



1 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

I. INTRODUCTION

A. Organization of Chapter.

8 *Witkin Cal. Proc. Enf Judgm § 1*

[§ 1] Organization of Chapter.

This chapter is organized as follows:

(1) *Introduction*. The methods of enforcing and discharging judgments in California are summarized in the next two sections (see §§2, 3), followed by a treatment of the regulation of debt collection practices (see §4 et seq.).

(2) *Procedures Under Enforcement of Judgments Law*. Treatment of the Enforcement of Judgments Law (*C.C.P.* 680.010 et seq.) then follows. The discussion is generally in the sequence of the statutory provisions:

(a) *Enforcement of Judgments Law: General Principles* (see *infra*, §18 et seq.).

(b) *Money Judgments: In General* (see *infra*, §53 et seq.).

(c) *Money Judgments: Liens* (see *infra*, §64 et seq.).

(d) *Money Judgments: Execution* (see *infra*, §99 et seq.).

(e) *Money Judgments: Exemptions* (see *infra*, §168 et seq.).

(f) *Money Judgments: Wage Garnishment* (see *infra*, §241 et seq.).

(g) *Money Judgments: Miscellaneous Creditors' Remedies* (see *infra*, §275 et seq.).

(h) *Nonmoney Judgments* (see *infra*, §325 et seq.).

(i) *Third-Party Claims and Related Procedures* (see *infra*, §364 et seq.).

(j) *Satisfaction of Judgment* (see *infra*, §387 et seq.).

(3) *Related Matters*. Related matters outside the scope of the Enforcement of Judgments Law are then covered as follows:

(a) *Other Actions and Proceedings Against Debtor* (see infra, §398 et seq.).

(b) *Sister State and Foreign Country Judgments* (see infra, §445 et seq.).

(c) *Attack on Fraudulent Transfers* (see infra, §479 et seq.).

(d) *Discharge of Judgment* (see infra, §507 et seq.).

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2 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

I. INTRODUCTION

B. Methods of Enforcement and Discharge.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 2

[§ 2] In General.

(1) *Execution*. It is customary to think of the enforcement of judgments in terms of execution against property of the judgment debtor. (See *infra*, §99 et seq.; on execution generally, see C.E.B., 2 Debt Collection Practice 2d, §9.2 et seq.; C.E.B. Action Guide, Enforcing Civil Money Judgments (2006); C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.2 et seq.; Cal. Civil Practice, 4 Procedure §30:22 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:300 et seq.; 39 *Hastings L. J.* 799; 11 *So. Cal. L. Rev.* 224; 9A Am.Jur. P.P. Forms (2005 ed.), Executions §1 et seq.; 30 *Am.Jur.2d* (2005 ed.), *Executions and Enforcement of Judgments* §1 et seq.; on recoverable costs of enforcement, see 7 *Cal. Proc.* (5th), *Judgment*, §§137, 138.)

(2) *Ancillary Proceedings*. A creditor may also use various summary proceedings ancillary to execution to aid enforcement. (See *infra*, §275 et seq.; on creditors' remedies ancillary to execution generally, see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.1 et seq.; Rutter Group, 2 Enforcing Judgments and Debts, Chaps. 6E-6G; C.E.B., 2 Debt Collection Practice, Chaps. 8-11; 30 *Am.Jur.2d* (2005 ed.), *Executions and Enforcement of Judgments* §551 et seq.; 10 Am.Jur. P.P. Forms (2005 ed.), Executions §213 et seq.) The following proceedings are illustrative:

(a) A garnishment proceeding under *C.C.P.* 706.010 et seq. to acquire payment of a portion of a debtor's earnings. (See *infra*, §241 et seq.)

(b) A creditor's suit under *C.C.P.* 708.210 et seq. to acquire property of the debtor in the possession or control of a third person or a debt owed by the third person to the debtor. (See *infra*, §291 et seq.)

(c) An action under C.C. 3439 et seq. to avoid a fraudulent transfer. (See *infra*, §488 et seq.)

(d) A contempt proceeding against the debtor. (See *infra*, §340 et seq.)

(e) A proceeding against joint debtors under *C.C.P.* 989 et seq. (See *infra*, §398 et seq.)

(f) Appointment of a receiver under *C.C.P.* 708.610 et seq. (See *infra*, §§310, 311.)

8 Witkin Cal. Proc. Enf Judgm § 2

(g) Enforcement against a governmental agency owing money to the judgment debtor under *C.C.P. 708.710* et seq. (See *infra*, §312 et seq.)

(h) An action on the judgment. (See *infra*, §§436, 445 et seq.)

(i) An action under the Uniform Interstate Family Support Act (*Family C. 4900* et seq.). (See *infra*, §407 et seq.)

(j) A claim against a decedent's estate or execution against estate property under *Prob.C. 9300* et seq. (See *infra*, §50.)

(k) An application under *B. & P.C. 10471* to satisfy an uncollectible judgment against a licensed real estate broker or seller for fraud, misrepresentation, deceit, or conversion of trust funds. (See 3 *Summary* (10th), *Agency and Employment*, §67 et seq.)

(3) *Indirect Methods*. The following indirect methods for bringing about compliance with judgments and court orders are also available:

(a) Denial of litigation rights to a party in contempt. (See *infra*, §358.)

(b) Suspension of a vehicle driver's license. (See *infra*, §438 et seq.)

(4) *Methods of Discharge*. Judgments may be discharged and satisfied of record, without the necessity of enforcement, by payment, equitable setoff, or bankruptcy. (See *infra*, §507 et seq.)

(5) *Federal Practice*. Except as otherwise provided by statute, the federal courts follow state practice in enforcing judgments. (*F.R. Civ. P., Rule 69*; see 12 *Federal Practice & Procedure* (Wright & Miller) §3012; 11 *Federal Procedure*, L.Ed. §31:57.)

West's Key Number Digest, Judgment 855

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3 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

I. INTRODUCTION

B. Methods of Enforcement and Discharge.

2. Civil Arrest Abolished.

8 *Witkin Cal. Proc. Enf Judgm* § 3

[§ 3] Civil Arrest Abolished.

Formerly, a judgment debtor was subject to civil arrest and imprisonment to satisfy the judgment. (See *30 Am.Jur.2d* (2005 ed.), *Executions and Enforcement of Judgments* §537.) Former C.C.P. 1143 et seq. provided an elaborate procedure for release including notice to the judgment creditor and a hearing. However, civil arrest was rarely used apart from contempt proceedings, and the civil arrest statutes were repealed in 1973. (See *5 Pacific L. J.* 268; 11 Cal. Law Rev. Com. Reports, p. 1; 6 *Cal. Proc.* (5th), *Provisional Remedies*, §5.)

Under present law, a person may not be imprisoned in a civil action for debt or tort, whether before or after judgment. However, the prohibition does not affect any power a court may have to imprison a person who violates a court order. (*C.C.P.* 501.)

West's Key Number Digest, Constitutional Law 83(3)

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4 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

I. INTRODUCTION

C. Collection Practice.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 4

[§ 4] In General.

Collection practice may involve commercial or consumer claims or any type of civil litigation. (See C.E.B., 1 Debt Collection Practice 2d, §1.1 et seq.; Cal. Civil Practice, 4 Business Litigation Chap. 59; Rutter Group, 1 Enforcing Judgments and Debts §1:1 et seq.) Various aspects of that practice are discussed in the following:

- (1) *Assignments for Benefit of Creditors*. (See 1 *Summary* (10th), *Contracts*, §§710, 711.)
- (2) *Bankruptcy Practice*. (See C.E.B., 1 Bankruptcy Practice in California, §3.1 et seq.; C.E.B., 2 Debt Collection Practice 2d, Chap. 12; 4 *U.C. Davis L. Rev.* 301; on discharge of judgments by bankruptcy, see *infra*, §514 et seq.)
- (3) *Collection Agency Practices*. (See C.E.B., 1 Debt Collection Practice 2d, Chap. 2; 17 *Santa Clara L. Rev.* 685.)
- (4) *Collection by Attorneys*. (See C.E.B., 1 Debt Collection Practice 2d, Chaps. 1, 2; 12 *Am.Jur. Trials* 194 [Collection Practice]; 35 *Hastings L. J.* 669.)
- (5) *Collection of Family Law Support Orders*. (See Cal. Civil Practice, 3 Family Law Litigation, Enforcement of Judgments and Orders, Chap. 19; 11 *Summary* (10th), *Husband and Wife*, §248 et seq.; *infra*, §§13 et seq., 403 et seq.)
- (6) *Compositions and Compromise Agreements*. (See 1 *Summary* (10th), *Contracts*, §§214, 215.)
- (7) *Payment Extension Agreements*. (See 1 *Summary* (10th), *Contracts*, §213.)
- (8) *Third-Party Claims*. (See C.E.B., 2 Debt Collection Practice 2d §949A et seq.; *infra*, §364 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



5 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

I. INTRODUCTION

C. Collection Practice.

2. Fair Debt Collection Practices Acts.

a. Nature and Scope.

1. Rosenthal Act.

8 *Witkin Cal. Proc. Enf Judgm* § 5

[§ 5] Rosenthal Act.

(1) *In General.* The Rosenthal Fair Debt Collection Practices Act (C.C. 1788 et seq.), enacted in 1977, regulates the collection of "consumer debts," i.e., those incurred by natural persons to acquire property, services, or money for personal, family, or household use. (C.C. 1788.2(b), (e), (f), (h).) The Act prohibits unfair and deceptive practices (see *infra*, §8), sets forth the responsibilities of debtors (see *infra*, §11) and the obligations of debt collectors (see *infra*, §§9, 10), and provides remedies for violation (see *infra*, §12). It applies to persons and entities engaged in the debt collection business, or who compose and sell forms, letters, and other collection media. (C.C. 1788.2(c), (g).) The Act is preempted, to the extent inconsistent, by the federal Fair Debt Collection Practices Act. (See *15 U.S.C.*, §1692 et seq., *infra*, §6.) (See C.E.B., 1 Debt Collection Practice 2d, Chap. 2; 9 *Pacific L. J.* 409; Rutter Group, 1 Enforcing Judgments and Debts §2:167 et seq.; Cal. Civil Practice, 5 Business Litigation, §59:1 et seq.; 87 *A.L.R.3d* 786 [validity, construction, and application of state statutes prohibiting abusive or coercive debt collection practices].)

(2) *Purpose of Act.* The purpose of the Act is to prohibit debt collectors from engaging in unfair or deceptive practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring consumer debts. (C.C. 1788.1.)

(3) *Applicability to Attorneys.* The term "debt collector" under the Act is not applicable to attorneys. (C.C. 1788.2(c).) However, the State Bar Act imposes requirements on attorneys and their employees when engaged in the collection of a consumer debt owed to another, and makes wilful breach of the requirements cause for discipline of the attorney. (*B. & P.C.* 6077.5; see 1 *Cal. Proc.* (5th), *Attorneys*, §506.)

(4) *Right of Employer To Receive Information From Credit Union.* Nothing in the Act prohibits a credit union chartered under state or federal law from providing information to an employer who is entitled to receive the information because of his or her status in the credit union. (C.C. 1788.3.)

SUPPLEMENT: [This section is current through the latest supplement]



6 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

I. INTRODUCTION

C. Collection Practice.

2. Fair Debt Collection Practices Acts.

a. Nature and Scope.

2. Effect of Federal Act.

8 *Witkin Cal. Proc. Enf Judgm* § 6

[§ 6] Effect of Federal Act.

(1) *Preemption by Federal Act.* The federal Fair Debt Collection Practices Act (15 U.S.C., §1692 et seq.) preempts state collection acts to the extent they are inconsistent. However, there is no inconsistency if a state Act affords greater consumer protection than that provided by the federal Act. (15 U.S.C., §1692n.) (On federal Act, see 79 *So. Cal. L. Rev.* 711 [scope and effect of federal Fair Debt Collection Practices Act]; 13 *U.S.F. L. Rev.* 575; 82 *Proof of Facts* 3d 335 [The Federal Fair Debt Collection Practices Act]; 5 *A.L.R. Fed 2d* 605 [construction and application of federal Fair Debt Collection Practices Act provision concerning use of language or symbol on mailed envelope (15 U.S.C., §1692f(8))]; 8 *A.L.R. Fed 2d* 423 [construction and application of federal Fair Debt Collection Practices Act provision regulating time and place of communications with consumer (15 U.S.C., §1692c(a)(1))]; 9 *A.L.R. Fed 2d* 645 [what constitutes harassment or abuse under federal Fair Debt Collection Practices Act provisions proscribing conduct the natural consequence of which is to harass, oppress, or abuse person in collecting debt (15 U.S.C., §1692d)]; 14 *A.L.R. Fed 2d* 207 [construction and application of federal Fair Debt Collection Practices Act bona fide error defense (15 U.S.C., §1692k(c))]; 22 *A.L.R. Fed 2d* 637 [what constitutes false representation or implication that individual is attorney or that communication is from attorney in connection with collection of debt as proscribed by federal Fair Debt Collection Practices Act (15 U.S.C., §1692e(3))].)

The Federal Trade Commission is directed to exempt by regulation debt collection practices that are subjected by state law to requirements substantially similar to those imposed by the federal Act, provided that there is adequate provision for enforcement. (15 U.S.C., §1692o.)

(2) *Partial Adoption of Federal Law.* The Rosenthal Fair Debt Collection Practices Act expressly adopts significant requirements of the federal Act. With specified exceptions, a debt collector must comply with the provisions of 15 U.S.C., §§1692b-1692j and is subject to the remedies in 15 U.S.C., §1692k. (C.C. 1788.17; see 178 *A.L.R. Fed* 367 [what constitutes "net worth" for purposes of 15 U.S.C., §1692k].)

(3) *Differences in Coverage.* The federal and state Acts differ in scope. For example, the federal Act ordinarily excludes from its scope creditors (and their employees) collecting their own consumer debts. (See 15 U.S.C., §1692a

(6); C.E.B., 1 Debt Collection Practice 2d, §2.8; Rutter Group, 1 Enforcing Judgments and Debts §2:16 et seq.) Under the Rosenthal Act, on the other hand, a debt collector is "any person who, in the ordinary course of business, regularly, and on behalf of himself or herself or others, engages in debt collection." (C.C. 1788.2(c).)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Preemption by Federal Act.* See 28 A.L.R. Fed 2d 523 [construction and application of venue provision of Fair Debt Collection Practices Act]; 104 Proof of Facts 3d 1 [proof under Fair Debt Collection Practices Act; superseding 82 Proof of Facts 3d 335, text, p. 36].



7 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

I. INTRODUCTION

C. Collection Practice.

2. Fair Debt Collection Practices Acts.
 - a. Nature and Scope.
3. Automobile Repair Shop Is Not Covered.

8 *Witkin Cal. Proc. Enf Judgm* § 7

[§ 7] Automobile Repair Shop Is Not Covered.

In *Gouskos v. Aptos Village Garage (2001) 94 C.A.4th 754, 114 C.R.2d 558*, a customer sued an automobile repair shop for violation of the Rosenthal Fair Debt Collection Practices Act, based on its attempts to collect repair and storage fees, which culminated in disposition of the car at a lien sale. The trial judge directed a verdict for defendant on the ground that the shop was not a "debt collector" as defined by the Act. *Held*, affirmed.

(a) The trial judge's analysis, which is correct, depends on the interplay of several definitions in the Act. Under C.C. 1788.2(c), "debt collector" means any person who, in the ordinary course of business, regularly engages in debt collection. Under C.C. 1788.2(b), "debt collection" means an act or practice in connection with the collection of consumer debts. Under C.C. 1788.2(f), "consumer debt" and "consumer credit" mean money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. Under C.C. 1788.2(e), "consumer credit transaction" means a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person from the other person primarily for personal, family, or household purposes. (*94 C.A.4th 759.*)

(b) C.C. 1788.2(e) does not state that a consumer credit transaction includes a transaction where a person provides property or services in advance of payment. The section states that a consumer credit transaction means a transaction where a person *acquires* property or services *on credit*. In other words, there is a consumer credit transaction when the consumer acquires something without paying for it. (*94 C.A.4th 759.*)

(c) In the automobile repair context, there rarely would exist a consumer credit transaction because repair shops typically do not release repaired vehicles without payment; thus, a vehicle owner would typically not acquire a shop's property or service until the property or service is paid for and the owner regains his or her own property. Here, the owner never acquired property or services from defendants because he never regained his car. (*94 C.A.4th 760.*)

SUPPLEMENT: [This section is current through the latest supplement]



8 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

I. INTRODUCTION

C. Collection Practice.

2. Fair Debt Collection Practices Acts.

b. Duties of Collector.

1. Prohibited Practices.

8 *Witkin Cal. Proc. Enf Judgm* § 8

[§ 8] Prohibited Practices.

Means of collecting consumer debts that are forbidden by the Rosenthal Fair Debt Collection Practices Act fall under the following general categories:

(1) *Threats*. Threats of violence, false criminal charges, or defamation; threats to use various enforcement measures if accompanied by false representations concerning the result of using the measures or if the collector does not intend to, or could not legally, carry them out; and threats to take actions prohibited by the Act. (C.C. 1788.10.)

(2) *Harassment*. Direct harassment by obscene or profane language, abuse of the telephone or similar means of communication, or unreasonably frequent communication, by telephone or in person, with the debtor. (C.C. 1788.11.)

(3) *Improper Disclosures*. Disclosures to third parties by communication about a debt with the debtor's employer (unless necessary to the collection of the debt) or family (unless necessary to locate the debtor or where consented to by the debtor's attorney), dissemination of "deadbeat lists" or other advertising naming the debtor, or communicating with the debtor by embarrassing writings addressed to the debtor but intended to be read by others. However, these provisions do not prohibit disclosure of information by a collector to a consumer reporting agency or other person reasonably believed to have a legitimate business need for the information. (C.C. 1788.12.)

(4) *False Representations*. False representations of the collector's identity or authority, of the debtor's liability for collection charges, or of intended legal proceedings or assignment for collection; and any communication by a licensed collection agency to a debtor demanding money unless the claim is actually assigned to the agency. (C.C. 1788.13.)

(5) *Overreaching*. Overreaching by fraudulently obtaining the debtor's affirmation of a discharged debt, attempting to collect illegal charges, or initiating communications with the debtor in disregard of a request to address communications to the debtor's attorney. (C.C. 1788.14.)

(6) *Improper Use of Judicial Proceedings*. Prosecution of judicial proceedings without service of process essential

to jurisdiction, or in a county other than that in which the debt was incurred or the debtor then resided or currently resides. (C.C. 1788.15; see *Yu v. Signet Bank/Virginia* (1999) 69 C.A.4th 1377, 1395, 82 C.R.2d 304 [C.C. 1788.15 does not govern conduct outside state; California credit card holders had no cause of action against Virginia banks that allegedly violated statute by suing plaintiffs in Virginia for credit card debt before it was reduced to judgment].)

(7) *Improper Communications*. Sending a communication that simulates legal or judicial process or falsely appears to be authorized by a governmental agency or attorney. (C.C. 1788.16.)

(8) *Failure To Comply With Federal Law*. Noncompliance with specified provisions of the federal Fair Debt Collection Practices Act. (C.C. 1788.17; see *supra*, §6.)

SUPPLEMENT: [This section is current through the latest supplement]



9 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

I. INTRODUCTION

C. Collection Practice.

2. Fair Debt Collection Practices Acts.

b. Duties of Collector.

2. Notice to Debtor of Rights.

8 *Witkin Cal. Proc. Enf Judgm* § 9

[§ 9] Notice to Debtor of Rights.

(1) *In General.* Third-party debt collectors subject to the federal Fair Debt Collection Practices Act (*supra*, §6) are required to provide a prescribed notice to debtors regarding their rights under that Act and the Rosenthal Fair Debt Collection Practices Act. (C.C. 1812.700(a).)

(2) *Time of Notice.* The notice must be included with the first written notice addressed to a California address of a debtor in connection with collecting the debt. (C.C. 1812.700(b).)

(3) *Content of Notice.* The notice must include the following description of debtor rights: "The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov." (C.C. 1812.700(a).)

The required notice may be changed only as necessary to reflect changes in the federal Fair Debt Collection Practices Act that would otherwise make the disclosure inaccurate. (C.C. 1812.701(a).)

(4) *Type Size.* The type size used in the notice must be at least as large as that used to inform the debtor of his or her specific debt, but need not be larger than 12-point type. (C.C. 1812.701(b).)

(5) *Notice in Foreign Language.* If a language other than English is principally used by the third-party debt collector in the initial oral contact with the debtor, the notice must be provided to the debtor in that language within 5 working days. (C.C. 1812.700(c).)

(6) *Remedies.* A violation of these requirements is considered a violation of the Rosenthal Act. (C.C. 1812.702; on remedies under Rosenthal Act, see *infra*, §12.)

SUPPLEMENT: [This section is current through the latest supplement]



10 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

I. INTRODUCTION

C. Collection Practice.

2. Fair Debt Collection Practices Acts.

b. Duties of Collector.

3. Collection Where Identity Theft Is Claimed.

8 *Witkin Cal. Proc. Enf Judgm* § 10

[§ 10] Collection Where Identity Theft Is Claimed.

(1) *In General.* When the debtor owing a consumer debt provides specified information regarding identity theft, the debt collector must stop collecting the debt and may resume collection activities only on a prescribed review of the information and a good faith determination that the information does not establish that the debtor is not responsible for the debt. (C.C. 1788.18(a), (d).)

Information and supporting documents provided by the debtor pursuant to these provisions may also serve to satisfy notice requirements in actions for identity theft (see C.C. 1798.93(c)(5); 5 *Summary* (10th), *Torts*, §668) to the extent the documents meet those requirements. (C.C. 1788.18(f).)

The exercise or nonexercise of rights under these provisions is not a waiver of any other right or defense of the debtor or debt collector. (C.C. 1788.18(e).)

(2) *Who Is Debtor.* "Debtor" is defined for purposes of these provisions as a natural person, firm, association, organization, partnership, business trust, company, corporation, or limited liability company from which a debt collector seeks to collect a debt that is due and owing or alleged to be due and owing. (C.C. 1788.18(i).)

The remedies provided by the Rosenthal Fair Debt Collection Practices Act apply equally to violations of C.C. 1788.18. (C.C. 1788.18(i).)

(3) *Information Provided by Debtor.* On receipt from the debtor of both of the following, the debt collector must cease collection activities until completion of the review:

(a) A copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime, including, but not limited to, a violation of P.C. 530.5 (wrongful use of personal identifying information; see 2 *Cal. Crim. Law* (3d), *Crimes Against Property*, §209), for the debt being collected. (C.C. 1788.18(a)(1).)

(b) The debtor's written statement that he or she claims to be the victim of identity theft with respect to the specific

debt being collected by the debt collector. (C.C. 1788.18(a)(2).)

The written statement may consist of any of the following:

(a) A Federal Trade Commission's Affidavit of Identity Theft. (C.C. 1788.18(b)(1).) This affidavit is available at: www.ftc.gov.

(b) A written statement containing the content of the Identity Theft Victim's Fraudulent Account Information Request offered to the public by the California Office of Privacy Protection. (C.C. 1788.18(b)(2).) This document is available at: www.oispp.ca.gov.

(c) A prescribed written certification that the representations are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. A person submitting the certification who declares as true any material matter he or she knows to be false is guilty of a misdemeanor. (C.C. 1788.18(b)(3).) (On form for certification, see C.C. 1788.18(b)(3)(K).)

If the debtor notifies the debt collector orally that he or she is a victim of identity theft, the debt collector must notify the debtor, orally or in writing, that his or her claim must be in writing. If the debtor notifies the debt collector in writing but omits required information or certification, the debt collector must cease collection activities, provide written notice to the debtor of the additional information or certification necessary, or send the debtor a copy of the Federal Trade Commission's Affidavit of Identity Theft form. (C.C. 1788.18(c).)

(4) *Review of Information and Determination by Debt Collector.* On receipt of the complete required statement and information, the debt collector must review and consider that information and any other information available to the debt collector in its file or from the creditor. The debt collector may recommence debt collection activities only on making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question. The debt collector's determination must be made in a manner consistent with the provisions of 15 U.S.C., §1692(1), as incorporated by C.C. 1788.17 (see supra, §6). The debt collector must notify the debtor in writing of that determination and its basis before proceeding with further collection activities. (C.C. 1788.18(d).)

No inference or presumption that the debt is valid or invalid, or that the debtor is liable or not liable for the debt, arises from the debt collector's decision after the review whether to cease or to recommence debt collection activities. (C.C. 1788.18(e).)

(5) *Report to Creditor and Credit Reporting Agencies.* A debt collector who ceases collection activities and does not recommence them must do both of the following:

(a) Notify any consumer credit reporting agency to whom the debt collector has furnished adverse information to delete that information. (C.C. 1788.18(g)(1).)

(b) Notify the creditor that debt collection activities have been terminated based on the debtor's claim of identity theft. (C.C. 1788.18(g)(2).)

(6) *Documents Provided to Debtor.* A debt collector who has possession of documents that the debtor is entitled to request from a creditor pursuant to P.C. 530.8 (procedure for obtaining information from creditor where application for credit or loan filed by unauthorized user of personal identifying information; see 2 Cal. Crim. Law (3d), Crimes Against Property, §209) is authorized to provide those documents to the debtor. (C.C. 1788.18(h).)

SUPPLEMENT: [This section is current through the latest supplement]



11 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

I. INTRODUCTION

C. Collection Practice.

2. Fair Debt Collection Practices Acts.

c. Responsibilities of Debtor.

8 Witkin Cal. Proc. Enf Judgm § 11

[§ 11] Responsibilities of Debtor.

The Rosenthal Fair Debt Collection Practices Act establishes certain responsibilities of debtors:

(1) When applying for consumer credit, a person may not knowingly lack ability or intent to pay, knowingly submit false information, or wilfully conceal adverse information bearing on the person's creditworthiness. (C.C. 1788.20.)

(2) Where the creditor has stated in writing the responsibility to do so, the debtor must notify the creditor of changes of name, address, or employment. (C.C. 1788.21.)

(3) Where the creditor has stated in writing the responsibility to do so, a debtor to whom credit has been extended under an account must refrain from using terminated or suspended credit privileges, notify the creditor of the loss of a credit card, and assist the creditor in determining the circumstances of any unauthorized use of the account. (C.C. 1788.22.)

A debtor's violation of these provisions may be raised as a defense to an action for violation of the Act. (See *infra*, §12.)

SUPPLEMENT: [This section is current through the latest supplement]



12 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

I. INTRODUCTION

C. Collection Practice.

2. Fair Debt Collection Practices Acts.

d. Relief for Violation.

8 *Witkin Cal. Proc. Enf Judgm* § 12

[§ 12] Relief for Violation.

(1) *Collector's Liability.* A collector violating the Rosenthal Fair Debt Collection Practices Act is liable for the debtor's actual damages, unless the collector shows by a preponderance of the evidence that the violation occurred unintentionally despite reasonable preventive procedures, or unless the collector notifies the debtor of a curable violation and corrects it within 15 days after discovery or written notice of the violation. (C.C. 1788.30(a), (d), (e).) For a wilful, knowing violation, the debtor may also recover a penalty between \$ 100 and \$ 1,000. (C.C. 1788.30(b).) (See 41 Proof of Facts 3d 159 [liability of debt collector to debtor under federal Fair Debt Collection Practices Act].)

(2) *Debtor's Violation as Defense.* A collector may raise the debtor's intentional violation of the Rosenthal Act as a defense to an action under the Act, if the violation is pertinent to the debtor's claim or action against the collector. (C.C. 1788.30(g).) (On debtor's responsibilities, see *supra*, §11.)

(3) *Nature of Action.* To enforce the collector's liability, the debtor may sue in an individual capacity only, within 1 year of the violation. (C.C. 1788.30(f).) The prevailing party is entitled to costs; a prevailing debtor is also entitled to attorneys' fees, and a prevailing creditor may be awarded attorneys' fees on a finding of the debtor's lack of good faith. (C.C. 1788.30(c).)

(4) *Remedies Are Cumulative.* The remedies provided by the Act are cumulative to any other remedies. (C.C. 1788.32.) (On tort liability for intentional infliction of emotional distress by debt collection tactics, see 5 *Summary* (10th), *Torts*, §458; on equitable relief against unfair competition caused by unfair collection practices, see 13 *Summary* (10th), *Equity*, §110.)

(5) *Waiver of Requirements Is Unenforceable.* Any waiver of the provisions of the Act is contrary to public policy, and is void and unenforceable. (C.C. 1788.33.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Collector's Liability.* See 104 Proof of Facts 3d 1 [proof under Fair Debt Collection Practices Act; superseding 41 Proof of Facts 3d 159, text, p. 43].

In *Komarova v. National Credit Acceptance* (2009) 175 C.A.4th 324, 95 C.R.3d 880, plaintiff, whose name was similar to the name of a debtor, brought an action against a collection agency for violations of the Rosenthal Fair Debt Collection Practices Act. The jury awarded compensatory and punitive damages. *Held*, affirmed in part, reversed in part, and remanded for calculation of attorneys' fees.

(a) The litigation privilege (5 *Summary* (10th), *Torts*, §562 et seq.) does not shield a debt collector from claims under the Act. Allowing the privilege would render the Act's protections meaningless. (175 C.A.4th 337.)

(b) Under the continuing violation doctrine, defendant's continuing pattern of frequent and harassing calling, improper communications with plaintiff's employer, and judicial proceedings without service of process justified plaintiff's recovery even though most of defendant's conduct took place outside the 1-year limitations period of C.C. 1788.30(f). (175 C.A.4th 343.)

(c) C.C. 1788.30(c), which allows recovery of attorneys' fees "based on time necessarily expended" in the action does not preclude the use of a multiplier to the lodestar when calculating fee awards (see 7 *Cal. Proc.* (5th), *Judgment*, §312). The statutory language refers to the review of billing records to ensure that "padding" or duplicative billing is not included. (175 C.A.4th 347.)



13 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

I. INTRODUCTION

C. Collection Practice.

3. Private Child Support Collectors.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 13*

[§ 13] In General.

(1) *Nature of Statute. Family C. 5610 et seq.*, added in 2006, regulate the activities of private child support collectors. (On governmental enforcement of support obligations, see 11 *Summary* (10th), *Husband and Wife*, §308 et seq.; on enforcement of child support obligations generally, see 10 *Summary* (10th), *Parent and Child*, §425 et seq.)

(2) *Definition of "Private Child Support Collector."* A "private child support collector" is an individual, corporation, nonprofit organization, or other nongovernmental entity engaged by an obligee to collect court-ordered child support for consideration. (*Family C. 5610.*) The term includes a private, nongovernmental attorney whose business is substantially comprised of the collection or enforcement of child support; "substantially" means at least 50%, either in terms of remuneration or time spent. The term does not include an attorney who addresses issues of ongoing child support or child support arrearages in the course of an action to establish parentage or a child support obligation, a proceeding under the Domestic Violence Prevention Act (*Family C. 6200 et seq.*), a proceeding for dissolution of marriage, legal separation, or nullity of marriage, or a postjudgment or modification proceeding related to any of those actions. (*Family C. 5610.*)

(3) *Waiver Is Prohibited.* Any waiver of the rights, requirements, and remedies provided by the statute violates public policy and is void. (*Family C. 5615(b).*)

(4) *Effect Under Bankruptcy Laws of Assignment for Collection.* An assignment to a private child support collector is a voluntary assignment for the purpose of collecting the domestic support obligation as defined in 11 *U.S.C.*, §101(14A) (see *infra*, §522). (*Family C. 5616(e).*)

SUPPLEMENT: [This section is current through the latest supplement]



14 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

I. INTRODUCTION

C. Collection Practice.

3. Private Child Support Collectors.

b. Contract for Collection.

8 *Witkin Cal. Proc. Enf Judgm § 14*

[§ 14] Contract for Collection.

(1) *Form and Content.* A contract for the collection of child support between a private child support collector and the support obligee must be in writing and written in simple language, in at least 10-point type, signed by the collector and the obligee. The contract must be delivered to the obligee in a paper form that the obligee may retain for his or her records. The contract must provide prescribed information concerning the obligee's rights and responsibilities and the collector's obligations. It must also include specified disclosures and notices in stated format. (*Family C. 5611.*)

The information, disclosures, and notices required in the contract include the following:

(a) *Explanation of fees.* An explanation of the fees imposed by contract and otherwise permitted by law and an example of how they are calculated and deducted. (*Family C. 5611(a)(1).*)

(b) *Setting of fees by collector.* A statement that the amount of fees to be charged is set by the private child support collector and is not set by state law. (*Family C. 5611(a)(2).*)

(c) *Limitation of fees on current support.* A statement that the collector cannot charge fees on current support if the obligee received any current child support during the 6 months preceding execution of the contract with the collector. (*Family C. 5611(a)(3).*)

(d) *Services provided.* An explanation of the nature of the services to be provided. (*Family C. 5611(a)(4).*)

(e) *Expected duration of contract.* The expected duration of the contract, stated as a length of time or as an amount to be collected by the collector. (*Family C. 5611(a)(5).*)

(f) *Cancellation or termination of contract.* An explanation of the opportunities available to the obligee or the collector to cancel the contract or other conditions under which the contract terminates. (*Family C. 5611(a)(6).*)

(g) *Collector's address, phone, fax, and Internet information.* The mailing address, street address, telephone numbers, fax numbers, and Internet address or location of the collector. (*Family C. 5611(a)(7).*)

(h) *Availability of governmental collection and enforcement.* A statement that the collector is not a governmental entity and that governmental entities in California provide child support collection and enforcement services free of charge. (*Family C. 5611(a)(8).*)

(i) *No collection of obligations assigned to state or county.* A statement that the collector collects only money owed to the obligee and not support obligations assigned to the state or county due to the receipt of benefits from CalWORKs or Temporary Assistance to Needy Families. (*Family C. 5611(a)(9).*)

(j) *No retention of fees from collections attributable to others.* A statement that the collector will not retain fees from collections that are primarily attributable to the actions of a governmental entity or any other person or entity and that the collector is required by law to refund any fees improperly retained. (*Family C. 5611(a)(10).*)

(k) *Obligee's right to engage governmental services.* A statement that the obligee may continue to receive, or may pursue, services through a governmental entity to collect support, and the collector will not require or request that the obligee cease or refrain from engaging those services. (*Family C. 5611(a)(11).*)

(l) *Case records.* A notice that the collector is required to keep and maintain case records for a period of 4 years and 4 months, after the expiration of the contract, and may thereafter destroy or otherwise dispose of the records. The obligee may, prior to destruction or disposal, retrieve those portions of the records that are not confidential. (*Family C. 5611(a)(12).*)

(m) *Notice of cancellation.* A "Notice of Cancellation," in prescribed language and format, (1) informing the obligee of his or her right to cancel the contract within 15 business days from the date the contract is signed or from receipt of the notice, whichever is later, or at any time that the collector commits a material breach of the contract or a material violation of the statute or that other permitted grounds for cancellation arise, and (2) stating the manner of cancellation. (*Family C. 5611(a)(13).*)

(n) *Receipt of public assistance.* A statement by the obligee, in prescribed language, on the first page of the contract (1) that the obligee understands that the contract calls for the collector to collect money owed to the obligee and not money owed to the state or county; that if child support is owed to the state or county because the obligee is receiving or has received program benefits from CalWORKs or Temporary Assistance to Needy Families, the collector cannot collect that money for the obligee; and that if the obligee starts to receive these program benefits during this contract, he or she must notify the collector in writing; and (2) that the obligee declares by his or her signature to the contract that the child support to be collected pursuant to the contract is not assigned to the state or county as of the time of signing the contract, and that the obligee agrees to give written notice to the collector if he or she applies for these program benefits during the term of the contract. (*Family C. 5611(a)(14).*)

(o) *Duration of collection.* A statement by the obligee, in prescribed language and format, immediately above the signature line of the contract that the obligee understands that the collector will charge a fee for all the current child support and arrears it collects until the entire contract amount is collected or the contract terminates for another reason; that depending on the frequency and size of payments, it could take years for the amount specified in the contract to be collected; and that if the collector is collecting current support by wage withholding or other means, the obligee will not receive the full amount of his or her periodic court-ordered current support until the contract terminates because the collector will be deducting its fee from the periodic court-ordered current support collected. (*Family C. 5611(a)(15).*)

(p) *Disclosure that collector is not governmental entity and charges fees.* A prescribed disclosure that the collector is not a governmental entity and respecting the charging of fees for its services. (*Family C. 5611(b), 5612(b)*); for nature of disclosure, see *Family C. 5612(a)*, *infra*, §15.)

(2) *Termination.* An obligee has the right to cancel the contract under either of the following circumstances:

(a) Within 15 business days after signing the contract or receiving a blank notice of cancellation form, whichever is

later, or at any time if the private child support collector commits a material breach of the contract or a material violation of the private child support collectors statute. (*Family C. 5613(a)(1).*)

(b) At the end of any 12-month period in which the total amount collected by the collector is less than 50% of the amount scheduled to be paid under a payment plan. (*Family C. 5613(a)(2).*)

A contract automatically terminates when the contract term has expired or the contract amount has been collected, whichever occurs first. (*Family C. 5613(b).*)

(3) *Contracts of Attorneys.* A contract for the collection of child support by an attorney who is a private child support collector must conform to the statutes, rules, and case law governing attorney conduct, including the provisions of law providing that a contract with an attorney may be cancelled by a client at any time. On cancellation, the attorney may seek compensation as provided by law, including, if applicable, a quantum meruit claim for the reasonable value of services rendered to the client, provided those services lead to the collection of support and the compensation is limited to what would have been collected had the contract been in effect. To the extent that the private child support collectors statute is in conflict with the provisions of state law governing the conduct of attorneys, the statute controls. If there is no conflict, the attorney must conform to the statute. (*Family C. 5615(c)*); on termination of attorney-client relationship, see 1 *Cal. Proc. (5th), Attorneys*, §66 et seq.; on fiduciary obligations of attorneys, see 1 *Cal. Proc. (5th), Attorneys*, §90 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



15 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

I. INTRODUCTION

C. Collection Practice.

3. Private Child Support Collectors.

c. Duties and Prohibited Acts.

8 *Witkin Cal. Proc. Enf Judgm § 15*

[§ 15] Duties and Prohibited Acts.

(1) *Duties Regarding Collections and Payments.* A private child support collector is required to provide specified information, disclosures, and notices in the contract with the support obligee. (See *Family C. 5611*, supra, §14). The collector has additional duties during the term of the contract with regard to collections and payments. These include the following:

(a) *Providing information to obligee.* The private child support collector must provide to an obligee all of the following information:

(1) The name and other identifying information relating to any obligor who made child support payments collected by the collector. (*Family C. 5614(a)(1)(A)(i).*)

(2) The amount of support collected by the collector. (*Family C. 5614(a)(1)(A)(ii).*)

(3) The date on which each amount was received by the collector. (*Family C. 5614(a)(1)(A)(iii).*)

(4) The date on which each amount received by the collector was sent to the obligee. (*Family C. 5614(a)(1)(A)(iv).*)

(5) The amount of the payment sent to the obligee. (*Family C. 5614(a)(1)(A)(v).*)

(6) The source of payment of support collected and the actions affirmatively taken by the collector that resulted in the payment. (*Family C. 5614(a)(1)(A)(vi).*)

(7) The amount and percentage of each payment kept by the collector as its fee. (*Family C. 5614(a)(1)(A)(vii).*)

The information so required must be made available, at the option of the obligee, by mail, by telephone, or via secure Internet access. If provided by mail, the notice must be sent at least quarterly and, if provided by any other method, the information must be updated and made available at least monthly. Information accessed by telephone and the Internet must be up to date. (*Family C. 5614(a)(1)(B).*)

(b) *Establishing direct deposit account.* The private child support collector must establish a direct deposit account with the State Disbursement Unit and must within 2 business days from the date the funds are disbursed from the unit to the collector, if a portion of the funds constitute an obligor's fee, notify the Department of Child Support Services of the portion of each collection that constitutes a fee. (*Family C. 5614(a)(2)*; on State Disbursement Unit, see 11 *Summary* (10th), *Husband and Wife*, §313; on Department of Child Support Services, see 11 *Summary* (10th), *Husband and Wife*, §309.)

(c) *Maintenance of records.* The private child support collector must maintain records of all child support collections made on behalf of the obligee. The records must be maintained for the duration of the contract plus 4 years and 4 months from the date of the last child support payment collected. In addition to information required by *Family C. 5614(a)(1)*, the collector must maintain (1) a copy of the order establishing the child support obligation under which a collection was made by the collector, (2) records of all correspondence between the collector and the obligee or obligor, and (3) any other pertinent information relating to the child support obligation, including any case, cause, or docket number of the court having jurisdiction over the matter and official government payment records obtained by the collector on behalf of, and at the request of, the obligee. (*Family C. 5614(a)(3)*.)

The collector must safeguard case records in a manner reasonably expected to prevent intentional or accidental disclosure of confidential information pertaining to the obligee or obligor, including providing necessary protections for records maintained in an automated system. (*Family C. 5614(a)(4)*.)

(d) *Review of documents.* The collector must ensure that every person who contracts with it has the right to review all files and documents, both paper and electronic, in its possession for information regarding that obligee's case that is not required by law to be kept confidential. The obligee, during regular business hours, must be provided reasonable access to, and copies of, the collector's files and records regarding money received, collection attempts made, fees retained by or paid to the collector, and moneys disbursed to the obligee. The collector may not charge a fee for access to the files and records, but may require the obligee to pay a specified amount for the copies. (*Family C. 5614(a)(5)*.)

(e) *Notice to local child support agency.* The private child support collector must provide, prior to commencing collection activities, written notice of any contract with an obligee to the local child support agency that is enforcing the obligee's support order, if known, or the local child support agency for the county in which the obligee resides as of the time the contract is signed by the obligee. The notice must identify the obligee, the obligor, and the amount of the arrearage claimed by the obligee. (*Family C. 5614(a)(6)*; on enforcement of support obligations by local child support agency, see 11 *Summary* (10th), *Husband and Wife*, §308 et seq.)

(2) *Advertising Disclosures.* A private child support collector that charges an initial fee, processing fee, application fee, filing fee, or other fee or assessment that must be paid by an obligee regardless of whether any child support collection is made must make the following disclosure in every radio, television, or print advertisement intended for a target audience consisting primarily of California residents: "(Name of private child support collector) is not a governmental entity and charges an upfront fee for its services even if it does not collect anything." (*Family C. 5612(a)(1)*.) A collector that does not charge such a fee or assessment must make the following disclosure: "(Name of private child support collector) is not a governmental entity and charges a fee for its services." (*Family C. 5612(a)(2)*.) These disclosures must also be stated during the first 30 seconds of an initial telephone conversation with an obligee. (*Family C. 5612(b)*.)

(3) *Prohibited Acts.* A private child support collector may not do any of the following:

(a) *Charging fees on certain current support.* Charge fees on current support if the obligee received any current child support during the 6 months preceding execution of the contract with the collector. The collector must inquire of the obligee and record the month and year of the last current support payment and may rely on information so provided in determining whether a fee may be charged on current support. (*Family C. 5614(b)(1)*.)

(b) *Retaining fees from governmental collections.* Improperly retain fees from collections that are primarily attributable to the actions of a governmental entity. The collector must refund all of those fees to the obligee immediately on discovery or notice of the improper retention of fees. (*Family C. 5614(b)(2).*)

(c) *Conduct prohibited by Rosenthal Fair Debt Collection Practices Act.* Collect or attempt to collect child support by means of conduct that is prohibited of a debt collector collecting a consumer debt under the Rosenthal Fair Debt Collection Practices Act (C.C. 1788 et seq.; see supra, §5 et seq.). (*Family C. 5614(b)(3).*)

(d) *Misstating fee obligation.* Misstate the amount of the fee that may be lawfully paid to the collector for the performance of the contract or the identity of the person who is obligated to pay that fee. (*Family C. 5614(b)(4).*)

(e) *False representation of amount to be collected.* Make a false representation of the amount of child support to be collected. A collector is not in violation of this prohibition if it reasonably relied on sufficient documentation provided by the government entity collecting child support, a court with jurisdiction over the support obligation, or from the obligee, or on sufficient documentation provided by the obligor. (*Family C. 5614(b)(5).*)

(f) *Collection from party other than obligor.* Ask any party other than the obligor to pay the child support obligation, unless that party is legally responsible for the obligation or is the legal representative of the obligor. (*Family C. 5614(b)(6).*)

(g) *Requiring waiver of litigation rights.* Require as a condition of providing services to the obligee that the obligee waive any right or procedure provided for in any state law regarding the right to file and pursue a civil action, or that the obligee agree to resolve disputes in a jurisdiction outside of California or to the application of laws other than those of California, as provided by law. Any waiver by the obligee of the right to file and pursue a civil action, the right to file and pursue a civil action in California, or the right to rely on California law as provided by law must be knowing, voluntary, and not made a condition of doing business with the collector. Any waiver, including, but not limited to, an agreement to arbitrate or regarding choice of forum or choice of law, that is required as a condition of doing business with the collector, is presumed involuntary, unconscionable, against public policy, and unenforceable; the collector has the burden of proving that the waiver was knowing, voluntary, and not made a condition of the contract with the obligee. (*Family C. 5614(b)(7).*)

SUPPLEMENT: [This section is current through the latest supplement]



16 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

I. INTRODUCTION

C. Collection Practice.

3. Private Child Support Collectors.

d. Remedies for Violation of Requirements.

8 *Witkin Cal. Proc. Enf Judgm § 16*

[§ 16] Remedies for Violation of Requirements.

(1) *Available Remedies.* The following remedies are provided for violations of the private child support collectors statute:

(a) *Actual damages.* A person may bring an action for actual damages incurred as a result of a violation of the statute. (*Family C. 5615(a)(1).*)

(b) *Civil penalty.* A private child support collector who wilfully and knowingly violates the statute is liable for a civil penalty in an amount determined by the court, which may not be less than \$ 100 nor more than \$ 1,000. The penalty is recoverable in addition to actual damages. (*Family C. 5615(a)(2).*)

(c) *Costs and attorneys' fees.* The prevailing party in an action pursuant to the statute is entitled to recover the costs of the action. Reasonable attorneys' fees, based on the time necessarily expended to enforce the liability, must be awarded to a prevailing party who is not a private child support collector. Reasonable attorneys' fees may be awarded to a prevailing collector if the court finds that the party bringing the action did not prosecute the action in good faith. (*Family C. 5615(a)(3)(A).*)

(2) *Limitations on Liability.* In an action by an obligor under the statute, the private child support collector has no civil liability to the obligor under any circumstance in which a debt collector would not have civil liability under the Rosenthal Fair Debt Collection Practices Act (see C.C. 1788.30, *supra*, §12). (*Family C. 5615(a)(3)(B).*)

A collector is not in violation of the statute if it shows, by a preponderance of the evidence, that the action complained of was not intentional and resulted from a bona fide error that occurred notwithstanding the use of reasonable procedures to avoid the error. (*Family C. 5615(a)(4).*)

(3) *Remedies Are Cumulative.* The remedies provided are cumulative and are in addition to any other procedures, rights, or remedies available under any other law. (*Family C. 5615(a)(5).*)

SUPPLEMENT: [This section is current through the latest supplement]



17 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

I. INTRODUCTION

C. Collection Practice.

3. Private Child Support Collectors.

e. Collection of Fees and Costs.

8 *Witkin Cal. Proc. Enf Judgm § 17*

[§ 17] Collection of Fees and Costs.

(1) *Separate Money Judgment Against Support Obligor.* Court orders for child support issued on or after January 1, 2010, and child support agreements providing for child support approved by a court on or after that date, "shall include a separate money judgment owed by the child support obligor to pay a fee not to exceed 33 and 1/3 percent of the total amount in arrears, and not to exceed 50 percent of the fee as charged by a private child support collector pursuant to a contract" complying with the requirements of the private child support collectors statute "and any other child support collections costs expressly permitted by the child support order for the collection efforts undertaken by the private child support collector." (*Family C. 5616(a).*)

The money judgment must be in favor of the collector and the obligee, jointly. (*Family C. 5616(a).*)

The money judgment may be enforced by the collector by any means available to the obligee for the enforcement of the child support order without any additional action or order by the court. However, nothing in the statute may be construed to grant the collector any enforcement remedies beyond those authorized by federal or state law. Any fee collected from the obligor pursuant to a contract under the statute does not constitute child support. (*Family C. 5616(a).*)

(2) *Fees and Costs Are Not Credited Against Support Arrearages.* If the child support order makes the obligor responsible for the payment of collection fees and costs, fees that are deducted by a private child support collector may not be credited against child support arrearages or interest owing on arrearages or any other money owed by the obligor to the obligee. (*Family C. 5616(b).*)

(3) *Notice to Obligor.* If the child support order requires payment of collection fees and costs by the obligor, written notice must be provided to the obligor, not later than 5 days after the date that the private child support collector makes its first collection, of (a) the amount of arrearages subject to collection, (b) the amount of the collection that will be applied to the arrearage, and (c) the amount of the collection that will be applied to the fees and costs of collection. The notice must provide that, in addition to any other procedures available, the obligor has 30 days to file a motion to contest the amount of collection fees and costs assessed against the obligor. (*Family C. 5616(c).*)

(4) *Creation of Lien.* Any fees or monetary obligations resulting from the contract between an obligee parent and a private child support collector, or money owed to the collector by the obligor parent or obligee parent as a result of the collector's efforts, does not create a lien on real property, unless an abstract of judgment is obtained from the court and recorded by the collector against the real property in the county in which it is located. That amount may not be added to any existing lien created by a recorded abstract of support or added to an obligation on any abstract of judgment. A private child support collector lien has the force, effect, and priority of a judgment lien. (*Family C. 5616(a), (d).*)

SUPPLEMENT: [This section is current through the latest supplement]



18 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

A. Background and Enactment.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 18

[§ 18] In General.

(1) *Defects in Former Law and Recommendation by Law Revision Commission.* Before enactment of the Enforcement of Judgments Law, the law relating to judgment enforcement had long been in need of revision. Many provisions dated from the 1872 enactment of the Code of Civil Procedure and some had remained largely unchanged since 1851, and piecemeal amendments had accumulated over a century. The result was long and complex sections that were difficult to read and understand, duplications and inconsistencies, and obsolete and inoperative provisions. Judicial decisions interpreting the statutory language were conflicting and obscure. Important matters were not covered at all or were covered inadequately. To reduce procedural costs and to improve remedies for creditors and protection for debtors, the California Law Revision Commission proposed a comprehensive statute providing full and clear statutory treatment of the enforcement of judgments. (16 Cal. Law Rev. Com. Reports, p. 1029.)

(2) *Enactment of Enforcement of Judgments Law.* In response to the Law Revision Commission's recommendation, the 1982 Legislature repealed former C.C.P. 681 et seq., enacted *C.C.P. 680.010* et seq. (entitled Enforcement of Judgments), and made numerous conforming changes in other codes. (See *14 Pacific L. J.* 397; Rutter Group, 2 Enforcing Judgments and Debts §6:1.5 et seq.; for disposition of former statutes, see 16 Cal. Law Rev. Com. Reports, p. 1861 et seq.; for conforming changes in other codes, see 16 Cal. Law Rev. Com. Reports, p. 1763 et seq.) The statute became operative July 1, 1983. (*C.C.P. 694.010(a)*.)

(3) *Title.* Although the entire statute may be cited as the Enforcement of Judgments Law (*C.C.P. 680.010*), the chapter on wage garnishment (see *C.C.P. 706.010* et seq., *infra*, §241 et seq.) may be cited as the Wage Garnishment Law (*C.C.P. 706.010*).

(4) *Transitional Provisions.* The Enforcement of Judgments Law sets forth a number of transitional provisions. (See *C.C.P. 694.010* et seq.) The period for enforcement and renewal of judgments under the statute (*C.C.P. 683.010* et seq.; see *infra*, §34 et seq.) applies to judgments entered before July 1, 1983. (*C.C.P. 694.030*.) Whether property subjected to a lien is exempt from enforcement of a money judgment is determined by the law in effect at the time the lien was created. (*C.C.P. 694.080*; see *C.C.P. 703.050*, *infra*, §169 [determination whether property is exempt and amount of exemption].) A homestead declaration made under prior law is effective only to the extent provided by the Enforcement of Judgments Law (see *C.C.P. 704.910* et seq., *infra*, §229 et seq.). (*C.C.P. 694.090*; see *Staffel v. Dutton*

(1985) 175 C.A.3d 1185, 1189, 1190, 221 C.R. 346 [statute was retroactively applied; judgment debtor's home, which had been exempt from execution under homestead provisions of former law, became subject to levy on enactment of Enforcement of Judgments Law.]

SUPPLEMENT: [This section is current through the latest supplement]



19 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

A. Background and Enactment.

2. Changes From Former Law.

a. In General.

8 Witkin Cal. Proc. Enf Judgm § 19

[§ 19] In General.

The Enforcement of Judgments Law makes a number of changes to prior law. (See 16 Cal. Law Rev. Com. Reports, p. 1011 et seq.) For example, prior law limited the third-party claim procedure to claims of personal property, while the Enforcement of Judgments Law extends the right to third-party claims of real property. (See *infra*, §364 et seq.) Only real property was subject to a judgment lien under former law, and the Enforcement of Judgments Law provides a procedure for obtaining a judgment lien on certain types of personal property. (See *infra*, §82 et seq.) Prior law provided 60 days to levy on property after receipt of a writ of execution, and required that personal property be levied on before real property, while the Enforcement of Judgments Law provides a period of 180 days from the date of issuance of the writ within which to levy on property and eliminates the mandatory order of levy. (See *infra*, §112.) Under prior law, a judgment was enforceable for a 10-year period, which was extended by a stay of enforcement, and enforcement after the 10-year period was permitted only in the court's discretion; the Enforcement of Judgments Law provides for a 10-year period of enforcement and renewal as a matter of right for additional 10-year periods. (See *infra*, §35 et seq.) The Enforcement of Judgments Law provides a procedure allowing a judgment creditor to acquire an order directing the debtor to assign to the creditor the debtor's right to payments. (See *infra*, §305 et seq.)

The Enforcement of Judgments Law includes numerous changes in exemptions. (16 Cal. Law Rev. Com. Reports, pp. 1018, 1079 et seq.; see *infra*, §168 et seq.) For example, the homestead exemption was extended to include any property in which the debtor or the debtor's spouse resides, and the personal property dwelling exemption was eliminated. (See *infra*, §216 et seq.) The motor vehicle exemption was increased. (See *infra*, §188.) A general exemption for household furnishings and personal effects was added to replace the former specific list of exemptions. (See *infra*, §189.) The former general deposit exemption was replaced by a paid earnings exemption. (See *infra*, §194.) The private retirement plan exemption was expanded to reflect changes in federal law. (See *infra*, §204.) The exemption of disability and health benefits was expanded. (See *infra*, §206.) Exemptions for damages for personal injury and wrongful death were added. (See *infra*, §§207, 208.) An exemption for student financial aid was added. (See *infra*, §212.)

SUPPLEMENT: [This section is current through the latest supplement]



20 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

A. Background and Enactment.

2. Changes From Former Law.

b. Redemption.

8 *Witkin Cal. Proc. Enf Judgm § 20*

[§ 20] Redemption.

(1) *Right After Execution Sale Abolished by Enforcement of Judgments Law.* Prior to enactment of the Enforcement of Judgments Law, real property sold on execution was subject to redemption (former C.C.P. 702, 703) within 12 months after the sale, during which time the debtor remained in possession (former C.C.P. 706). The Enforcement of Judgments Law abolishes the right of redemption and, with limited exceptions, makes all sales absolute. (See *infra*, §§156, 164, 167.) However, the statute still gives the debtor an opportunity to save his or her property or sell it for a higher price by providing a grace period of 120 days between service of the notice of levy and the notice of sale. (See *infra*, §147.)

(2) *Continuing Rights Under Other Statutes.* The elimination of the right of redemption after an execution sale does not affect redemption rights provided by other statutes. (See Law Rev. Com. Comment to *C.C.P. 701.680*.) Redemption is available, for example, as follows:

(a) Property sold on judicial foreclosure of a mortgage or deed of trust in which the creditor seeks a deficiency judgment may be redeemed by the debtor or the debtor's successor in interest within 3 months if the proceeds are sufficient to satisfy the debtor's obligation, or within 1 year if the proceeds are not sufficient. (*C.C.P. 729.010 et seq.*, 4 *Summary* (10th), *Security Transactions in Real Property*, §233 *et seq.*; see 16 Cal. Law Rev. Com. Reports, p. 1122.)

(b) A vessel sold at a lien sale may be redeemed within 10 days. (*Harb. & Nav.C. 506.5*.)

(c) Tax-defaulted property may be redeemed until the redemption right is terminated. (Rev.C. 4101 *et seq.*, 9 *Summary* (10th), *Taxation*, §268 *et seq.*)

(d) Property sold for nonpayment of delinquent improvement bonds issued under the Improvement Act of 1911 may be redeemed within 12 months. (*Sts. & H.C. 6530 et seq.*)

Yancey v. Fink (1991) 226 C.A.3d 1334, 277 C.R. 415, involved nonpayment of assessments under a distinct improvement statute--the Improvement Bond Act of 1915 (*Sts. & H.C. 8500 et seq.*). A water district filed a foreclosure action after property owners failed to pay district assessments. The trial judge's decree of foreclosure determined the

amount of the district's liens and ordered the property sold, but the notice of sale stated that the sale was subject to redemption. Plaintiff, the purchaser at the sale, brought an action seeking a declaration that the property was not encumbered by a right of redemption. *Held*, there was no right of redemption.

(a) *No redemption under Streets and Highways Code*. The bonds giving rise to the assessments were issued under the Improvement Bond Act of 1915, which authorizes two distinct procedures for the enforcement of delinquent assessments: (1) sale for delinquency under *Sts. & H.C. 8800* et seq. and (2) foreclosure by action under *Sts. & H.C. 8830* et seq. "Neither of those procedures authorizes a county water district to sell, subject to a right of redemption, real property that secures delinquent assessments." (226 C.A.3d 1346.)

(b) *No redemption under Enforcement of Judgments Law*. Owners contended that *C.C.P. 701.680(a)* (*infra*, §164), which provides that a sale following a levy is absolute and may not be set aside, means that the sale is final but not that there is no right of redemption. "Contrary to the redemptioners' characterization, an 'absolute' sale is not merely final, but is also without a right of redemption. With respect to execution sales, 'absolute' has the same meaning as it has in the phrase 'absolute deed,' which is defined as 'a document of conveyance without restriction or defeasance.'" (226 C.A.3d 1350.)

(c) *No redemption under C.C.P. 729.010*. Relying on the comment to *C.C.P. 701.680*, stating that the elimination of the right of redemption after an execution sale does not affect redemption rights under other statutes, the owners claimed that they were entitled to redemption under *C.C.P. 729.010*. However, that section is expressly limited to judicial foreclosures of a mortgage or deed of trust in which a deficiency judgment is being sought. "Neither of those prerequisites is present here." (226 C.A.3d 1351.)

SUPPLEMENT: [This section is current through the latest supplement]



21 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

B. Definitions.

8 *Witkin Cal. Proc. Enf Judgm* § 21

[§ 21] Definitions.

(1) *In General.* *C.C.P. 680.120* et seq. set forth definitions applicable to the Enforcement of Judgments Law unless the provision or context otherwise requires. (*C.C.P. 680.110.*) (For special definitions governing construction of the Wage Garnishment Law (*C.C.P. 706.010* et seq.), see *infra*, §243; for special definitions governing third-party claims and related procedures (*C.C.P. 720.010* et seq.), see *infra*, §364.)

(2) *Persons and Entities.* A number of terms relating to persons and entities are defined:

(a) "Court" means the court where the judgment sought to be enforced was entered. (*C.C.P. 680.160.*)

(b) "Financial institution" means a state or national bank, a state or federal savings and loan association or credit union, or a similar organization, and includes a corporation engaged in the safe deposit business. (*C.C.P. 680.200.*)

(c) "Judgment creditor" means the person in whose favor a judgment is rendered or, if there is an assignee of record, the assignee. Unless the context otherwise requires, the term also includes the guardian or conservator of the estate, personal representative, or other successor in interest of the judgment creditor or assignee of record. (*C.C.P. 680.240.*) "Judgment creditor" includes persons in whose favor money judgments, judgments for the possession of real or personal property, and judgments for the sale of real or personal property are rendered. (See Law Rev. Com. Comment to *C.C.P. 680.240.*)

(d) "Judgment debtor" means the person against whom a judgment is rendered. (*C.C.P. 680.250.*) "Judgment debtor" includes persons against whom money judgments, judgments for the possession of real or personal property, and judgments for the sale of real or personal property are rendered. (See Law Rev. Com. Comment to *C.C.P. 680.250.*)

(e) "Levying officer" means a sheriff or marshal. (*C.C.P. 680.260*; for statutes authorizing others to perform the duties of levying officers, see Legislative Com. Comment (Assembly) to *C.C.P. 680.260.*)

(f) "Person" includes a natural person, a corporation, a partnership or other unincorporated association, a general partner of a partnership, a limited liability company, or a public entity. (*C.C.P. 680.280.*)

(g) "Registered process server" means a person registered as a process server under *B. & P.C. 22350* et seq. (see 3

Cal. Proc. (5th), Actions, §998. (C.C.P. 680.330.)

(3) *Property Designations.* The following terms designate property interests:

(a) "Property" includes real and personal property and any interest in the property. (*C.C.P. 680.310.*)

(b) "Real property" includes leasehold interests and other rights in real property. (*C.C.P. 680.320*; on treatment of leasehold interests under Enforcement of Judgments Law, see Legislative Com. Comment (Senate) to *C.C.P. 680.320.*)

(c) "Personal property" includes both tangible and intangible personal property. (*C.C.P. 680.290.*)

(d) "Tangible personal property" includes chattel paper, documents of title, instruments, securities, and money. (*C.C.P. 680.370.*)

(4) *Judgment.* The following terms relating to judgments are defined:

(a) "Judgment" means a judgment, order, or decree entered in a California court. (*C.C.P. 680.230*; see Law Rev. Com. Comment to *C.C.P. 680.230* [noting that a judgment is ineffectual for any purpose until entered].)

(b) "Money judgment" means that part of a judgment that requires the payment of money (*C.C.P. 680.270*), including judgments and orders for child or spousal support payable in installments (see Legislative Com. Comment to *C.C.P. 680.270*).

(c) "Principal amount of the judgment" means the amount of the judgment as entered or renewed plus costs added under *C.C.P. 685.090* (see *infra*, §49), less any partial satisfactions and any amounts no longer enforceable. (*C.C.P. 680.300.*)

(5) *Commercial Code Definitions.* The following terms are defined by reference to their definitions in the Commercial Code:

(a) "Account debtor" as defined in U.C.C. 9102(a)(3). (*C.C.P. 680.120.*)

(b) "Account receivable" as "account" is defined in U.C.C. 9102(a)(2) (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §42). (*C.C.P. 680.130.*)

(c) "Chattel paper" as defined in U.C.C. 9102(a)(11) (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §42). (*C.C.P. 680.140.*)

(d) "Deposit account" as defined in U.C.C. 9102(a)(29) (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §44). (*C.C.P. 680.170.*)

(e) "Document of title" as "document" is defined in U.C.C. 9102(a)(30). A document of title is negotiable if it is negotiable within the meaning of U.C.C. 7104. (*C.C.P. 680.180.*)

(f) "General intangibles" as defined in U.C.C. 9102(a)(42) (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §42), consisting of rights to payment. (*C.C.P. 680.210.*)

(g) "Instrument" as defined in U.C.C. 9102(a)(47) (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §42), except a security. (*C.C.P. 680.220*; see Legislative Com. Comment (Assembly) to *C.C.P. 680.220* [noting that securities are excluded because they are treated separately in many cases].)

(h) "Secured party" as defined in U.C.C. 9102(a)(72) (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §47). (*C.C.P. 680.340.*)

(i) "Security" as defined in U.C.C. 8102 (see 9 *Summary* (10th), *Corporations*, §134). (*C.C.P.* 680.345.)

(j) "Security agreement" as defined in U.C.C. 9102(a)(73) (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §39). (*C.C.P.* 680.350.)

(k) "Security interest" as defined in U.C.C. 1201. (*C.C.P.* 680.360.)

(6) *Miscellaneous Terms.* The following additional terms are defined:

(a) "Affidavit of identity" means an affidavit or declaration executed by a judgment creditor, under penalty of perjury, filed with the clerk of the court in which the judgment is entered at the time the judgment creditor files for a writ of execution or an abstract of judgment. The affidavit must set forth the case name and number, the name of the judgment debtor stated in the judgment, the additional name or names by which the judgment debtor is known, and the facts on which the judgment creditor has relied in obtaining the judgment debtor's additional name or names. The affidavit may not include the name or names of persons other than the judgment debtor (including corporations, partnerships, or legal entities not separately named in the judgment in which the judgment debtor is a partner, shareholder, or member). (*C.C.P.* 680.135.)

(b) "Child support" includes family support. (*C.C.P.* 680.145.)

(c) "Costs" means costs and disbursements, including, but not limited to, statutory fees, charges, commissions, and expenses. (*C.C.P.* 680.150.)

(d) "Equity" means "the fair market value of the interest of the judgment debtor in property, or in the case of community property the fair market value of the interest of the judgment debtor and his or her spouse in the property, over and above all liens and encumbrances on the interest superior to the judgment creditor's lien." (*C.C.P.* 680.190; see Law Rev. Com. Comment to *C.C.P.* 680.190 [section makes clear that judgment creditor's lien and junior liens are excluded in determination of "equity" for purpose of applying certain exemptions]; *Mirolla v. Mendez* (1980) 111 C.A.3d 518, 168 C.R. 735 [judgment creditor's execution lien on debtor's truck was superior to seller's unperfected lien, and that lien could not be used to calculate debtor's exemption under former C.C.P. 690.4 for property used in trade].)

(e) "Spousal support" includes support for a former spouse. (*C.C.P.* 680.365.)

(f) "Writ" includes a writ of execution, a writ of possession of personal property, a writ of possession of real property, and a writ of sale. (*C.C.P.* 680.380.)

SUPPLEMENT: [This section is current through the latest supplement]



22 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

1. In General.

a. Former Law.

8 *Witkin Cal. Proc. Enf Judgm* § 22

[§ 22] Former Law.

(1) *Enforcement of Particular Judgments.* Under former C.C.P. 684, a judgment for money or the possession of property was enforced by a *writ of execution*. A judgment for sale was enforced by a writ generally called a *writ of enforcement*. Other judgments were enforced by the court.

(2) *Enforcement as Matter of Right.* A party in whose favor a judgment was given was entitled to a writ or order for execution or enforcement of the judgment within 10 years after entry of the judgment. Any time within which the writ or order was stayed or enjoined was excluded in computing the 10-year period. (Former C.C.P. 681; on right of children to enforce child support order, see *In re Marriage of Utigard* (1981) 126 C.A.3d 133, 138, 178 C.R. 546.) Enforcement was permissible after expiration of the 10-year period if the writ had been timely issued. (*Alonso Inv. Corp. v. Doff* (1976) 17 C.3d 539, 543, 131 C.R. 411, 551 P.2d 1243.)

Enforcement by execution was generally limited to money judgments on which judgment liens could be based. (See *Montgomery v. Meyerstein* (1924) 195 C. 37, 44, 231 P. 730; *Wellborn v. Wellborn* (1942) 55 C.A.2d 516, 524, 131 P.2d 48.)

(3) *Conditions for Execution.* The right to execution was subject to the following conditions:

(a) The judgment had to be unconditional and final (as distinguished from interlocutory). (See *Adams v. Bell* (1933) 219 C. 503, 505, 27 P.2d 757; *Perry v. West Coast Bond & Mortg. Co.* (1934) 136 C.A. 557, 559, 29 P.2d 279; *O'Hair v. United States Fidelity & Guaranty Co.* (1935) 9 C.A.2d 307, 309, 49 P.2d 1129 [judgment was not required to be final in sense of safe from reversal].)

(b) The judgment had to be sufficiently certain to constitute an enforceable personal judgment for money. (See *Smith v. Wilson* (1934) 1 C.A.2d 297, 300, 36 P.2d 715; *Avakian v. Dusenberry* (1936) 15 C.A.2d 55, 57, 58 P.2d 1306; *Pinecrest Productions v. RKO Teleradio Pictures* (1970) 14 C.A.3d 6, 13, 92 C.R. 44.)

(c) The judgment had to be a valid and subsisting obligation. (See *Salveter v. Salveter* (1936) 11 C.A.2d 335, 337,

53 P.2d 381 [order for execution was void where support order had been satisfied by unauthorized collection of rentals from community property].)

(4) *Discretionary Enforcement*. Under former C.C.P. 685, a judgment could be enforced after expiration of the 10-year period, *by leave of court*. (See *Butcher v. Brouwer* (1942) 21 C.2d 354, 357, 132 P.2d 205; *Da Arauje v. Rodriques* (1942) 50 C.A.2d 425, 427, 123 P.2d 154; *Alonso Inv. Corp. v. Doff*, *supra*, 17 C.3d 544.) Discretionary enforcement had no time limit (see *Long v. Long* (1946) 76 C.A.2d 716, 722, 173 P.2d 840) and was available for all judgments, not just those enforceable by execution (see *Laubisch v. Roberdo* (1954) 43 C.2d 702, 713, 714, 277 P.2d 9 [writ of enforcement]; *Los Angeles v. Forrester* (1936) 12 C.A.2d 146, 148, 55 P.2d 277 [writ of possession]; *Pemberton v. Pemberton* (1950) 95 C.A.2d 472, 479, 213 P.2d 118 [enforcement against estate]).

SUPPLEMENT: [This section is current through the latest supplement]



23 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

1. In General.

b. Enforcement of Particular Judgments.

8 *Witkin Cal. Proc. Enf Judgm* § 23

[§ 23] Enforcement of Particular Judgments.

(1) *Procedures Prescribed by Enforcement of Judgments Law.* The Enforcement of Judgments Law provides for the manner of enforcement of the following judgments:

(a) Money judgments are enforceable as provided in *C.C.P. 695.010* et seq. (infra, §53 et seq.). (*C.C.P. 681.010(a)*.)

(b) Judgments for possession of personal property are enforceable as provided in *C.C.P. 714.010* et seq. (infra, §329 et seq.). (*C.C.P. 681.010(b)*.)

(c) Judgments for possession of real property are enforceable as provided in *C.C.P. 715.010* et seq. (infra, §332 et seq.). (*C.C.P. 681.010(c)*.)

(d) Judgments for sale of real or personal property are enforceable as provided in *C.C.P. 716.010* et seq. (infra, §§338, 339). (*C.C.P. 681.010(d)*.)

(e) Judgments requiring performance or forbearance of other acts are enforceable as provided in *C.C.P. 717.010* (infra, §340). (*C.C.P. 681.010(e)*.)

(2) *Procedures Prescribed by Other Statutes.* The preceding methods for the enforcement of judgments are not exclusive. (*C.C.P. 681.010*.) Other statutes govern the enforcement of particular judgments. (See Law Rev. Com. Comment to *C.C.P. 681.010*, listing examples.) The following are illustrative:

(a) Sister state and foreign money judgments. (See *C.C.P. 1710.10* et seq., infra, §449 et seq. [sister state]; *C.C.P. 1713* et seq., infra, §462 et seq. [foreign country].)

(b) Judgments and support orders under the Family Code. (See *Family C. 290* et seq. [judgments]; *Family C. 4500* et seq. [support orders]; infra, §403 et seq.)

(c) Sister state and foreign country support orders. (See *Family C. 4900* et seq., infra, §407 et seq.)

(d) Judgments against deceased judgment debtors. (See *Prob.C. 9300* et seq., infra, §50.)

(e) Judgments in small claims court. (See *C.C.P. 116.810* et seq., 2 *Cal. Proc. (5th), Courts*, §303.)

(3) *Incorporation by Other Statutes of Enforcement of Judgments Law*. A number of statutes provide that judgments and orders may be enforced "in the manner provided for the enforcement of money judgments generally." The following are illustrative:

(a) *Lab.C. 3862* (employer's lien on employee's recovery against third-party tortfeasor).

(b) *P.C. 987.8* (collection of costs of legal assistance).

(c) *P.C. 1214* (criminal judgment for fine).

(d) *P.C. 1306* (enforcement of bail bond).

(e) *P.C. 1397* (collection of fine against corporation).

West's Key Number Digest, Judgment 851

SUPPLEMENT: [This section is current through the latest supplement]



24 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

1. In General.

c. Enforcement by Assignee.

8 *Witkin Cal. Proc. Enf Judgm* § 24

[§ 24] Enforcement by Assignee.

An assignee of a judgment may not enforce the judgment under the Enforcement of Judgments Law unless (1) an acknowledgment of assignment of judgment under *C.C.P. 673* has been filed, or (2) the assignee has otherwise become an assignee of record. (*C.C.P. 681.020*; see *C.C.P. 673(d)* [*C.C.P. 673* does not prevent person from becoming assignee by other means]; Law Rev. Com. Comment to *C.C.P. 681.020* [requirement of assignment of record codifies former practice]; *Fjaeran v. Board of Supervisors (1989) 210 C.A.3d 434, 440, 258 C.R. 353* [on execution and delivery of assignment, it is perfected and becomes enforceable against third persons; failure to record assignment merely prevents assignee from obtaining writ of execution or establishing priority].) (On perfection and notice of assignment and priority between assignees, see *C.C. 954.5, 955.1*.)

The assignee of a judgment may become an assignee of record by filing an acknowledgment of assignment with the clerk of the court entering the judgment. (*C.C.P. 673(a)*.) The acknowledgment must be executed and acknowledged by the judgment creditor or a prior assignee of record, and must be made in the manner of an acknowledgment of a conveyance of real property (see *12 Summary* (10th), *Real Property*, §283 et seq.). (*C.C.P. 673(c)*.) The acknowledgment must contain the following information:

- (1) The title of the court where the judgment is entered and the cause and number of the action. (*C.C.P. 673(b)(1)*.)
- (2) The date of entry of the judgment and of any renewals, and where entered in the court records. (*C.C.P. 673(b)(2)*.)
- (3) The name and address of the judgment creditor and the name and last known address of the judgment debtor. (*C.C.P. 673(b)(3)*.)
- (4) A statement describing the right represented by the judgment assigned to the assignee. (*C.C.P. 673(b)(4)*.)
- (5) The name and address of the assignee. (*C.C.P. 673(b)(5)*.) (See *16 Cal. Law Rev. Com. Reports*, p. 1790 [provisions of *C.C.P. 673(b)*, (c) are similar to those governing acknowledgment of satisfaction of judgment under

C.C.P. 724.060 (infra, §390)].)

SUPPLEMENT: [This section is current through the latest supplement]

See *California Coastal Com. v. Allen* (2008) 167 C.A.4th 322, 326, 83 C.R.3d 906 [Enforcement of Judgments Law does not authorize judgment debtor to attack judgment creditor's authority to make assignment; assignment of judgment lien need not be permanent to give assignee standing to enforce judgment].



25 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

1. In General.

d. Rules and Forms.

8 *Witkin Cal. Proc. Enf Judgm § 25*

[§ 25] Rules and Forms.

(1) *Rules.* The Judicial Council is authorized to adopt rules of practice and procedure under the Enforcement of Judgments Law (*C.C.P. 681.030(a)*) and, generally, under the Wage Garnishment Law (*C.C.P. 706.100*; see *infra*, §250).

(2) *Judicial Council Enforcement of Judgment Forms.* The Judicial Council is authorized to prescribe forms for the various documents required by the Enforcement of Judgments Law. (*C.C.P. 681.030(b)*.) The following forms have been adopted or approved (forms adopted for- mandatory use are indicated by an asterisk):

Judicial Council Form No. EJ-001* [Abstract of Judgment--Civil and Small Claims].

Judicial Council Form No. EJ-100 [Acknowledgment of Satisfaction of Judgment].

Judicial Council Form No. EJ-105 [Application for Entry of Judgment on Sister-State Judgment].

Judicial Council Form No. EJ-110 [Notice of Entry of Judgment on Sister-State Judgment].

Judicial Council Form No. EJ-125* [Application and Order for Appearance and Examination].

Judicial Council Form No. EJ-130 [Writ of Execution].

Judicial Council Form No. EJ-150 [Notice of Levy--Enforcement of Judgment].

Judicial Council Form No. EJ-152 [Memorandum of Garnishee].

Judicial Council Form No. EJ-155 [Exemptions from the Enforcement of Judgments].

Judicial Council Form No. EJ-160 [Claim of Exemption].

Judicial Council Form No. EJ-165* [Financial Statement].

8 Witkin Cal. Proc. Enf Judgm § 25

Judicial Council Form No. EJ-170 [Notice of Opposition to Claim of Exemption].

Judicial Council Form No. EJ-175* [Notice of Hearing on Claim of Exemption].

Judicial Council Form No. EJ-180 [Notice of Hearing on Right to Homestead Exemption].

Judicial Council Form No. EJ-182 [Declaration for Rehearing on Homestead Exemption].

Judicial Council Form No. EJ-185 [Notice of Lien].

Judicial Council Form No. EJ-190 [Application for and Renewal of Judgment].

Judicial Council Form No. EJ-195* [Notice of Renewal of Judgment].

The Judicial Council is required to prepare a form listing federal and California exemptions from enforcement of a money judgment against a natural person, citing relevant federal and California statutes creating each exemption, and containing information on how to obtain the list of cost-of-living adjusted exemption amounts published pursuant to *C.C.P. 703.150(d)* (infra, §179). (*C.C.P. 681.030(c)*; see Judicial Council Form No. EJ-155 [Exemptions from the Enforcement of Judgments].)

(3) *Judicial Council Wage Garnishment Forms.* Except for state forms relating to tax withholding, the Judicial Council is required to prescribe forms applicable to the Wage Garnishment Law. (*C.C.P. 706.120*; see infra, §250.) The following forms have been adopted or approved (forms adopted for mandatory use are indicated by asterisk):

Judicial Council Form No. WG-001 [Application for Earnings Withholding Order].

Judicial Council Form No. WG-002 [Earnings Withholding Order].

Judicial Council Form No. WG-003 [Employee Instructions (Wage Garnishment)].

Judicial Council Form No. WG-004 [Earnings Withholding Order for Support].

Judicial Council Form No. WG-005* [Employer's Return (Wage Garnishment)].

Judicial Council Form No. WG-006 [Claim of Exemption].

Judicial Council Form No. WG-007 [Financial Statement].

Judicial Council Form No. WG-008* [Notice of Filing of Claim of Exemption].

Judicial Council Form No. WG-009 [Notice of Opposition to Claim of Exemption].

Judicial Council Form No. WG-010 [Notice of Hearing on Claim of Exemption].

Judicial Council Form No. WG-011 [Order Determining Claim of Exemption].

Judicial Council Form No. WG-012 [Notice of Termination or Modification of Earnings Withholding Order].

Judicial Council Form No. WG-020* [Application for Earnings Withholding Order for Taxes (State Tax Liability)].

Judicial Council Form No. WG-021* [Confidential Supplement to Application for Earnings Withholding Order for Taxes]

Judicial Council Form No. WG-022* [Earnings Withholding Order for Taxes].

Judicial Council Form No. WG-023* [Notice of Hearing--Earnings Withholding Order for Taxes].

Judicial Council Form No. WG-024* [Temporary Earnings Withholding Order for Taxes (State Tax Liability)].

Judicial Council Form No. WG-025* [Confidential Supplement to Temporary Earnings Withholding Order for Taxes (State Tax Liability)].

Judicial Council Form No. WG-026* [Claim of Exemption and Financial Declaration (State Tax Liability)].

(4) *State Forms*. The state is required to prescribe forms for documents required by the Wage Garnishment Law in connection with withholding orders for taxes, other than forms used in connection with court-issued orders under that statute. (See *C.C.P. 706.081*, *infra*, §272.)

The Secretary of State is authorized to prescribe forms for (a) a notice of judgment lien on personal property, (b) a statement of release or subordination of the lien, and (c) a statement accompanying an acknowledgment of satisfaction of the judgment, as provided for in *C.C.P. 697.640*. (*C.C.P. 697.670*; see *infra*, §82 et seq.) The following forms have been adopted by the Secretary of State:

Form No. JL-1 [Notice of Judgment Lien and Addendum].

Form No. JL-3 [Notice of Judgment Lien--Release or Subordination].

These forms are available on the Secretary of State website: http://www.sos.ca.gov/business/bpd_forms.htm.

SUPPLEMENT: [This section is current through the latest supplement]

(4) *State Forms*. As amended in 2009, *C.C.P. 697.670* also authorizes the Secretary of State to prescribe a form for a statement of continuation of a judgment lien on personal property (see *Supp.*, *infra*, §83).



26 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

2. Service of Papers.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 26

[§ 26] In General.

(1) *Scope of General Service Provisions.* The Enforcement of Judgments Law contains general provisions governing the service of papers (see *C.C.P. 684.010* et seq.) that apply unless a particular provision requires otherwise (see 16 Cal. Law Rev. Com. Reports, p. 1167). Except for *C.C.P. 684.130* and *684.140* (manner of service; *infra*, §27) and *C.C.P. 684.210* and *684.220* (proof of service; *infra*, §28), these general service provisions are not applicable to the Wage Garnishment Law, which is subject to distinct provisions (see *infra*, §254 et seq.). (*C.C.P. 684.310.*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.193 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:103 et seq.)

(2) *Service on Attorney.*

(a) *Attorney for Judgment Creditor.* Subject to statutes that govern the withdrawal, discharge, and substitution of attorneys (see *C.C.P. 283* et seq., 1 *Cal. Proc. (5th), Attorneys*, §68 et seq.) and that require service on the party in certain proceedings under the Family Code (see *Family C. 215*, 6 *Cal. Proc. (5th), Proceedings Without Trial*, §14), a paper required to be served on a judgment creditor *must* be served on the judgment creditor's attorney of record rather than on the judgment creditor, if there is such an attorney. (*C.C.P. 684.010.*)

(b) *Attorney for Judgment Debtor.* Under specified circumstances, papers required to be served on a judgment debtor *may* be served on the debtor's attorney: The judgment debtor's request for service on the attorney, including the attorney's signed consent to receive service, must be filed with the court and served personally or by mail on the judgment creditor. (*C.C.P. 684.020(b).*) A request or consent may be revoked by filing a notice of revocation with the court and serving it personally or by mail on the judgment creditor. (*C.C.P. 684.020(c).*) (See Legislative Com. Comment (Assembly) to *C.C.P. 684.020* [provision applies to service of interrogatories].)

(c) *Manner and Effect of Service.* Service on an attorney must be made by personal delivery, by personal service under *C.C.P. 1011* (see 6 *Cal. Proc. (5th), Proceedings Without Trial*, §19), or by mail under *C.C.P. 684.120* (see *infra*, §27). (*C.C.P. 684.040.*) Proper service on the attorney for a judgment creditor or a judgment debtor constitutes service on the judgment creditor or the judgment debtor. (*C.C.P. 684.050.*)

(3) *Service on Party*. Except where a judgment debtor has requested, and the debtor's attorney has consented to, service on the attorney, papers required to be served on the debtor must be served on the debtor, not on the attorney. (*C.C.P. 684.020(a)*.) Also, subpoenas and other papers to require a party's attendance, and papers to bring a party into contempt, must always be served on the party. (*C.C.P. 684.030*.)

(4) *Filing With Levying Officer*. A paper required or permitted to be filed with a levying officer is considered filed when it is actually received by the officer. (*C.C.P. 681.040*.) There is no extension of time for papers that are mailed. (Legislative Com. Comment (Assembly) to *C.C.P. 681.040*.)

SUPPLEMENT: [This section is current through the latest supplement]



27 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

2. Service of Papers.

b. Manner of Service.

8 *Witkin Cal. Proc. Enf Judgm* § 27

[§ 27] Manner of Service.

(1) *Personal Service*. Subject to stated exceptions, service of a writ, notice, order, or other paper required to be personally served under the Enforcement of Judgments Law must be made in the manner provided for service of summons under *C.C.P. 413.10* et seq. (see 3 *Cal. Proc. (5th), Actions*, §1001 et seq.). (*C.C.P. 684.110(a)*.) The exceptions are as follows:

(a) Service on an attorney required under *C.C.P. 684.010* et seq. must be made as provided by *C.C.P. 684.040* (see supra, §26). (*C.C.P. 684.110(b)*.)

(b) Service on a financial institution, title insurer, underwritten title company, or industrial loan company must be made on the officer, manager, or other person in charge at the office or branch that actually possesses the property or carries the account levied on. (*C.C.P. 684.110(c)*.)

(c) If levy is made by personal service on a third person, a copy of the writ and notice of levy must be served on the third person in the same manner as a summons under *C.C.P. 415.10* or *415.20* (see 3 *Cal. Proc. (5th), Actions*, §1008 et seq.). (*C.C.P. 684.110(d)*); see Legislative Com. Comment (Assembly) to *C.C.P. 684.110* [listing levy statutes requiring personal service on third persons].)

(2) *Service by Mail*. Unless otherwise provided, service by mail must be sent by first class mail in a sealed, postage paid envelope, addressed as follows:

(a) If an attorney is being served in place of the judgment creditor or the judgment debtor under *C.C.P. 684.010* or *684.020* (see supra, §26), to the attorney's last address as given on any paper filed in the proceeding and served on the party making service. (*C.C.P. 684.120(a)(1)*.)

(b) If any other person is being served, to the person's current mailing address if known or, if unknown, to the person's last address as given on any paper filed in the proceeding and served on the party making service. (*C.C.P. 684.120(a)(2)*.)

(c) If service cannot be made in accordance with these provisions, to the person's last known address. (*C.C.P. 684.120(a)(3).*)

Service is complete at the time of deposit in the mail, but any required period of notice and the time within which to exercise a right or duty to do an act or make a response are extended 5 days if the place of address is within California, 10 days if it is anywhere else within the United States, and 20 days if it is outside the United States. However, the court may prescribe a shorter period of time. (*C.C.P. 684.120(b).*) The paper served must bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing, but this requirement is directory only. (*C.C.P. 684.120(c).*)

(3) *Name and Address of Person Served.* A judgment creditor must use reasonable diligence to ascertain, and must include in the instructions to the levying officer (see *infra*, §29), the correct name and address of a person on whom the levying officer is required to serve a paper. (*C.C.P. 684.130(a).*) The levying officer must rely on those instructions unless the officer has actual knowledge that the name or address is incorrect. (*C.C.P. 684.130(b).*)

(4) *Service by Judgment Creditor or Judgment Creditor's Agent.* With the levying officer's permission, evidenced by a certificate, a person (or the person's agent) in whose favor an order, notice, or other paper (other than a writ or notice of levy) runs may personally serve the paper. This provision does not limit the authority of a registered process server (see *infra*, §103), and the cost of this service is not a recoverable cost. (*C.C.P. 684.140.*)

West's Key Number Digest, Judgment 855(1)

SUPPLEMENT: [This section is current through the latest supplement]



28 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

2. Service of Papers.

c. Proof of Service.

8 *Witkin Cal. Proc. Enf Judgm* § 28

[§ 28] Proof of Service.

(1) *In General.* Proof of service, posting, or publication under the Enforcement of Judgment Law may be made by, but is not limited to, the following methods:

(a) If service is made in the same manner as a summons is served under *C.C.P. 413.10* et seq. (see 3 *Cal. Proc.* (5th), *Actions*, §1001 et seq.; supra, §27), proof of service may be made as provided by *C.C.P. 417.10* et seq. (see 3 *Cal. Proc.* (5th), *Actions*, §1067 et seq.). (*C.C.P. 684.220(a).*)

(b) If service is made in the same manner as a summons is served under *C.C.P. 415.10* or *415.20* (see 3 *Cal. Proc.* (5th), *Actions*, §1008 et seq.; supra, §27), proof of service may be made by an affidavit of the server showing (1) the time, place, and manner of service, (2) the name and, if appropriate, the title or capacity of the person served, and (3) facts indicating that the service was made in accord with applicable statutes. (*C.C.P. 684.220(b).*)

(c) Proof of service by mail under *C.C.P. 684.120* (see supra, §27) may be made as provided by *C.C.P. 1013a* (see 6 *Cal. Proc.* (5th), *Proceedings Without Trial*, §23). (*C.C.P. 684.220(c).*)

(d) Proof of posting may be made by an affidavit of the party posting the notice, showing the time and place of posting (*C.C.P. 684.220(d)*), or by testimonial evidence (*C.C.P. 684.220(g)*).

(e) Proof of publication may be made by an affidavit of the publisher or printer (or his or her foreman or principal clerk), showing the time and place of publication (*C.C.P. 684.220(e)*), or by testimonial evidence (*C.C.P. 684.220(g)*).>

(f) However service is made, proof of service may be made by the written admission of the person served (*C.C.P. 684.220(f)*) or by testimonial evidence (*C.C.P. 684.220(g)*).

(2) *Notice of Court Hearing.* Where service of notice of a court hearing is required, proof of service must be made to the satisfaction of the court at or before the hearing. (*C.C.P. 684.210.*)

SUPPLEMENT: [This section is current through the latest supplement]



29 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

3. Levying Officer.

a. Instructions From Judgment Creditor.

8 Witkin Cal. Proc. Enf Judgm § 29

[§ 29] Instructions From Judgment Creditor.

(1) *Nature and Content of Instructions.* A judgment creditor must give the levying officer written instructions, signed by the attorney of record, or by the judgment creditor if there is no attorney. The instructions must contain the information needed or requested by the levying officer, including (a) an adequate description of the property to be levied on, and (b) a statement whether the property is a dwelling and, if so, whether it is real or personal. (*C.C.P. 687.010(a)*.) The creditor's written instructions must be delivered to the levying officer with the writ of execution. (*C.C.P. 699.530(a)*, *infra*, §112.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:371 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §§9.6, 9.7.)

(2) *Judgment Creditor's Duties Regarding Names and Addresses.* If the levying officer is required to serve a paper, the judgment creditor must use reasonable diligence to ascertain the correct name and address of the person to be served and must include them in the instructions. (*C.C.P. 684.130(a)*, *supra*, §27.)

No earlier than 30 days after the date of levy on real property, the judgment creditor must determine the names and addresses of all persons having recorded liens on the property, and must instruct the levying officer to mail notice of sale of the property to all those persons. (*C.C.P. 701.540(h)*); on notice of sale, see *C.C.P. 701.540*, *infra*, §147.)

(3) *Reliance on Instructions.* Except to the extent that the levying officer has actual knowledge that information contained in the written instructions is incorrect, the officer may rely on the instructions and, to the extent his or her actions are taken in conformance with the Enforcement of Judgments Law, the officer must act in accordance with the written instructions. (*C.C.P. 687.010(b)*, (c).) (For reliance on instructions as to name and address of person to be served, see *C.C.P. 684.130(b)*, *supra*, §27.)

West's Key Number Digest, Execution 85

SUPPLEMENT: [This section is current through the latest supplement]



30 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

3. Levying Officer.

b. Deposit To Cover Expenses.

8 *Witkin Cal. Proc. Enf Judgm* § 30

[§ 30] Deposit To Cover Expenses.

(1) *Deposit To Cover Costs of Levying Officer's Duties Generally.* Except as otherwise provided, before a levying officer performs a duty under the Enforcement of Judgments Law, the judgment creditor must deposit with the officer a sum sufficient to pay the costs of performing that duty. (*C.C.P. 685.100(a)(1)*; see *Govt.C. 6100* [officers of state, county, or judicial districts may not perform official services until fees have been paid].) (On fees of levying officers, see *Govt.C. 26720* et seq.)

(2) *Deposit To Cover Costs of Taking and Holding Property.* Before a levying officer takes property into custody, the judgment creditor must deposit with the officer a sum sufficient to pay the cost of taking the property and keeping it for no more than 15 days. If continued custody is required, the officer must demand, orally or in writing, additional deposits sufficient to cover costs for additional periods of not more than 30 days each. The judgment creditor has at least 3 business days after receipt of the demand to pay the amount demanded; if the amount demanded is not paid within the time specified, the officer must release the property. (*C.C.P. 685.100(a)(2)*.) The levying officer is not liable for failing to take or hold property unless the judgment creditor has satisfied these requirements. (*C.C.P. 685.100(b)*.)

(3) *Levying Officer's Lien.* The levying officer has a special lien, dependent on possession, on personal property levied on in the amount of the officer's costs for which an advance has not been made. (*C.C.P. 687.050*.)

SUPPLEMENT: [This section is current through the latest supplement]



31 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

3. Levying Officer.

c. Indorsement and Collection of Instruments.

8 *Witkin Cal. Proc. Enf Judgm* § 31

[§ 31] Indorsement and Collection of Instruments.

(1) *In General.* The levying officer is authorized to collect instruments payable to the judgment debtor (*C.C.P.* 687.020(b), (d)), including a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, a state, or a public entity within a state (*C.C.P.* 687.020(a)). (For definition of "financial institution," see *C.C.P.* 680.200, *supra*, §21.)

(2) *Ordinary Instrument.* If an instrument is payable to the judgment debtor on demand, the levying officer must promptly indorse and present it for payment. (*C.C.P.* 687.020(b); on form of indorsement, see *C.C.P.* 687.020(c).)

(3) *Instrument Tendered in Satisfaction of Claim.* Where the instrument on its face appears to have been tendered to the judgment debtor in satisfaction of a claim or demand so that indorsement would be considered a release and satisfaction, the officer may not indorse the instrument unless the judgment debtor has first indorsed it to the officer. If the judgment debtor does not so indorse, the officer must hold the instrument for 30 days and then return it to the maker. (*C.C.P.* 687.020(d).)

(4) *Nonliability of Financial Institution, Public Entity, and Officer.* No financial institution or public entity drawee is liable to any person for paying the instrument to the officer rather than the judgment debtor by reason of the officer's proper indorsement. (*C.C.P.* 687.020(c).) The levying officer is not liable by reason of indorsing, presenting, and obtaining payment of the instrument (*C.C.P.* 687.020(c)), or for delay in presenting for payment an instrument tendered in satisfaction of a claim where the delay results from the judgment debtor's failure to indorse the instrument (*C.C.P.* 687.020(d)).

SUPPLEMENT: [This section is current through the latest supplement]



32 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

3. Levying Officer.

d. Manner of Taking Custody of Property.

8 Witkin Cal. Proc. Enf Judgm § 32

[§ 32] Manner of Taking Custody of Property.

Except as otherwise provided, a levying officer who takes custody of property may do so by any of the following methods:

- (1) Removing the property to a place of safe keeping. (*C.C.P. 687.030(a).*)
- (2) Installing a keeper. (*C.C.P. 687.030(b).*)
- (3) Otherwise obtaining possession or control of the property. (*C.C.P. 687.030(c).*)

This provision is intended to provide levying officers with a degree of flexibility in determining efficient and economical means of securing custody. Although use of a keeper is not required for property not moved to a place of safekeeping, the custody obtained must be sufficient to prevent removal of the property. (See Law Rev. Com. Comment to *C.C.P. 687.030.*)

SUPPLEMENT: [This section is current through the latest supplement]



33 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

3. Levying Officer.

e. Liability of Officer.

8 *Witkin Cal. Proc. Enf Judgm § 33*

[§ 33] Liability of Officer.

(1) *General Rule Precluding Liability.* A levying officer or registered process server is not liable for actions taken in conformance with the Enforcement of Judgments Law, including actions taken in reliance on information in the written instructions of the judgment creditor (see *supra*, §29) or in reliance on information provided to the levying officer by a registered process server (see *infra*, §§103, 256, 333), except to the extent that the officer or process server has actual knowledge that the information is incorrect. This provision does not limit any liability of the *judgment creditor* if the officer or process server acts on incorrect information in the written instructions. (*C.C.P. 687.040(a)*.) (On immunity of ministerial officers executing process and orders regular on their face, see *C.C.P. 262.1; 5 Summary* (10th), *Torts*, §161.)

(2) *Particular Acts for Which Officer Is Not Liable.* A levying officer is not liable for the following:

(a) Determining in good faith the amount of property subject to execution sale that is sufficient to satisfy a money judgment. (*C.C.P. 701.570(d)*, *infra*, §151.)

(b) Failing to take or hold property if the judgment creditor has not deposited funds sufficient to cover the officer's costs. (*C.C.P. 685.100(b)*, *supra*, §30.)

(c) Loss by fire, theft, injury, or damage to personal property in storage, transit, or the custody of a keeper, in the absence of negligence. (*C.C.P. 687.040(b)*.)

(d) Accepting a cash equivalent as payment for the sale of property of a business being operated by a keeper. (*C.C.P. 700.070(a)*, *infra*, §126.)

(e) Determining in good faith that property levied on is extremely perishable or subject to great deterioration or depreciation. (*C.C.P. 699.070(b)*, *infra*, §102.)

(f) Indorsing, presenting, and obtaining payment of an instrument payable to the judgment debtor or properly delaying payment. (*C.C.P. 687.020(c)*, (d), *supra*, §31.)

(g) Properly releasing property levied on. (*C.C.P. 699.060(e)*, *infra*, §106.)

(h) Levying on property required to be registered or recorded in the name of the owner where the property appears to be held by the judgment debtor as the registered or record owner. (*C.C.P. 699.090*, *infra*, §104.)

(3) *Liability for Unauthorized or Improper Sale.* A levying officer who sells property without giving the required notice is liable to the judgment creditor and the judgment debtor for actual damages caused by failure to give that notice. (*C.C.P. 701.560(b)*, *infra*, §150.) If a sale is improper, damages caused by the impropriety may be recoverable against the levying officer. (*C.C.P. 701.680(c)(2)*, *infra*, §167.)

(4) *Liability for Failure To Pay or Deposit Proceeds of Sale or Collection.* A levying officer who fails to distribute the proceeds of a sale or collection after a written demand is liable for damages. (*C.C.P. 701.820(e)*, *infra*, §159.)

(5) *Liability of Sheriff for Neglect or Refusal To Perform Duties Under Writ.* A sheriff who neglects or refuses to perform the duties under a writ of execution or sale, after being required by the creditor or the creditor's attorney and after the sheriff's fees have been paid, is liable for actual damages sustained by the creditor. (*Govt.C. 26664.*)

West's Key Number Digest, Execution 464, 466

SUPPLEMENT: [This section is current through the latest supplement]



34 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

4. Period for Enforcement.

a. In General.

8 Witkin Cal. Proc. Enf Judgm § 34

[§ 34] In General.

(1) *When Enforcement May Commence.* Except as otherwise provided by statute or by the judgment, a judgment is enforceable on entry. (*C.C.P. 683.010*; see Rutter Group, 2 Enforcing Judgments and Debts §6:57 et seq.; on entry of judgment, see 7 *Cal. Proc. (5th), Judgment*, §49 et seq.) This provision does not limit a court's authority to stay enforcement of a judgment under an applicable statute. (See Law Rev. Com. Comment to *C.C.P. 683.010*; on stay of enforcement, see 9 *Cal. Proc. (5th), Appeal*, §221 et seq.)

(2) *Ten-Year Period for Enforcement.* The Enforcement of Judgments Law prescribes a 10-year period for enforcement of a judgment. Except as otherwise provided by statute, on expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property, the judgment may not be enforced, enforcement procedures must cease, and any lien pursuant to the judgment is extinguished. (*C.C.P. 683.020*; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §§6.167, 6.168; C.E.B., 1 Debt Collection Practice 2d, §7.48; on period applicable to installment judgments, see *infra*, this section; on extension of judgment liens on real property, see *C.C.P. 683.180*, *infra*, §39.) Nonmoney judgments other than judgments for the possession or sale of property are not subject to the 10-year limitation. (Law Rev. Com. Comment to *C.C.P. 683.020*.)

Enforcement after expiration of the 10-year period is not permitted, even though a writ has been timely issued. No further action, including levy, sale, collection, or delivery pursuant to the judgment, or pursuant to a writ or order issued to enforce the judgment, may take place. (Law Rev. Com. Comment to *C.C.P. 683.020*.) However, the judgment may be renewed under *C.C.P. 683.110* et seq. (see *infra*, §35 et seq.) and also by a timely action on the judgment under *C.C.P. 683.050* (see *infra*, §§35, 436.) (On continuation of enforcement procedures after renewal, see *C.C.P. 683.200*, *infra*, §40.)

(3) *Exemption for Judgments Under Family Code.* A money judgment or judgment for possession or sale of property under the Family Code, including a judgment or order for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied. The judgment or order is exempt from any requirement of renewal. (*Family C. 291(a), (b), (g)*, *infra*, §403; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.170.) (On optional renewal of Family Code judgments, see *infra*, §36; on continuation of judgment lien under Family Code during time

judgment is enforceable, see *infra*, §71.)

(4) *Period Is Not Extended or Tolled.* The 10-year period is not extended, even though enforcement has been stayed or enjoined, and is not tolled for any reason. However, an unenforceable judgment may be used as an offset against a claim of the judgment debtor that existed during the 10-year period. (Law Rev. Com. Comment to *C.C.P.* 683.020; see *Fidelity Creditor Service v. Browne* (2001) 89 *C.A.4th* 195, 201, 106 *C.R.2d* 854 [enforcement period prescribed in *C.C.P.* 683.020 is not tolled for any reason].)

(5) *Distinction: Statute of Limitations May Be Tolled.* While the 10-year period established by *C.C.P.* 683.020 is not extended or tolled, the 10-year period of the *statute of limitations* for an action on a judgment (see *C.C.P.* 337.5, *infra*, §436) may be tolled, and the action may be brought after the expiration of the period for enforcement under *C.C.P.* 683.020. (Law Rev. Com. Comments to *C.C.P.* 683.020 and 683.050; see *Fidelity Creditor Service v. Browne*, *supra* [*C.C.P.* 337.5 limitations period may be tolled, e.g., by debtor's absence from state, and action may be brought on judgment after expiration of *C.C.P.* 683.020 enforcement period].)

(6) *Period Governing Installment Judgments.* If a money judgment is payable in installments, the 10-year period of enforceability runs as to each installment from the date the installment becomes due and runs as to costs from the date the costs are added to the judgment. (*C.C.P.* 683.030; on addition of costs to judgment, see *infra*, §49.) (See Law Rev. Com. Comment to *C.C.P.* 683.030 [listing statutes authorizing installment judgments].)

(7) *Application for Writ Over 10 Years After Entry.* If an application for a writ to enforce a judgment is made more than 10 years after the date of entry or renewal, the application must be accompanied by an affidavit stating facts showing that the writ is not barred. (*C.C.P.* 683.040.) This requirement is designed to give the court clerk and levying officer sufficient information concerning enforceability of judgments more than 10 years old. (Law Rev. Com. Comment to *C.C.P.* 683.040.) A copy of the affidavit must be attached to the writ when issued. (*C.C.P.* 683.040.)

SUPPLEMENT: [This section is current through the latest supplement]



35 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

4. Period for Enforcement.

b. Renewal of Judgment.

1. Right To Renew.

8 *Witkin Cal. Proc. Enf Judgm* § 35

[§ 35] Right To Renew.

(1) *In General.* The 10-year period for enforcing a money judgment or a judgment for the possession or sale of property (see *supra*, §34) may be extended by renewal of the judgment. (*C.C.P. 683.110(a)*); see 16 Cal. Law Rev. Com. Reports, p. 1033; C.E.B., 1 Debt Collection Practice 2d, §7.65 et seq.; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.171 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:60 et seq.; Cal. Civil Practice, 4 Procedure, §30:2; 14 *Pacific L. J.* 401; on optional renewal of support judgments, see *infra*, §36.) The renewal procedure is drawn from the procedure for enforcing sister state money judgments (see *C.C.P. 1710.10* et seq., *infra*, §449 et seq.). Renewal is automatic if a renewal application is filed (see *infra*, §36). No showing of diligence on the part of the judgment creditor is required. (Law Rev. Com. Comment to *C.C.P. 683.110*.) However, suspension of a corporation precludes its use of the statutory process for renewing a judgment. (See *Timberline v. Jaisinghani* (1997) 54 *C.A.4th* 1361, 1365, 64 *C.R.2d* 4 [suspended corporation, being disqualified from exercising any right, power, or privilege, could not avail itself of legal processes for renewing judgment entered while it was in good standing].)

(2) *Subsequent Renewals.* A judgment may not be renewed within 5 years of a previous renewal. (*C.C.P. 683.110(b)*.) This provision prevents a judgment creditor from renewing a judgment merely to compound the interest on the judgment, which accrues on the amount of the judgment as renewed and includes interest accrued to the date of renewal. (Law Rev. Com. Comment to *C.C.P. 683.110*.)

(3) *Renewal of Deficiency Judgment.* The statutory 10-year renewal period runs from the date of entry of a deficiency judgment, not the date of the related foreclosure decree. In *Kinsmith Financial Corp. v. Gilroy* (2003) 105 *C.A.4th* 447, 129 *C.R.2d* 478, a judgment creditor renewed a deficiency judgment within 10 years after the judgment was obtained but more than 10 years after the underlying foreclosure decree was entered. The judgment debtor moved to vacate the renewal in the county where the renewal was obtained, and moved to quash the renewal in the county where the creditor had obtained an order of examination of the debtor. Both trial courts denied the motions. *Held*, affirmed. Neither the one action rule of *C.C.P. 726* (see 4 *Summary* (10th), *Security Transactions in Real Property*, §178) nor the renewal procedure of *C.C.P. 663.010* et seq. dictates that the renewal period run from the time of the foreclosure decree.

(a) The one action rule is meant to protect debtors from multiple collection actions, not to bar entry of more than one final determination in a foreclosure action. Whether the foreclosure process is viewed as two actions or one procedure with two final determinations, there is no requirement that the earlier foreclosure judgment be renewed in order to enforce the subsequent deficiency judgment. (105 C.A.4th 453.)

(b) Former C.C.P. 683.150(e) (now C.C.P. 683.150(f); see *infra*, §37) required a party seeking renewal of a judgment to describe the performance remaining due, and here no performance remained due under the foreclosure decree. The only unsatisfied judgment, and the only one sought to be enforced, was the money judgment for the deficiency. (105 C.A.4th 457.)

(4) *Renewal of Amended Judgment.* In *Iliff v. Dustrud* (2003) 107 C.A.4th 1201, 132 C.R.2d 848, a judgment creditor in a damages action filed a motion for renewal more than 10 years after entry of the original judgment, but within 10 years of entry of an amended judgment. The trial judge granted the judgment debtor's motion for vacation of the renewed judgment, finding that the judgment creditor's application for renewal was untimely. *Held*, reversed. By the plain terms of C.C.P. 683.020 (*supra*, §34) and 683.130(a) (*infra*, §36), the 10-year limit for renewal of judgment applies to *any* money judgment (or judgment for possession or sale of property), regardless of whether it is a modified or amended judgment. On entry by the clerk, any such judgment is enforceable for 10 years. Plaintiff's motion for renewal was filed within 10 years of entry of the amended judgment and, therefore, was timely. (107 C.A.4th 1207.)

(5) *Alternative of Action on Judgment.* An alternative method of renewal is by a timely action on the judgment. (C.C.P. 683.050, *infra*, §436; see 16 Cal. Law Rev. Com. Reports, p. 1030 et seq.) A judgment creditor may file a separate action on the judgment even after the 10-year enforceability period has expired if the 10-year statute of limitations in C.C.P. 337.5 (*infra*, §436) has not yet run. C.C.P. 683.050 makes clear that the 10-year period of enforcement prescribed by C.C.P. 683.020 and the renewal procedure provided by C.C.P. 683.110 et seq. do not affect the right to bring an action on the judgment. (*Fidelity Creditor Service v. Browne* (2001) 89 C.A.4th 195, 200, 106 C.R.2d 854; on tolling of limitations period, see *supra*, §34.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General.* See *Goldman v. Simpson* (2008) 160 C.A.4th 255, 264, 72 C.R.3d 729 [court has continuing jurisdiction to enter statutory renewal of judgment; renewal is not subject to attack on ground of insufficient contacts at time of renewal to establish personal jurisdiction over out-of-state debtor]; *Cadle Co. II v. Fiscus* (2008) 163 C.A.4th 1232, 1237, 78 C.R.3d 238 [as in statutory renewal of judgment, original litigation and judgment provide minimum contacts for exercise of personal jurisdiction over out-of-state judgment debtor in independent action to enforce judgment; citing *Goldman*]; *OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2008) 168 C.A.4th 185, 193, 85 C.R.3d 350 [party seeking to renew judgment is not obligated to establish that enforceability of judgment is at risk]. *Correction:* Page 76, second full paragraph, "C.C.P. 663.010 et seq." should be " C.C.P. 683.110 et seq.".



36 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

4. Period for Enforcement.

b. Renewal of Judgment.

2. Application.

8 *Witkin Cal. Proc. Enf Judgm* § 36

[§ 36] Application.

(1) *In General.* An application for renewal is filed with the court that entered judgment. (*C.C.P. 683.120(a)*.) It has the effect of renewing the judgment and extending the period of enforceability until 10 years from the date the application is filed. (*C.C.P. 683.120(b)*.) A money judgment payable in installments may be renewed with respect to any past due amounts not barred by the 10-year period; the amount of the renewed judgment (including principal and interest) must be treated as a lump sum money judgment from the date the application is filed. (*C.C.P. 683.120(c)*; Law Rev. Com. Comment to *C.C.P. 683.120*.)

(2) *Time for Filing.* Except for installment judgments, an application for renewal may be filed at any time during the 10-year period of enforceability of the original or renewed judgment. (*C.C.P. 683.130(a)*.) If an installment money judgment has not previously been renewed, an application for renewal may be filed at any time as to past due amounts not barred by expiration of the applicable 10-year period of enforceability. If it has previously been renewed, a subsequent application for renewal of the previously renewed amount may be filed at any time within the renewed 10-year period, while an application for renewal of any amounts that became due and payable after the previous renewal may be filed at any time before expiration of the applicable 10-year period of enforceability. (*C.C.P. 683.130(b)*.)

(3) *Judgment Under Family Code.* A money judgment or judgment for possession or sale of property under the Family Code, including a judgment for child, spousal, or family support, is *exempt* from any requirement of renewal (see *supra*, §35). However, the judgment *may* be renewed. An application for renewal may be filed at any time if the judgment has not been previously renewed, or any time after 5 years from a previous renewal. (*Family C. 291(c)*); on enforcement of Family Code judgments generally, see *infra*, §403 et seq.)

(4) *Execution Under Oath.* The application must be executed under oath. (*C.C.P. 683.140*.)

(5) *Contents.* The application must include all of the following:

(a) The title of the court where the judgment is entered and the cause and number of the action. (*C.C.P. 683.140(a)*)

.)

(b) The dates of entry and renewal of the judgment and the place of entry in the court records. (*C.C.P. 683.140(b)*.)

(c) The name and address of the judgment creditor and the name and last known address of the judgment debtor. (*C.C.P. 683.140(c)*.)

(d) If the judgment is a money judgment, information sufficient to compute the amount of the judgment as renewed. (*C.C.P. 683.140(d)*.)

(e) If the judgment is a judgment for the possession or sale of property, a description of the performance remaining due. (*C.C.P. 683.140(d)*.)

(6) *Form*. The Judicial Council has approved a form for a renewal application. (See Judicial Council Form No. EJ-190 [Application for and Renewal of Judgment].)

(7) *Filing Fee*. The fee for filing an application for renewal of judgment is the fee provided in *Govt.C. 70626* (\$ 20). (*C.C.P. 683.150(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(7) *Filing Fee*. *Govt.C. 70626* was amended in 2009. The fee is \$ 30 until July 1, 2017. (*Govt.C. 70626(b)(4)*, (e).)



37 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

4. Period for Enforcement.

b. Renewal of Judgment.

3. Entry, Amount, and Notice.

8 *Witkin Cal. Proc. Enf Judgm* § 37

[§ 37] Entry, Amount, and Notice.

(1) *Entry by Court Clerk.* On the filing of a renewal application, the clerk must enter the renewal in the court records. (*C.C.P. 683.150(a)*.) Entry is a ministerial act. (See Law Rev. Com. Comment to *C.C.P. 683.150*; *Jonathan Neil & Associates v. Jones* (2006) 138 *C.A.4th* 1481, 1487, 42 *C.R.3d* 350 [renewal of judgment is purely ministerial; there is no separate entity called "renewed judgment," and judgment creditor's rights arise from underlying judgment].) If the judgment is a money judgment, the entry must show the amount of the judgment as renewed. (*C.C.P. 683.150(c)*.) If the judgment is a judgment for the possession or sale of property, the entry must describe the performance remaining due. (*C.C.P. 683.150(f)*.)

(2) *Amount of Renewed Money Judgment.*

(a) *Lump sum.* If the judgment is for a lump sum, the amount of the judgment as renewed is the amount required to satisfy the judgment on the date of renewal. (*C.C.P. 683.150(c)*); see Rutter Group, 2 *Enforcing Judgments and Debts* §6:72 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §7.67.)

(b) *Installment judgment not previously renewed.* If it is an installment money judgment not previously renewed, the amount of the judgment as renewed includes, to the extent unsatisfied and enforceable on the date of renewal, past due installments, costs under *C.C.P. 685.090* (see *infra*, §49), and accrued interest. (*C.C.P. 683.150(d)*); see *In re Marriage of Thompson* (1996) 41 *C.A.4th* 1049, 1057, 48 *C.R.2d* 882 [statute allows for compounding of interest].)

(c) *Installment judgment previously renewed.* If it is an installment money judgment previously renewed, the amount of the judgment as renewed includes, to the extent unsatisfied and enforceable on the date of renewal, the amount of the judgment as previously renewed, past due installments subsequently due and payable, costs added since the previous renewal, and interest accrued on these amounts since the previous renewal. (*C.C.P. 683.150(e)*.)

(d) *Renewal fee.* The amount of any judgment as renewed also includes the fee for filing the renewal application. (*C.C.P. 683.150(c)*, (d), (e).)

(3) *Notice of Renewal.* The judgment creditor must serve a notice of renewal of the judgment on the judgment debtor, which informs the judgment debtor of the time within which to move to vacate or modify the renewal (see *infra*, §38). Service must be made personally or by first class mail, and proof of service must be filed with the court clerk. (*C.C.P. 683.160(a)*); see Rutter Group, 2 Enforcing Judgments and Debts §6:60 et seq.) As long as the renewal application is timely, the notice of renewal may be served after expiration of the period of enforcement of the original judgment. (Law Rev. Com. Comment to *C.C.P. 683.160*.) The notice of renewal must be in the form prescribed by the Judicial Council. (*C.C.P. 683.160(a)*); see Judicial Council Form No. EJ-195 [Notice of Renewal of Judgment]; Cal. Civil Practice, 4 Procedure, §30:9.)

(4) *Issuance of Writ and Enforcement of Judgment.* Until proof of service of the notice is filed, a writ may not be issued and the judgment may not be enforced except to the extent that it would be enforceable had it not been renewed. (*C.C.P. 683.160(b)*.)

West's Key Number Digest, Judgment 872

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Amount of Renewed Money Judgment.*

(e) *(New) Interest.* In *OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2008) 168 C.A.4th 185, 85 C.R.3d 350, a judgment creditor applied for renewal of judgment. The trial court clerk filed notice of renewal, and the renewed judgment included compound postjudgment interest on the original judgment. The judgment debtor unsuccessfully moved to vacate the renewed judgment. *Held*, affirmed.

(a) *Compounding of interest upon renewal.* The renewal provisions require that postjudgment interest be incorporated at the legal rate into the total amount of the renewed judgment, resulting in the accrual of interest on interest. Under the Enforcement of Judgments Law, interest accrues on the principal amount of a money judgment remaining unsatisfied (*C.C.P. 685.010(a)*), which is the total amount of the judgment "as last renewed" (*C.C.P. 680.300*). The legislative history of these provisions expressly notes this compounding feature of the renewal process. (*168 C.A.4th 193*.)

(b) *No violation of constitutional limits on interest.* The interest accorded pursuant to the renewal provisions does not "positively and certainly offend" the 10% per annum limit on judgments in Cal. Const., Art. XV, §1. The constitutional provision does not expressly prohibit compound interest, but authorizes the Legislature to set the interest at a maximum of 10% per annum. The renewal provisions reset the 10-year period to enforce a judgment while incorporating the accrued interest in the principal of the renewed judgment. The Legislature avoided excessive compounding of interest by limiting the renewal of judgments to once in 5 years (*C.C.P. 683.110(b)*). (*168 C.A.4th 195, 200*.)



38 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

4. Period for Enforcement.

b. Renewal of Judgment.

4. Vacation or Modification.

8 *Witkin Cal. Proc. Enf Judgm* § 38

[§ 38] Vacation or Modification.

(1) *Motion*. Within 30 days after service of the notice of renewal (see supra, §37), the judgment debtor may move to vacate the renewal by a noticed motion served on the judgment creditor personally or by mail. (*C.C.P. 683.170(b)*.) If a timely motion to vacate is not made, the judgment remains enforceable in the amount stated in the entry of renewal. (Law Rev. Com. Comment to *C.C.P. 683.170* [noting that *C.C.P. 683.170* does not limit remedies otherwise available to the judgment debtor after the time for making a motion to vacate has expired]; for amount of judgment as renewed, see supra, §37.) (See *Jonathan Neil & Associates v. Jones* (2006) 138 *C.A.4th* 1481, 1491, 42 *C.R.3d* 350 [renewal was vacated by operation of law on issuance of remittitur in appeal reversing underlying judgment]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:79 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §7.71; for form of notice of motion for order vacating renewal of judgment, see *Cal. Civil Practice*, 4 *Procedure*, §30:10.)

(2) *Grounds*. The motion may be based on any ground that would be a defense to an action on the judgment. This includes the ground that the amount of the renewed judgment is incorrect. (*C.C.P. 683.170(a)*.) Renewal of a judgment may also be vacated on the ground of accord and satisfaction. (*In re Marriage of Thompson* (1996) 41 *C.A.4th* 1049, 1058, 48 *C.R.2d* 882 [vacating renewal of child support judgment was not justified where there was no evidence of accord and satisfaction].)

(3) *Defective Service*. Defective service of process may be raised by a motion to vacate renewal of a judgment. Whether the defendant had a meritorious defense to the action is not relevant; a judgment invalid for lack of proper service is void. The motion is not untimely even though it is not brought within the relief from default provisions of *C.C.P. 473.5* (see 8 *Cal. Proc.* (5th), *Attack on Judgment in Trial Court*, §§209, 210). (*Fidelity Creditor Service v. Browne* (2001) 89 *C.A.4th* 195, 201, 106 *C.R.2d* 854.)

(4) *Hearing and Order*. At the hearing on the motion, the renewal may be vacated or a different renewal may be entered. If the court determines that the amount of the judgment as renewed is incorrect, it may enter a renewal in the correct amount. (*C.C.P. 683.170(c)*.) A renewal must be vacated if the application was filed within 5 years of a previous renewal. (*C.C.P. 683.170(a)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Grounds.* See *Goldman v. Simpson* (2008) 160 C.A.4th 255, 260, 264, 72 C.R.3d 729 [lack of personal jurisdiction over judgment debtor at time judgment was renewed was not valid ground to vacate renewed judgment; jurisdiction at time of original judgment gave court continuing jurisdiction to enter renewal].



39 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

4. Period for Enforcement.

b. Renewal of Judgment.

5. Extending Duration of Liens.

8 *Witkin Cal. Proc. Enf Judgm* § 39

[§ 39] Extending Duration of Liens.

(1) *Judgment Lien on Real Property.* Renewal of a money judgment has the effect of extending for 10 years a judgment lien on an interest in real property created pursuant to the judgment (see *infra*, §69) provided that, prior to expiration of the judgment lien, a certified copy of the renewal application is recorded with the county recorder where the property subject to the lien is located. (*C.C.P.* 683.180(a); see *Beneficial Financial v. Durkee* (1988) 206 C.A.3d 912, 916, 254 C.R. 351 [judgment lien expired due to failure to record certified copy of renewal application while lien still in effect]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:85 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §7.72.) This extension is analogous to the result obtained by an action on the judgment to preserve the priority of a judgment lien under the holding of *Provisor v. Nelson* (1965) 234 C.A.2d Supp. 876, 44 C.R. 894, *infra*, §436. (Law Rev. Com. Comment to *C.C.P.* 683.180.)

If the interest in real property has been transferred subject to the judgment lien and the transfer was recorded before the renewal application was filed, the lien is not extended unless a copy of the renewal application is personally served on the transferee and proof of service is filed within 90 days after filing of the renewal application. (*C.C.P.* 683.180(b).)

If the judgment creditor fails to extend the judgment lien, the creditor may still record an abstract of a renewed judgment and obtain a new judgment lien dating from the recording date. (Law Rev. Com. Comment to *C.C.P.* 683.180.)

(2) *Other Liens.* Renewal of a judgment has the effect of extending for 10 years a lien created by an enforcement proceeding pursuant to the judgment, other than a judgment lien on an interest in real property or an execution lien, provided that, prior to the expiration of the lien, a certified copy of the renewal application is served on or filed with the same person and in the same manner as the notice or order that created the lien. (*C.C.P.* 683.190; on extension of execution lien, see *C.C.P.* 683.200, *infra*, §40.) However, the extension is subject to any other limitations on the duration of the lien under the Enforcement of Judgments Law. (*C.C.P.* 683.190.) Thus, a lien of limited duration, such as a judgment lien on personal property (see *infra*, §83), is not increased in duration by the renewal but is merely permitted to continue past the 10-year period specified in *C.C.P.* 683.020 (see *supra*, §34). (Law Rev. Com. Comment

to *C.C.P. 683.190.*) (On extension of judgment lien created by installment judgment for support or health care, see *C.C.P. 697.320(b)*, *infra*, §71; on extension of judgment lien created by installment judgment on workers' compensation award, see *C.C.P. 697.330(a)(2)*, *infra*, §72.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Judgment Lien on Real Property.* See *Johnson v. E-Z Ins. Brokerage* (2009) 175 C.A.4th 86, 93, 95 C.R.3d 782 [third party who received quitclaim deed from judgment debtor for property subject to judgment lien was not valid transferee entitled to personal service of judgment creditors' application for renewal of judgment; deed was conveyed after debtor filed bankruptcy petition, and debtor had no interest to convey].



40 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

4. Period for Enforcement.

b. Renewal of Judgment.

6. Effect of Renewal on Enforcement.

8 *Witkin Cal. Proc. Enf Judgm § 40*

[§ 40] Effect of Renewal on Enforcement.

(1) *Continuation of Enforcement Proceedings.* Renewal of a judgment permits continuation of any previously commenced enforcement proceeding that would otherwise cease due to expiration of the 10-year period of enforceability (see *supra*, §35) if, before expiration of the period, a certified copy of the renewal application is filed with the officer acting under a writ or order or, in other cases, is filed in the enforcement proceeding. (*C.C.P.* 683.200; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:90; C.E.B., 1 *Debt Collection Practice* 2d, §7.73.) Thus, e.g., a sale of real property pursuant to a writ of execution may proceed after the expiration of 10 years from the date of entry of the judgment if the judgment is renewed within the time allowed and a certified copy of the application for renewal is filed with the levying officer in charge of the sale before the expiration of the 10-year period. (Law Rev. Com. Comment to *C.C.P.* 683.200.)

(2) *Renewal During Stay of Enforcement.* A judgment may be renewed during a stay of enforcement. The renewal prevents termination of the period of enforceability but does not affect the stay. (*C.C.P.* 683.210; Law Rev. Com. Comment to *C.C.P.* 683.210.)

(3) *Limitations Period for Action on Renewed Judgment.* An action on a judgment must be brought within 10 years. (*C.C.P.* 337.5(3), *infra*, §436.) Where a judgment is renewed, the date the renewal application is filed is deemed to be the date on which the 10-year period commences. (*C.C.P.* 683.220.)

SUPPLEMENT: [This section is current through the latest supplement]



41 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

4. Period for Enforcement.

c. Exceptions to Application of Provisions.

8 Within Cal. Proc. Enf Judgm § 41

[§ 41] Exceptions to Application of Provisions.

The provisions of the Enforcement of Judgments Law governing the period for enforcement and renewal of judgments (see *C.C.P. 683.010* et seq., supra, §34 et seq.) are not applicable to the following:

(1) Judgments or orders made or entered under the Family Code (see 11 *Summary* (10th), *Husband and Wife*, §2 et seq.), except as otherwise provided in that Code. (*C.C.P. 683.310*.) Under *Family C. 291(c)* (see infra, §403), the ministerial renewal scheme under the Enforcement of Judgments Law is available as an *option* for judgments for money or for possession or sale of property under the Family Code, including support judgments. (On enforcement of judgments under the Family Code, see infra, §403 et seq.; on interstate enforcement of support orders, see infra, §407 et seq.)

(2) Money judgments against state and local public entities subject to the enforcement provisions of *Govt.C. 965.5* and *970.1* (see infra, §429 et seq.). (*C.C.P. 683.320*.) (See *C.C.P. 695.050*, infra, §61 [money judgment against public entity that is subject to *Govt.C. 965* et seq. or *Govt.C. 970* et seq. is unenforceable under Enforcement of Judgments Law]; *C.C.P. 712.070*, infra, §61 [enforceability of judgment against public entity as nonmoney judgment].)

SUPPLEMENT: [This section is current through the latest supplement]



42 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

5. Interest.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 42

[§ 42] In General.

(1) *Rate*. The rate of interest on money judgments is 10%. (*C.C.P. 685.010(a)*; see *Westbrook v. Fairchild* (1992) 7 *C.A.4th* 889, 893, 9 *C.R.2d* 277 [postjudgment interest is limited to 10% simple interest]; *C.J.E.R.*, Judges Benchbook: Civil Proceedings--After Trial §6.147; Rutter Group, 2 *Enforcing Judgments and Debts* §6:14 et seq.; *Cal. Civil Practice*, 4 *Procedure*, §30:4.) The Legislature may lower the interest rate, regardless of the date of entry of the judgment, but the lower rate may only be made applicable prospectively. (*C.C.P. 685.010(b)*.) The 10% rate is inapplicable to judgments against local public entities, because they are not enforceable under the Enforcement of Judgments Law (see *Govt.C. 970.1(b)*, *infra*, §61); the applicable rate is the 7% rate specified in *Cal. Const.*, Art. XV, §1 (interest on judgments in absence of statutory provision). (*California Fed. Savings & Loan Assn. v. Los Angeles* (1995) 11 *C.4th* 342, 348, 45 *C.R.2d* 279, 902 *P.2d* 297; *San Francisco Unified School Dist. v. San Francisco Classroom Teachers Assn.* (1990) 222 *C.A.3d* 146, 151, 272 *C.R.* 38.) (For general discussion of interest on judgment, see 7 *Cal. Proc.* (5th), *Judgment*, §326 et seq.)

(2) *Prejudgment Interest*. The provisions of *C.C.P. 685.010* et seq. do not affect the law relating to prejudgment interest (see 7 *Cal. Proc.* (5th), *Judgment*, §325). (*C.C.P. 685.110*.)

(3) *Interest on Costs*. Costs added to the judgment are included in the principal amount of the judgment (*C.C.P. 685.090(b)*, *infra*, §49); interest therefore accrues on costs from the date they are added to the judgment (16 *Cal. Law Rev. Com. Reports*, p. 1036). (See 14 *Pacific L. J.* 402.)

West's Key Number Digest, Interest 31, 38(1)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Rate*. For interest on renewed judgments, see *Supp.*, *supra*, §37.



43 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

5. Interest.

b. When Accrual Commences.

8 *Witkin Cal. Proc. Enf Judgm* § 43

[§ 43] When Accrual Commences.

(1) *Installment Money Judgments*. Interest on an installment money judgment accrues as to each installment on the date it becomes due, unless the judgment otherwise provides. (*C.C.P. 685.020(b)*); see Legislative Com. Comment (Senate) to *C.C.P. 685.020* [in certain circumstances, court may have authority to order that interest accrues from date of entry of judgment rendered in amount certain but payable in installments]; *In re Marriage of Perez* (1995) 35 *C.A.4th* 77, 81, 41 *C.R.2d* 377 [trial judge erred in purporting to exempt husband from paying interest on balance of child support payments due]; *Alameda v. Weatherford* (1995) 36 *C.A.4th* 666, 670, 42 *C.R.2d* 386 [*C.C.P. 685.020(b)* was applicable where installment judgment for support was not clear and definite on issue of interest]; *In re Marriage of Thompson* (1996) 41 *C.A.4th* 1049, 1056, 48 *C.R.2d* 882 [interest on installment judgment for child support accrues as to each installment when it becomes due; unpaid principal remaining continues to accrue interest]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §§6.148, 6.149.)

(2) *Other Money Judgments*. Interest on other money judgments accrues on the date of entry of the judgment. (*C.C.P. 685.020(a)*.)

In *Ehret v. Congoleum Corp.* (2001) 87 *C.A.4th* 202, 104 *C.R.2d* 370, a wrongful death action, judgment was entered for plaintiffs on a jury verdict. A modified judgment was subsequently entered following the remittitur by the Court of Appeal, and the trial court ruled that postjudgment interest ran from the original judgment. *Held*, affirmed. Plaintiffs were entitled to postjudgment interest from the date of the original judgment on the jury's verdict, rather than from the judgment following the remittitur. (87 *C.A.4th* 203.)

(a) As amended in 1983, *C.C.P. 685.020(a)* continued the existing practice of awarding interest from the judgment entered on the verdict. This interpretation is supported by the Law Revision Commission Comment to the amendment, as well as by the 1985 repeal of former *C.C.P. 1033*, which had addressed postjudgment interest. (87 *C.A.4th* 206.)

(b) Former *C.R.C.*, Rule 875 (now *C.R.C.*, Rule 3.1802), which requires the clerk to include in the judgment any interest awarded by the court "and the interest accrued since the entry of the verdict" (see 7 *Cal. Proc.* (4th), *Judgment*, §325), is consistent with the legislative intent in amending *C.C.P. 685.020(a)*. (87 *C.A.4th* 208.)

SUPPLEMENT: [This section is current through the latest supplement]



44 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

5. Interest.

c. When Accrual Ceases.

8 *Witkin Cal. Proc. Enf Judgm* § 44

[§ 44] When Accrual Ceases.

Where a money judgment is satisfied in full under a writ, interest on the judgment ceases to accrue (1) on the date of levy, if the proceeds are paid in a lump sum; (2) on the date and in the manner provided in *C.C.P. 706.024* or *706.028* (see *infra*, §246), if the judgment is satisfied pursuant to an earnings withholding order; or (3) on the date the proceeds of sale or collection are actually received by the levying officer, in any other case. (*C.C.P. 685.030(a)*); on levying officer's duty to collect and compute interest, see *infra*, §46.) Where a money judgment is satisfied in full other than under a writ, interest ceases to accrue on the date the judgment is satisfied in full. (*C.C.P. 685.030(b)*.) Where a money judgment is partially satisfied, under a writ or otherwise, interest ceases to accrue on the part satisfied on the date the part is satisfied. (*C.C.P. 685.030(c)*.) (See *In re Marriage of Green* (2006) 143 *C.A.4th* 1312, 1321, 49 *C.R.3d* 908 [interest on attorneys' fee award incorporated in dissolution judgment continued to accrue in absence of either payment of award or deposit of funds in court; *C.C.P. 685.030* places burden on judgment debtor to take steps necessary to terminate accrual of postjudgment interest]; 14 *Pacific L. J.* 402; 16 *Cal. Law Rev. Com. Reports*, p. 1035.)

The date of full or partial satisfaction of a money judgment (other than one fully satisfied pursuant to a writ) is the earliest of (1) the date the judgment creditor actually receives satisfaction, (2) the date satisfaction is tendered to or deposited in court for the judgment creditor, or (3) the date of any other performance that has the effect of satisfaction. (*C.C.P. 685.030(d)*); see *Bell v. Farmers Ins. Exchange* (2006) 137 *C.A.4th* 835, 839, 40 *C.R.3d* 601 [judgment awarding unpaid overtime compensation to class of employees was satisfied when employer deposited amount of judgment into trust account held in names of class counsel and court-appointed claims administrator; "deposited in court" in *C.C.P. 685.030(d)* should be construed to embrace payment to fund managed by claims administrator who is appointed by court and reports to it].)

The clerk of a court may enter a writ of execution on a money judgment as returned "wholly satisfied" when the judgment amount, as specified on the writ, is fully collected and only an interest deficit of not more than \$ 10 exists, due to automation of the continual daily interest accrual calculation. (*C.C.P. 685.030(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]



45 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

5. Interest.

d. Support Orders.

8 *Witkin Cal. Proc. Enf Judgm* § 45

[§ 45] Support Orders.

Every money judgment or order for child support must provide notice that interest on arrearages accrues at the legal rate. Also, statements of account in child support actions must include the amount of current support, arrears, and interest due. (*C.C.P.* 695.211; see *Los Angeles v. Salas* (1995) 38 *C.A.4th* 510, 515, footnote 1, 45 *C.R.2d* 61 [*C.C.P.* 695.211 is not applicable retroactively]; *In re Marriage of Cordero* (2002) 95 *C.A.4th* 653, 657, 115 *C.R.2d* 787 [trial court lacks authority to waive or forgive accrued interest on unpaid support order]; on enforcement of judgments under Family Code generally, see *infra*, §403 et seq.)

Dupont v. Dupont (2001) 88 *C.A.4th* 192, 197, 105 *C.R.2d* 607, held that a support arrearages order establishing periodic payments to liquidate support owed for prior periods was a new installment judgment for purposes of *C.C.P.* 685.020 (*supra*, §43) and superseded, and therefore stopped the further accrual of interest on, the prior obligations. This holding was expressly abrogated by the Legislature in 2002. (See Stats. 2002, Chap. 539, §1.) Only the initial support order, whether temporary or final and whether contained in a judgment or not, may be considered an installment judgment for purposes of *C.C.P.* 685.020. A support order or other order or notice that sets forth the amount of support owed for prior periods of time or establishes a periodic payment to liquidate the support owed for prior periods is not an installment judgment for these purposes. (*Family C. 155, 11 Summary* (10th), *Husband and Wife*, §4.)

In re Marriage of McClellan (2005) 130 *C.A.4th* 247, 30 *C.R.3d* 5, raised the issue whether amended *Family C. 155* applied to accrual of interest on child support arrearages that were subject of arrearages orders entered before the amendment's effective date. *Held*, the amended statute applied. The amendment merely clarified existing law and therefore did not raise a retroactivity issue. (130 *C.A.4th* 255.) The amendment "simply allowed the basic postjudgment interest rules in the Code of Civil Procedure to *continue* to control the accrual of interest on delinquent child support payments without the confusion created by *Dupont*." (130 *C.A.4th* 258.) Thus, statutory interest on unpaid child support payments accrues as a matter of law as to each installment when each installment becomes due, accrued arrearages are treated like a money judgment for purposes of assessing statutory interest, and, unless otherwise specified in the judgment, interest accrues as to each installment when each installment becomes due and continues to accrue for so long as the arrearage remains unpaid. Because accrued arrearages are treated like money judgments, courts lack discretion to modify or terminate the arrearages retroactively. (130 *C.A.4th* 251, 259.)

SUPPLEMENT: [This section is current through the latest supplement]



46 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

6. Costs.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 46

[§ 46] In General.

(1) *Right to Costs.* A judgment creditor is entitled to the "reasonable and necessary" costs of enforcing a judgment. (*C.C.P. 685.040.*) Recoverable costs may be limited by statute or subject to procedural restrictions. (Legislative Com. Comment (Assembly) to *C.C.P. 685.040* [listing statutory provisions limiting or denying costs in particular circumstances].) (See C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.180 et seq.; Rutter Group, 2 *Enforcing Judgments and Debts* §6:33 et seq.; *Cal. Civil Practice*, 4 Procedure, §30:4; on expenses of enforcing judgment as allowable item of costs, see 7 *Cal. Proc. (5th), Judgment*, §137.)

(2) *Attorneys' Fees.* Attorneys' fees are not included in the recoverable costs of enforcing a judgment unless otherwise provided by law. (*C.C.P. 685.040*; see *Berti v. Santa Barbara Beach Properties (2006) 145 C.A.4th 70, 76, 51 C.R.3d 364* [*C.C.P. 685.040* did not preclude award of postjudgment attorneys' fees authorized under *Corp.C. 15635* in action to enforce limited partners' right to inspect partnership books; recovery of those fees was "otherwise provided by law"]; for further discussion, see 7 *Cal. Proc. (5th), Judgment*, §138.) However, attorneys' fees incurred in enforcing a judgment *are* recoverable as costs if the underlying judgment includes an award of fees authorized by contract under *C.C.P. 1033.5(a)(10)(A)* (see 7 *Cal. Proc. (5th), Judgment*, §150). (*C.C.P. 685.040*; see *Miller v. Givens (1994) 30 C.A.4th 18, 22, 37 C.R.2d 1* [language in *C.C.P. 685.040* referring to award of fees to "judgment creditor" does not preclude recovery of fees by assignees of original judgment creditor].)

In *Molalla Holdings v. Akers (2002) 100 C.A.4th Supp. 6, 123 C.R.2d 342*, a collection agency obtained a judgment by default on an account, which included attorneys' fees and costs, and moved for an award of postjudgment attorneys' fees. *Held*, denial of motion affirmed. *C.C.P. 685.040* allows attorneys' fees incurred to enforce a judgment as collectible costs if the underlying judgment includes an award of fees authorized by contract under *C.C.P. 1033.5(a)(10)(A)*. However, plaintiff's attorneys' fees were awarded under a fee schedule promulgated by the trial court pursuant to a local court rule and *C.C.P. 585(a)* (see 6 *Cal. Proc. (5th), Proceedings Without Trial*, §166), not as a cost item pursuant to the contract in issue. Plaintiff could have obtained a judgment through a court hearing, and not simply through a clerk's judgment by default. In securing the clerk's judgment by default, plaintiff implicitly accepted an attorneys' fee award pursuant to the local rule, thus eschewing the *C.C.P. 1033.5(a)(10)(A)* alternative. Plaintiff's election of the default procedure precluded postjudgment attorneys' fees. (100 C.A.4th Supp. 7.)

(3) *Collection and Computation by Levying Officer.* Where a writ is issued to enforce a judgment, the levying officer must collect, compute, and determine the costs and interest to be satisfied in the levy under the writ. These include: (a) the statutory fee for issuance of the writ; (b) interest from the date of entry or renewal of the judgment to the date of the issuance of the writ, adjusted for partial satisfactions, provided that the judgment creditor has filed an affidavit with the court clerk stating the amount; (c) interest on the unsatisfied principal amount of the judgment from the date of issuance of the writ until interest ceases to accrue, determined by reference to the daily interest entered on the writ; and (d) the levying officer's statutory costs for performance under the writ. (*C.C.P.* 685.050; see Law Rev. Com. Comment to *C.C.P.* 685.050 [noting that section applies to writs of possession and sale as well as to writs of execution].) (For costs allowable under memorandum of costs, see *C.C.P.* 685.070, *infra*, §47; for collection of costs added to judgment, see *C.C.P.* 685.090, *infra*, §49.)

The levying officer has discretion to *recompute* the amount of daily interest accruing on a money judgment in cases of partial satisfaction, and make later collections by reference to the adjusted amount of interest. (*C.C.P.* 685.050(b)(2).) The levying officer may condition recomputation on receiving adequate instructions from the judgment creditor (see *supra*, §29). The purpose of this provision is to permit the full satisfaction of a money judgment during the course of a continuing levy, without the need to seek issuance of a new writ of execution or final earnings withholding order for costs and interest, and to avoid the potential of collecting an excessive amount. (Law Rev. Com. Comment to *C.C.P.* 685.050.) (On satisfaction of judgment under earnings withholding order, see *infra*, §246.)

(4) *Request for Eviction Expenses in Unlawful Detainer Proceedings.* The plaintiff in an unlawful detainer proceeding who recovers judgment for possession may request as costs the amount advanced to the sheriff or marshal that is expended to effect the eviction. (*C.C.P.* 1034.5; on supplemental memorandum of costs to recover costs of eviction, see *infra*, §47.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Attorneys' Fees.* See *Jaffe v. Pacelli* (2008) 165 C.A.4th 927, 934, 82 C.R.3d 423 [under *C.C.P.* 685.040, judgment creditor was entitled to fees and costs incurred in successful efforts to dismiss debtor's bankruptcy proceeding seeking to discharge debt, where promissory note underlying judgment contained fee provision]; *Globalist Internet Technologies v. Reda* (2008) 167 C.A.4th 1267, 1273, 84 C.R.3d 725 [under *C.C.P.* 685.040, judgment creditor was entitled to fees incurred in successfully defending judgment debtor's separate action that sought specific enforcement of alleged agreement to settle judgment debt at reduced amount; citing *Jaffe*]; *Sanai v. Saltz* (2009) 170 C.A.4th 746, 780, 88 C.R.3d 673 [plaintiff who prevailed on appeal in action against credit reporting agency obtained award of costs; memorandum of costs after judgment, which was intended to enforce cost award, improperly sought attorneys' fees as restitution in violation of *C.C.P.* 685.040]; *Chinese Yellow Pages Co. v. Chinese Overseas Marketing Service Corp.* (2008) 170 C.A.4th 868, 882, 88 C.R.3d 250 [after automatic stay in judgment debtor's bankruptcy proceeding had expired, nothing in Bankruptcy Code precluded trial court from awarding judgment creditor, under *C.C.P.* 685.040, reasonable and necessary attorneys' fees and costs incurred in bankruptcy proceeding].



47 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

6. Costs.

b. Memorandum of Costs.

8 *Witkin Cal. Proc. Enf Judgm* § 47

[§ 47] Memorandum of Costs.

(1) *Execution, Filing, and Service.* Within 2 years after costs have been incurred but before the judgment is fully satisfied, a judgment creditor may claim allowable costs by filing a memorandum of costs with the court clerk and serving a copy, personally or by mail, on the judgment debtor. The memorandum must be executed under oath by a person who has knowledge of the facts and must state to the person's "best knowledge and belief" that the costs are correct, reasonable, necessary, and unsatisfied. (*C.C.P. 685.070(b)*; see *14 Pacific L. J. 403*; Judicial Council Form No. MC-012 [Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest]; Cal. Civil Practice, 4 Procedure, §30:14.) (For costs automatically recoverable without inclusion in memorandum, see *C.C.P. 685.050*, supra, §46 [costs satisfied in levy under writ], and *C.C.P. 706.125(e)* [service of earnings withholding order].)

(2) *Allowable Costs.* The judgment creditor's memorandum may include the following costs of enforcing a judgment:

(a) Statutory fees for preparing, issuing, recording, and indexing an abstract of judgment or a certified copy of a judgment. (*C.C.P. 685.070(a)(1)*.)

(b) Statutory fees for filing a notice of judgment lien on personal property. (*C.C.P. 685.070(a)(2)*.)

(c) To the extent not satisfied under *C.C.P. 685.050* (see supra, §46), statutory fees for issuing a writ for the enforcement of a judgment. (*C.C.P. 685.070(a)(3)*.)

(d) To the extent not satisfied under *C.C.P. 685.050* (see supra, §46), the levying officer's statutory costs for performing under a writ. (*C.C.P. 685.070(a)(4)*.)

(e) To the extent not satisfied under a wage garnishment (see infra, §241 et seq.), the levying officer's statutory fee for performing under the Wage Garnishment Law. (*C.C.P. 685.070(a)(4)*.)

(f) Costs incurred in connection with any proceeding under the miscellaneous creditors' remedies provided by

C.C.P. 708.010 et seq. (see *infra*, §275 et seq.) that have been approved by the judge or referee conducting the proceeding. (*C.C.P. 685.070(a)(5)*.)

(g) Attorneys' fees allowed under *C.C.P. 685.040* (see *supra*, §46). (*C.C.P. 685.070(a)(6)*.)

(3) *Motion by Judgment Debtor for Court To Tax Costs.* The judgment debtor may, within 10 days after service of the memorandum, make a noticed motion to have the costs taxed by the court. The notice must be served, personally or by mail, on the judgment creditor. The court must allow or disallow the costs to the extent justified under the circumstances of the case. (*C.C.P. 685.070(c)*.)

If a memorandum to tax costs is filed at the same time as an application for a writ of execution, the judgment creditor may include statutory costs not exceeding \$ 100 in the amount specified in the writ, and may obtain a levy on the writ, without giving the judgment debtor a prior opportunity to file a motion to tax those costs. However, the costs may be subsequently disallowed if the debtor moves to tax costs, and the memorandum must contain a specified notice informing the debtor of that fact. The inclusion of these costs in the writ or the pendency of the motion to tax them may not be cause for delay in issuing the writ or for the levying officer to delay enforcing it. (*C.C.P. 685.070(e)*.)

(4) *Allowance of Claimed Costs in Absence of Motion To Tax Costs.* If a timely motion to tax costs is not made, the costs claimed in the memorandum are allowed. (*C.C.P. 685.070(d)*.)

(5) *Extension of Time.* *C.C.P. 1013*, extending the time within which a right may be exercised or an act may be done (see 6 *Cal. Proc. (5th), Proceedings Without Trial*, §30 et seq.), applies to proceedings under *C.C.P. 685.070*. (*C.C.P. 685.070(f)*.)

(6) *Supplemental Memorandum in Unlawful Detainer Proceedings.* The plaintiff in an unlawful detainer proceeding who has claimed eviction costs under *C.C.P. 1034.5* (see *supra*, §46) must file a supplemental cost memorandum in order to recover them. (C.R.C., Rule 3.2000.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Execution, Filing, and Service.* See *David S. Karton, a Law Corp. v. Dougherty (2009) 171 C.A.4th 133, 145, 89 C.R.3d 506* [judgment creditor who sought supplemental attorneys' fees incurred in enforcing judgment was required to give notice of memorandum of costs under *C.C.P. 685.070*, to debtor even though underlying judgment was default judgment].



48 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

6. Costs.

c. Motion for Costs.

8 *Witkin Cal. Proc. Enf Judgm* § 48

[§ 48] Motion for Costs.

(1) *Notice, Affidavit, and Service.* Within 2 years after costs have been incurred, but before the judgment is fully satisfied, a judgment creditor may claim certain costs by a noticed motion. (*C.C.P. 685.080(a)*.) The notice must be served personally or by mail on the judgment debtor and must describe the costs claimed and state their amount. It must be supported by an affidavit on the "best knowledge and belief" of a person who has knowledge of the facts, stating that the costs are correct, reasonable and necessary, and unsatisfied. (*C.C.P. 685.080(b)*.) (For forms of notice of motion for order allowing costs of enforcing judgment and declaration in support of motion, see *Cal. Civil Practice*, 4 Procedure, §§30:11, 30:12.)

(2) *Costs Claimed.* The noticed motion procedure applies to costs authorized by *C.C.P. 685.040* (see *supra*, §46), including, but not limited to, costs that could be claimed under the memorandum procedure of *C.C.P. 685.070* (see *supra*, §47) and costs incurred but not approved by the court or referee in a proceeding under the miscellaneous creditors' remedies provided by *C.C.P. 708.010* et seq. (see *infra*, §275 et seq.). (*C.C.P. 685.080(a)*.)

(3) *Determination.* The court must allow or disallow the costs to the extent justified under the circumstances of the case. (*C.C.P. 685.080(c)*.) (For form of order allowing judgment creditor's costs of enforcing judgment, see *Cal. Civil Practice*, 4 Procedure, §30:13.)

(4) *Fees of Registered Process Server.* The fees of a registered process server for levy of a writ of execution under *C.C.P. 699.080* (see *infra*, §103) and for serving an earnings withholding order under *C.C.P. 706.108* (see *infra*, §256) must be allowed as recoverable costs under *C.C.P. 1033.5* (allowance of costs; see 7 *Cal. Proc. (5th), Judgment*, §117 et seq.). (*C.C.P. 699.080(f)*, *706.108(f)*.) The fee for executing a writ of possession of real property under *C.C.P. 715.040* (see *infra*, §333) may, in the court's discretion, be allowed as a recoverable cost on a motion under *C.C.P. 685.080*. If allowed, the fee is governed by *C.C.P. 1033.5*. (*C.C.P. 715.040(d)*.)

West's Key Number Digest, Judgment 855(1)

SUPPLEMENT: [This section is current through the latest supplement]



49 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

C. Practice and Procedure.

6. Costs.

d. Addition of Costs to Judgment.

8 *Witkin Cal. Proc. Enf Judgm* § 49

[§ 49] Addition of Costs to Judgment.

In the following circumstances, costs are added to, and become part of, the principal amount of the judgment:

- (1) On the filing of an order allowing the costs. (*C.C.P. 685.090(a)(1)*, (b).)
- (2) If a memorandum of costs is filed under *C.C.P. 685.070* (see *supra*, §47) and no motion to tax is made, on expiration of the time for making the motion. (*C.C.P. 685.090(a)(2)*, (b).)
- (3) When a writ is served by a levying officer or registered process server. (*C.C.P. 685.090(a)(3)*, *685.090(b)*, *685.095* [costs of service, as determined pursuant to *C.C.P. 1033.5* (3 *Cal. Proc.* (5th), *Actions*, §999)].)

If the costs are added to the judgment while a writ or earnings withholding order is outstanding and the levying officer receives, before the writ or withholding order is returned, either a certified copy of the court order allowing the costs or a certificate from the court clerk that the costs have been added to the judgment after the filing of a memorandum of costs, the officer must add the costs to the amount to be collected under the writ or withholding order. (*C.C.P. 685.090(c)*.) The procedure for the addition of costs to a judgment where collection is made under an earnings withholdings order may be used to avoid obtaining another writ of execution in cases where the writ has been returned and collection continues under the earnings withholding order (see *infra*, §260). (Law Rev. Com. Comment to *C.C.P. 685.090*.) If the copy of the order or the clerk's certificate is received before distribution, the levying officer must include the costs in the amount distributed to the judgment creditor. (*C.C.P. 685.090(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



50 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

D. Enforcement After Death.

8 *Within Cal. Proc. Enf Judgm § 50*

[§ 50] Enforcement After Death.

(1) *Death of Judgment Creditor.* The judgment of a deceased judgment creditor may be enforced by the judgment creditor's executor, administrator, or successor in interest. (*C.C.P. 686.010*; see *C.E.B.*, 2 *Debt Collection Practice* 2d, §11.46; *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §6.187; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:1585.)

(2) *Death of Judgment Debtor.* Enforcement of a judgment against property in a deceased judgment debtor's estate is governed by the Probate Code. (*C.C.P. 686.020*; see *C.E.B.*, 2 *Debt Collection Practice* 2d, §11.46; *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §6.188; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:1586 et seq.) Under the Probate Code, a money judgment against a deceased judgment debtor is not generally enforceable against the estate under the Enforcement of Judgments Law, but is payable in the course of administration. (*Prob.C. 9300(a)*.) However, if property of a decedent is subject to an execution lien at the time of death, enforcement may proceed under the Enforcement of Judgments Law. (*Prob.C. 9303*.) Also, a judgment for possession or sale of property may be enforced under the Enforcement of Judgments Law against property in the estate described in the judgment. (*Prob.C. 9302(a)*.) (On enforcement of money and nonmoney judgments against decedent, see 14 *Summary* (10th), *Wills and Probate*, §627; 10 *Am.Jur. P.P. Forms* (2005 ed.), *Executions* §387 et seq.; on action to enforce judgment lien against property of estate, see *Prob.C. 9391*, 14 *Summary* (10th), *Wills and Probate*, §632; on conversion of attachment lien into judgment lien on property of estate, see *Prob.C. 9304*, 14 *Summary* (10th), *Wills and Probate*, §628; on priority of claims against estate, see *Prob.C. 11420*, 14 *Summary* (10th), *Wills and Probate*, §649.)

(3) *Death of Settlor of Revocable Living Trust.* Similar provisions of the Probate Code govern the enforcement of a judgment against the deceased settlor of a revocable living trust. (See *Prob.C. 19300* et seq., 13 *Summary* (10th), *Trusts*, §267; *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §6.187; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:1583.1 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



51 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

E. Enforcement of State Tax Liability.

1. In General.

8 Witkin Cal. Proc. Enf Judgm § 51

[§ 51] In General.

(1) *Enforcement Methods.* Except as otherwise provided by statute, a judgment on a public entity's tax claim is enforceable in the same manner as any other money judgment. (*C.C.P. 688.110.*) (On special provisions governing wage garnishment for collection of state taxes, see *infra*, §269 et seq.) Tax liability may also be enforced by warrant or notice of levy.

(2) *Jurisdiction and Venue.* A proceeding for enforcement of a tax liability by warrant or notice of levy is a limited civil case if the amount of liability sought to be collected does not exceed the amount in controversy for a limited civil case provided in *C.C.P. 85* (see 2 *Cal. Proc. (5th), Courts*, §241), and the legality of the liability being enforced is not contested by the person against whom enforcement is sought. (*C.C.P. 688.010.*) An action for enforcement of these remedies may be brought in the county where the debtor resides, the county where the property is located, or, if the debtor is not a resident of California, in any county. (*C.C.P. 688.020(b).*) However, a claim of exemption or a third-party claim (see *infra*, §52) must be heard in the superior court in the county where the property levied on is located. (*C.C.P. 688.030(c).*)

(3) *Remedies Where Warrant Is Issued.* Except as otherwise provided by statute, whenever any provision of the Public Resources Code, Revenue and Taxation Code, or Unemployment Insurance Code authorizes the state, or a department or agency, to issue a warrant, and permits the warrant to "be levied with the same effect as a levy pursuant to a writ of execution," the state, department, or agency "may use any of the remedies available to a judgment creditor," including miscellaneous remedies under *C.C.P. 708.010* et seq. (see *infra*, §275 et seq.). (*C.C.P. 688.020(a)*; see Law Rev. Com. Comment to *C.C.P. 688.020* [listing statutes authorizing warrants with effect of levy pursuant to execution and noting that miscellaneous remedies are available if warrant may be properly issued even though warrant is not actually issued].)

(4) *Definitions.* For purposes of these provisions, "judgment creditor" or "creditor" means the state, department, or agency seeking to collect the liability, and "judgment debtor" or "debtor" means the debtor from whom the liability is sought to be collected. (*C.C.P. 688.040.*)

West's Key Number Digest, Judgment 855(1)

SUPPLEMENT: [This section is current through the latest supplement]



52 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

II. ENFORCEMENT OF JUDGMENTS LAW: GENERAL PRINCIPLES

E. Enforcement of State Tax Liability.

2. Exemptions and Third-Party Claims.

8 *Witkin Cal. Proc. Enf Judgm* § 52

[§ 52] Exemptions and Third-Party Claims.

(1) *Availability of Exemptions and Claims.* Where property is levied on under a warrant (other than a warrant to enforce a lien for postponed real property taxes under Rev.C. 3201 et seq.) or notice of levy, a natural person debtor may claim the same exemptions as a judgment debtor (see *infra*, §169 et seq.), and a third person may claim ownership of, the right to possession of, a security interest in, or a lien on the property. (*C.C.P. 688.030(a)*.)

When enforcement is under statutory provisions permitting tax enforcement in certain situations by means of a notice to withhold or notice of delinquency to a person who has personal property of, or owes a debt to, a tax debtor, the debtor may not claim exemptions. (16 Cal. Law Rev. Com. Reports, p. 1153; see *Hepner v. Franchise Tax Bd. (1997) 52 C.A.4th 1475, 1481, 61 C.R.2d 341 [C.C.P. 688.030* does not contain words "notice to withhold," either expressly or by implication; legislative history shows that Legislature chose not to extend exemption statutes to tax debtor when enforcement is by notice to withhold].)

(2) *Procedure.* Claims of exemption and third-party claims must generally be made, heard, and determined in the same manner as if the property were levied on under a writ of execution. (*C.C.P. 688.030(a)*; see Legislative Com. Comment (Assembly) to *C.C.P. 688.030* [noting that this provision includes warrants issued under statutes referred to in comment to *C.C.P. 688.020*, *supra*, §51].) (On procedure for claiming exemptions, see *infra*, §180 et seq.; on procedure for third-party claims, see *infra*, §§367 et seq., 372 et seq., 378 et seq.) In the case of a notice of levy, (a) the claim must be filed with the state department or agency that issued the notice of levy; (b) the department or agency must perform the levying officer's duties, but need not give itself the notices that a levying officer and a judgment creditor are required to give each other; and (c) the department or agency is not obligated to determine the existence of any lien or encumbrance on the property. (*C.C.P. 688.030(b)*.)

(3) *Date of Creation of Tax Lien for Exemption Purposes.* For the purpose of applying *C.C.P. 694.080, 703.050, or 703.100* (exemption provisions dependent on date of creation of lien), the date of creation of a tax lien is the earliest of the following: (a) the time a notice of state tax lien is recorded or filed under *Govt.C. 7150* et seq.; (b) the time when the property is levied on under a warrant or notice of levy or notice to withhold issued by the state or a department or agency; or (c) the time of performance of any other act that creates or perfects a lien on specific property as distinguished from a lien on the debtor's property generally. (*C.C.P. 688.050*.) Thus, the tax lien that arises when a tax

liability is due and unpaid with nothing more is not the date of creation of a tax lien for purposes of this section.
(Legislative Com. Comment (Assembly) to *C.C.P.* 688.050.)

SUPPLEMENT: [This section is current through the latest supplement]



53 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

III. MONEY JUDGMENTS: IN GENERAL

A. Amount Satisfying Judgment.

8 *Witkin Cal. Proc. Enf Judgm* § 53

[§ 53] Amount Satisfying Judgment.

The amount required to satisfy a money judgment is the total amount of the judgment as entered or renewed (*C.C.P. 695.210*), with the following modifications:

(1) Costs added under *C.C.P. 685.090* (see *supra*, §49) are added. (*C.C.P. 695.210(a)*.)

(2) Interest added under *C.C.P. 685.010* et seq. (see *supra*, §42 et seq.) is added. (*C.C.P. 695.210(b)*.)

(3) The amount of any partial satisfaction is subtracted. (*C.C.P. 695.210(c)*.)

(4) Any portion no longer enforceable is subtracted. (*C.C.P. 695.210(d)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.7; Rutter Group, 2 *Enforcing Judgments and Debts* §6:12 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



54 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 III. MONEY JUDGMENTS: IN GENERAL
 B. Application of Money Received.

8 *Witkin Cal. Proc. Enf Judgm* § 54

[§ 54] Application of Money Received.

(1) *In General.* Money received in satisfaction of a money judgment, except a judgment for support, is credited in the following order:

(a) Costs collected by the levying officer under *C.C.P. 685.050(b)* (see *supra*, §46). (*C.C.P. 695.220(a).*)

(b) Fees due to the court under *Govt.C. 6103.5* (recovery of clerk's fees; see 4 *Cal. Proc. (5th), Pleading*, §27) or *Govt.C. 68511.3* (recovery of fees and costs where litigant proceeds in forma pauperis; see 3 *Cal. Proc. (5th), Actions*, §§418, 425). (*C.C.P. 695.220(b).*)

(c) Accrued interest remaining unsatisfied. (*C.C.P. 695.220(c).*)

(d) The principal amount of the judgment remaining unsatisfied. On installment judgments, money is credited against installments in the order of maturity. (*C.C.P. 695.220(d).*) (See C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.8; Rutter Group, 2 *Enforcing Judgments and Debts* §6:55.15.)

(2) *Support Judgments.* Until January 1, 2009, money received in satisfaction of a money judgment for support is credited in the following order:

(a) The current month's support. (*C.C.P. 695.221(a).*)

(b) Accrued interest remaining unsatisfied. (*C.C.P. 695.221(b).*)

(c) The principal amount of the judgment remaining unsatisfied. On installment judgments, money is credited against installments in the order of maturity. (*C.C.P. 695.221(c).*) (See C.E.B., 2 *Debt Collection Practice* 2d, §13.34; Rutter Group, 2 *Enforcing Judgments and Debts* §6:55.16 et seq.; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

Effective January 1, 2009, the order of payment is revised. (*C.C.P. 695.221(h).*) Money is first credited against the current month's support, next credited against the principal amount of the judgment remaining unsatisfied, and only then against the accrued interest that remains unsatisfied. (*C.C.P. 695.221(b), (c).*)

Notwithstanding these provisions, a collection received through a federal tax refund offset is first credited against the interest and then the principal of past due support assigned to the state, before the balance is credited to the interest and principal of other unpaid support. (*C.C.P. 695.221(e)*.)

When a child support judgment is enforced under Title IV-D of the Social Security Act (*42 U.S.C., §651 et seq.*; see 11 *Summary* (10th), *Husband and Wife*, §308), and a lump sum payment is collected from a support obligor who has money judgments for support owing to more than one family, all support collected must be distributed pursuant to guidelines developed by the State Department of Child Support Services. (*C.C.P. 695.221(d)*.)

Special provisions govern the order of distribution of child support payments where families and children have received public assistance. (*C.C.P. 695.221(f), (g)*); on reimbursement of public assistance generally, see 11 *Summary* (10th), *Husband and Wife*, §339 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General.*

(b) *Fees:* *Govt.C. 68511.3* was repealed in 2008. *Govt.C. 68630 et seq.* now govern the waiver of court fees and costs for litigants proceeding *in forma pauperis*.



55 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 III. MONEY JUDGMENTS: IN GENERAL
 C. Property Subject to Enforcement.
 1. In General.

8 *Within Cal. Proc. Enf Judgm § 55*

[§ 55] In General.

(1) *Former Law.* Under the former law, all property and property interests of a judgment debtor not excepted by law were subject to execution. (Former C.C.P. 688; on exceptions under former law, see *infra*, §60.) The following property interests, among others, were subject to levy and sale:

- (a) Promissory notes. (*Hoxie v. Bryant* (1900) 131 C. 85, 88, 63 P. 153.)
- (b) Shares of stock. (*Partch v. Adams* (1942) 55 C.A.2d 1, 5, 130 P.2d 244.)
- (c) Rights under a manufacturing contract. (*Meacham v. Meacham* (1968) 262 C.A.2d 248, 252, 68 C.R. 746.)
- (d) Fraudulently conveyed property in the hands of the transferee. (Former version of C.C. 3439.09.)
- (e) Community property standing in the name of the wife, to satisfy a claim against the husband. (*McAlvay v. Consumers' Salt Co.* (1931) 112 C.A. 383, 386, 297 P. 135.)
- (f) Interest of a joint tenant. (*Pepin v. Stricklin* (1931) 114 C.A. 32, 34, 299 P. 557.)
- (g) Joint property of partners or associates, to satisfy a claim against the partnership or association. (Former Corp.C. 24002.)
- (h) Property subject to a security interest. (Former C.C.P. 689a.)
- (i) Purchaser's equitable interest in land under an executory contract. (*Hansen v. D'Artenay* (1936) 13 C.A.2d 293, 297, 57 P.2d 202.)
- (j) Beneficiary's vested equitable interest in a trust. (See *Houghton v. Pacific Southwest Trust & Savings Bank* (1931) 111 C.A. 509, 513, 295 P. 1079 [trust in land]; *McAlvay v. Consumers' Salt Co.*, *supra*, 112 C.A. 395 [passive trust of stock]; *Lynch v. Cunningham* (1933) 131 C.A. 164, 172, 21 P.2d 154 [trust in land].)

(k) Beneficiary's interest in a spendthrift trust. (Former C.C. 859 [but income in excess of beneficiary's needs was liable to claims of creditors "in the same manner as personal property which cannot be reached by execution"].)

(2) *General Rule Under Enforcement of Judgments Law: All Property Is Subject to Enforcement.* The Enforcement of Judgments Law similarly provides that all property of the judgment debtor is subject to enforcement of a money judgment, except as otherwise provided by law. (*C.C.P. 695.010(a)*; see C.E.B., 2 Debt Collection Practice 2d, §9.12; 16 Cal. Law Rev. Com. Reports, pp. 1037, 1038; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.9; Rutter Group, 2 Enforcing Judgments and Debts §6:123 et seq.; Cal. Civil Practice, 4 Procedure, §30:3; 14 *Pacific L. J.* 403; 1 *A.L.R.2d* 727 [purchaser's interest under executory contract as subject to enforcement].) (On property specifically excepted from enforcement, see *infra*, §§60 et seq., 168 et seq.)

(3) *Property Subject to Enforcement Under Particular Statutes.* The following property is subject to enforcement under particular statutes:

(a) The judgment debtor's interest in real property as a lessee. (*C.C.P. 695.035*, *infra*, §56.)

(b) The judgment debtor's interest in a trust, to the extent provided by law. (*C.C.P. 695.030(b)(1)*, *infra*, §57.)

(c) The judgment debtor's cause of action for money or property that is the subject of a pending action or special proceeding. (*C.C.P. 695.030(b)(2)*.) (On lien in pending action or proceeding, see *C.C.P. 708.410* et seq., *infra*, §297 et seq.)

(d) Community property as provided in the Family Code. (*C.C.P. 695.020(a)*, *infra*, §58.)

(e) Property transferred or encumbered subject to a lien created to enforce a money judgment remains subject to enforcement "in the same manner and to the same extent as if it had not been transferred or encumbered," and this is true even if the judgment debtor dies after transfer of the property. (*C.C.P. 695.070*; see Legislative Com. Comment (Assembly) to *C.C.P. 695.070* [listing statutes governing continuation of liens on transferred or encumbered property]; *Dieden v. Schmidt* (2002) 104 *C.A.4th* 645, 650, 128 *C.R.2d* 365 [judgment lien on real property interest held by tenant in common survived both change in title to joint tenancy and death of debtor joint tenant].)

(f) The judgment debtor's interest in an alcoholic beverage license. (*C.C.P. 708.630*, *infra*, §314.)

(g) A money judgment against an unincorporated association. The judgment may be enforced only against the property of the association. (*Corp.C. 18260*, 9 *Summary* (10th), *Corporations*, §40.)

(h) Property of a judgment debtor attached in an action, but transferred before entry of a money judgment in favor of the judgment creditor. (*C.C.P. 695.010(b)*, *infra*, §59.)

SUPPLEMENT: [This section is current through the latest supplement]



56 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

III. MONEY JUDGMENTS: IN GENERAL

C. Property Subject to Enforcement.

2. Leasehold Interest in Real Property.

8 *Witkin Cal. Proc. Enf Judgm* § 56

[§ 56] Leasehold Interest in Real Property.

A leasehold interest in real property may be applied to satisfaction of a money judgment in any of the following circumstances:

- (1) If the lessee has the right to sublet the property or assign the lease. (*C.C.P. 695.035(a)(1)*.)
- (2) If the lessee has the right to sublet or assign "subject to standards or conditions" and the purchaser or other assignee agrees to comply with the standards or conditions. (*C.C.P. 695.035(a)(2)*.)
- (3) If the lessee has the right to sublet or assign "with the consent of the lessor," in which case the lessor's obligation to consent is subject to the standard applicable to a voluntary sublease or assignment. (*C.C.P. 695.035(a)(3)*.)
- (4) If the lessor consents in writing. (*C.C.P. 695.035(a)(4)*.) (See Legislative Committee Comment (Assembly) to *C.C.P. 695.035* [*C.C.P. 695.035(a)* is based on *C.C. 1951.4* (see 12 *Summary* (10th), *Real Property*, §744 et seq.).])

A provision in a lease against involuntary transfer or assignment of the lessee's interest is ineffective to the extent it would prevent application of the interest to the satisfaction of a judgment under these circumstances. (*C.C.P. 695.035(b)*); see Legislative Committee Comment (Assembly) to *C.C.P. 695.035* [under former law, lessor could avoid involuntary transfer by providing for forfeiture on involuntary transfer].)

The consent provisions of *C.C.P. 695.035* are intended to protect the lessor and not a judgment debtor lessee. (*Regency Outdoor Advertising v. Carolina Lanes* (1995) 31 *C.A.4th* 1323, 1331, 1332, 37 *C.R.2d* 552, *infra*, §367 [debtor lessee lacked standing to argue that judgment creditor had not procured lessor's consent to potential purchaser of judgment debtor's leasehold interest].)

SUPPLEMENT: [This section is current through the latest supplement]



57 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
III. MONEY JUDGMENTS: IN GENERAL
C. Property Subject to Enforcement.
3. Beneficial Interest in Trust.

8 *Witkin Cal. Proc. Enf Judgm* § 57

[§ 57] Beneficial Interest in Trust.

An interest in a trust is subject to enforcement of a money judgment "to the extent provided by law." (*C.C.P.* 695.030(b)(1); see Legislative Com. Comment (Senate) to *C.C.P.* 695.030 [provision codifies existing case law].) Under *Prob.C. 15307* (13 *Summary* (10th), *Trusts*, §165), notwithstanding a restraint on transfer of a beneficiary's interest in a trust, income in excess of the amount "necessary for the education and support" of the beneficiary may be applied to the satisfaction of a money judgment against the beneficiary.

C.C.P. 709.010 establishes a procedure for applying a beneficiary's interest in a trust to satisfaction of a money judgment. As originally enacted, the Enforcement of Judgments Law adopted the "education and needs" test. As amended in 1986, the statute provides that enforcement of a money judgment against a beneficiary's interest in a trust is governed by *Prob.C. 15300* et seq. (*C.C.P.* 709.010(c), *infra*, §321.)

West's Key Number Digest, Trusts 151(1), 152

SUPPLEMENT: [This section is current through the latest supplement]



58 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

III. MONEY JUDGMENTS: IN GENERAL

C. Property Subject to Enforcement.

4. Community Property.

8 *Witkin Cal. Proc. Enf Judgm* § 58

[§ 58] Community Property.

Community property is subject to enforcement of a money judgment as provided in the Family Code (see 11 *Summary* (10th), *Community Property*, §§177, 178.). (*C.C.P. 695.020(a)*); see *In re Marriage of Schenck* (1991) 228 *C.A.3d* 1474, 1479, 279 *C.R. 651*, citing the text [property subject to enforcement includes community property].) This includes the interest of a nondebtor spouse. (Law Rev. Com. Comment to *C.C.P. 695.020*.)

Unless the provision or context otherwise requires, any provision of the Enforcement of Judgments Law relating to enforcement of money judgments (see *C.C.P. 695.010* et seq.) that applies to the property of the judgment debtor or to obligations owed to the judgment debtor also applies to the community property interest of the judgment debtor's spouse and to obligations owed to the spouse that are community property. Similarly, unless otherwise required, any of those provisions that applies to property in the possession or under the control of the judgment debtor also applies to community property in the possession or under the control of the judgment debtor's spouse. (*C.C.P. 695.220(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]



59 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

III. MONEY JUDGMENTS: IN GENERAL

C. Property Subject to Enforcement.

5. Attached Property Transferred Before Judgment.

8 Witkin Cal. Proc. Enf Judgm § 59

[§ 59] Attached Property Transferred Before Judgment.

If property of a judgment debtor is attached in an action but is transferred before entry of a money judgment in favor of the judgment creditor, the property is subject to enforcement of the money judgment as long as the attachment lien remains effective. (*C.C.P. 695.010(b)*.)

The property may be levied on under a writ of execution after judgment without the need to bring a separate action to foreclose the lien. (See Law Rev. Com. Comment to *C.C.P. 695.010*; on property subject to execution, see *infra*, §115.)

West's Key Number Digest, Attachment 182

SUPPLEMENT: [This section is current through the latest supplement]



60 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

III. MONEY JUDGMENTS: IN GENERAL

D. Property Not Subject to Enforcement.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 60

[§ 60] In General.

(1) *Former Law*. It was formerly held that property that a judgment debtor could not assign or in which the debtor had only a contingent interest was not subject to execution. Whether this property was subject to enforcement by other methods, such as receivership or a creditor's suit, was rarely explicit. In any event, the following interests were not subject to execution:

(a) Contingent remainder under a trust. (See *San Diego Trust & Savings Bank v. Heustis* (1932) 121 C.A. 675, 694, 10 P.2d 158; *Anglo-Calif. Nat. Bank of San Francisco v. Kidd* (1943) 58 C.A.2d 651, 655, 137 P.2d 460.)

(b) Future rental payments under a lease. (*Hustead v. Superior Court* (1969) 2 C.A.3d 780, 788, 83 C.R. 26.)

(c) Cash loan value of a life insurance policy. (*Equico Lessors v. Metropolitan Life Ins. Co.* (1978) 88 C.A.3d Supp. 6, 8, 151 C.R. 618, citing the text.)

(d) An estate at will. (Former C.C. 765.)

(e) Mere personal privileges. (See *Lowenberg v. Greenebaum* (1893) 99 C. 162, 164, 33 P. 794 [seat on San Francisco Stock Exchange].)

(f) Patent rights and trademarks. (*Peterson v. Sheriff of San Francisco* (1896) 115 C. 211, 213, 46 P. 1060; *Ward-Chandler Bldg. Co. v. Caldwell* (1935) 8 C.A.2d 375, 379, 47 P.2d 758 [dictum stating that trademark could not be seized and sold on execution or attachment, apart from business in which it has been used].)

(g) A cause of action or judgment. (Former C.C.P. 688(f).)

(h) A state license to engage in a business, profession, or activity. (Former C.C.P. 688(f).)

(i) A beneficiary's interest in a spendthrift trust. (Former C.C. 859 [but income in excess of beneficiary's needs could be reached by other methods].)

(2) *Present Law*. Under present law, the following types of property are illustrative of those not subject to enforcement of a money judgment:

(a) Property that is not assignable or transferable (except as otherwise provided by statute). (*C.C.P. 695.030(a)*.) (For statutory exceptions, see, e.g., *C.C.P. 695.030(b)(1)* [interest in trust; *supra*, §57], and *C.C.P. 695.030(b)(2)* [pending cause of action; *supra*, §55].)

(b) Property of a public entity. (*C.C.P. 695.050*; see *infra*, §61.)

(c) A license issued by a public entity to engage in a business, profession, or activity (except as provided by *C.C.P. 708.630* with respect to an alcoholic beverage license). (*C.C.P. 695.060*.) (On enforcement against alcoholic beverage license, see *infra*, §311.)

(d) Estates at will. (*C.C. 765*.)

(e) Escrow or trust funds, with interest (not subject to enforcement of a money judgment arising from a claim against the escrow agent). (*Fin.C. 17410*.)

(f) Funds held in trust to secure the wages of logging employees (*Lab.C. 270.5(b)*) and itinerant merchants (*Lab.C. 270.6(b)*) (not subject to enforcement of a money judgment by a creditor of the employer other than such an employee).

(g) Money deposited as an employee's bond (not subject to enforcement of a money judgment except in an action between the employer and the employee or their successors or assigns). (*Lab.C. 404(a)*.)

(h) Money held by a seller or agent as a residual payment to an artist (not subject to enforcement of a money judgment by a creditor of the seller or agent). (*C.C. 986(a)(6)*.)

(i) Segregated insurance benefit funds (not subject to enforcement of a money judgment by a creditor of the holder of the fund except on a claim for benefits). (*Ins.C. 10498.5*.)

(j) Property *in custodia legis*. (See *infra*, §62.)

(k) Property found on an arrested person. (See *infra*, §63.)

Certain property is not subject to execution and sale, but is subject to other means of enforcement. (See *infra*, §116.)

(3) *Effect of Immunity From Enforcement*. Property not subject to enforcement of a money judgment may not be levied on or in any other manner applied to the satisfaction of a money judgment. (*C.C.P. 695.040*.) The property is exempt without making a claim. (*C.C.P. 704.210*.) If the property has been levied on, it may be released pursuant to the claim of exemption procedure provided by *C.C.P. 703.510* et seq. (see *infra*, §180 et seq.). (*C.C.P. 695.040*.) (For discussion of exemptions generally, see *infra*, §168 et seq.)

West's Key Number Digest, Trusts 151(1), 152-

SUPPLEMENT: [This section is current through the latest supplement]



61 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

III. MONEY JUDGMENTS: IN GENERAL

D. Property Not Subject to Enforcement.

2. Governmental Property.

8 *Witkin Cal. Proc. Enf Judgm* § 61

[§ 61] Governmental Property.

(1) *Remedies for Enforcing Money Judgments Are Not Available.* Execution and other remedies under the Enforcement of Judgments Law for enforcing money judgments are not available against governmental property. (*C.C.P.* 695.050; Law Rev. Com. Comments to *Govt.C.* 965.5 and 970.5; Rutter Group, 2 Enforcing Judgments and Debts §6:324; on enforcement of claims and judgments against public entities, see *infra*, §429 et seq.) Money judgments against the state and local public entities must ordinarily be paid by the appropriation of money raised by taxes or bond issues. (On enforcement of judgments against public entities generally, see C.E.B., 1 Government Tort Liability Practice 4th, §1.6 et seq.; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.6; Rutter Group, 2 Enforcing Judgments and Debts §6:56 et seq.; 5 *Summary* (5th), *Torts*, §203 et seq.)

The contention that execution would lie against municipal property held in a proprietary capacity was rejected in *North Bay Const. v. Petaluma* (2006) 143 *C.A.4th* 552, 49 *C.R.3d* 455. Defendant city resisted a contractor's attempt to foreclose a mechanic's lien against city-owned property leased to a developer for the purpose of building a sports complex. *Held*, judgment for the city affirmed. In the absence of other statutory authorization, *C.C.P.* 695.050 constitutes explicit legislative action rendering all publicly owned property immune from execution. This is so whether the property is held in a governmental capacity or a proprietary capacity. (143 *C.A.4th* 562.)

Provisions of the Government Code govern the payment of claims and judgments against the state (*Govt.C.* 965 et seq., *infra*, §429) and local entities (*Govt.C.* 912.6, 970 et seq., *infra*, §430 et seq.). (See 15 Cal. Law Rev. Com. Reports, p. 1257; for definition of local public entity, see *Govt.C.* 970(c); on interest on claim against public entity that is not reduced to judgment, see *Govt.C.* 906; on enforcement of eminent domain award against public entity under these procedures, see *C.C.P.* 1268.020, 8 *Summary* (10th), *Constitutional Law*, §1254.) A money judgment against a public entity that is subject to these provisions is not enforceable under the Enforcement of Judgments Law. (*C.C.P.* 695.050.) (See *Govt.C.* 965.5(b) [judgment against state or state agency is not enforceable under Enforcement of Judgments Law but rather under *Govt.C.* 965 et seq.]; *Govt.C.* 970.1(b) [judgment against local public entity is not enforceable under Enforcement of Judgments Law but rather under *Govt.C.* 970 et seq.]; on applicability of *Govt.C.* 970.1(b) to interest on judgment, see *supra*, §42 et seq.; on right to bring action on judgment against local public entity even though not specifically preserved by *Govt.C.* 970 et seq., see *infra*, §430.)

(2) *Enforcement of Nonmoney Judgments.* Except as provided by *C.C.P. 695.050* (i.e., with respect to money judgments), a judgment against a public entity is enforceable as a nonmoney judgment under *C.C.P. 712.010* et seq. (see *infra*, §325 et seq.). (*C.C.P. 712.070.*)

SUPPLEMENT: [This section is current through the latest supplement]



62 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

III. MONEY JUDGMENTS: IN GENERAL

D. Property Not Subject to Enforcement.

3. Property in Custody of Law.

8 *Witkin Cal. Proc. Enf Judgm* § 62

[§ 62] Property in Custody of Law.

(1) *General Rule.* Money or other property *in custodia legis* is not subject to execution. (See *30 Am.Jur.2d* (2005 ed.), *Executions and Enforcement of Judgments* §164 et seq.) The chief application of this rule is to property held by a court or court officer, such as a clerk, sheriff, or receiver, during a proceeding to determine the disposition of that particular property. The reason for making it immune from execution is to prevent the interposition of claims of strangers to that proceeding that would unduly delay or hinder it. (See *McCracken v. Lott* (1935) 3 C.2d 164, 165, 44 P.2d 355 [property of person adjudged incompetent and placed under guardianship]; *Evans v. Superior Court* (1942) 20 C.2d 186, 188, 124 P.2d 820 [property of building and loan association in liquidation; special statute]; *Hawi Mill & Plantation Co. v. Leland* (1922) 56 C.A. 224, 228, 205 P. 485 [property taken by sheriff and delivered to plaintiff under claim and delivery proceedings]; *North v. Evans* (1934) 1 C.A.2d 64, 68, 36 P.2d 133 [promissory notes filed with county clerk as exhibits]; *State Athletic Com. of Calif. v. Massachusetts Bonding & Ins. Co.* (1941) 46 C.A.2d 823, 830, 117 P.2d 75 [money deposited by boxing promoter with representative of State Athletic Commission]; *14 Cal. L. Rev.* 321, 323; *1 A.L.R.3d* 936 [funds deposited in court].) (On exemption of inmate's trust account, see *C.C.P.* 704.090, *infra*, §198.)

In *Withington v. Shay* (1941) 47 C.A.2d 68, 117 P.2d 415, a mechanic's lien was foreclosed, and S, another judgment creditor of the debtor, purchased at the sale with notice of plaintiff's trust deed. S paid enough to satisfy the mechanic's lien, and then levied execution on the surplus cash in the sheriff's hands. *Held*, this was improper. If the sale had been on *execution*, the surplus would have been payable to the debtor and S's levy would have been good. But a *foreclosure sale* was governed by former C.C.P. 727, which provided for payment of any surplus into court for distribution as the interests of the parties may appear. Hence, while in the sheriff's hands, the funds were in the custody of the law and safe from execution. (47 C.A.2d 72.)

In *Robbins v. Bueno* (1968) 262 C.A.2d 79, 68 C.R. 347, plaintiff wife recorded a declaration of homestead on her husband's separate property worth \$ 42,500 (statutory limit was \$ 15,000). Subsequently, she filed a complaint for divorce, and was awarded child support, alimony, \$ 75,000 in lieu of her share of community property, and the homestead for life. Defendant husband's assets were largely outside California, and he left the state, disregarding the court orders. Plaintiff wife, to secure the money due her, plus expenses of the homestead property, obtained a receiver for defendant's California property. Defendant husband then confessed judgment in favor of his attorney, B, for \$ 16,000, and B attempted to levy on the excess value of the homestead and to garnish the receiver. The judge granted an

injunction against execution or garnishment without permission of the court. *Held*, affirmed.

(a) The husband retained title to the homesteaded property, and his interest (the excess value of \$ 27,500) would ordinarily have been subject to levy. But before B got his judgment all of the husband's property came under the control of the receiver, and it was consequently exempt. (262 C.A.2d 84.)

(b) The situation would have been different if B had obtained a judgment lien before appointment of the receiver; he would then have had priority. (262 C.A.2d 85.)

(2) *Exception: Property Voluntarily Paid or Deposited.* The rule protecting property *in custodia legis* is confined to property taken by *compulsion* (under legal process or pursuant to court order). If it is voluntarily paid into court as a tender or deposit in interpleader, there is no immunity. The money is in the clerk's hands but is not deemed to be *in custodia legis*. (*Kimball v. Richardson-Kimball Co.* (1896) 111 C. 386, 394, 43 P. 1111; *Colver v. W.B. Scarborough Co.* (1925) 73 C.A. 455, 457, 238 P. 1110; *Van Orden v. Anderson* (1932) 122 C.A. 132, 141, 9 P.2d 572.)

(3) *Exception: Cessation of Custody.* The immunity from execution ceases when the period of custody ends or the reason for it ceases. Hence, where a receiver, trustee, executor, administrator, or other officer holds money or property pending determination of rights to it, and a final order of distribution is made, a creditor may levy on the interest of the debtor. This is true even though the officer or representative has not yet paid it over, because, after the final order, the officer or representative holds it not *in custodia legis* but for the debtor. (*Dunsmoor v. Furstenfeldt* (1891) 88 C. 522, 527, 26 P. 518; *Los Angeles v. Knapp* (1937) 22 C.A.2d 211, 212, 70 P.2d 643 [when interpleader suit ended, clerk was under duty to deliver deposit to successful party; creditor could garnish clerk]; *Credit Bureau of San Diego v. Getty* (1943) 61 C.A.2d Supp. 823, 832, 142 P.2d 105 [money deposited as bail by accused (judgment debtor) was subject to levy in hands of clerk after court order exonerating bail].)

(4) *Exception: Court's Permission To Levy.* Property *in custodia legis* may be levied on if permission is obtained from the court exercising custody. (See *Phoenix v. Kovacevich* (1966) 246 C.A.2d 774, 779, 55 C.R. 135 [pointing out that appellants could have made valid levy on personal property in custody of federal bankruptcy court by application to court for order directing clerk to recognize writ of execution].)

SUPPLEMENT: [This section is current through the latest supplement]



63 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

III. MONEY JUDGMENTS: IN GENERAL

D. Property Not Subject to Enforcement.

4. Property Found on Arrested Person.

8 *Witkin Cal. Proc. Enf Judgm* § 63

[§ 63] Property Found on Arrested Person.

(1) *General Rule.* Property taken from an arrested person and held by the property clerk is exempt from execution for special reasons of public policy. The levy on the property would involve the possibility of an assault or other breach of the peace, and the abuse of criminal process by making it an aid to the collection of civil debts. As the court said in *Emmanuel v. Sichofsky* (1926) 198 C. 713, 247 P. 205: "Were it otherwise ... it would tempt creditors whose debtors keep their funds on their persons, and thus beyond the reach of civil process, to make unfounded criminal charges against their debtors, and bring about their arrest and the transfer of their funds to the custody of the arresting officers, in order to make them reachable by the process of garnishment." (198 C. 715.) (See *Golden Gate Candy Products Co. v. Superior Court* (1934) 1 C.A.2d 426, 428, 36 P.2d 834 [quoting *Emmanuel*]; *Saba v. Stroup* (1999) 74 C.A.4th 1254, 1257, 88 C.R.2d 746, citing the text [exemption is general rule and is not limited to cases where criminal process was actually abused by creditor].)

(2) *Exceptions.* In several situations execution may be allowed:

(a) *Bailed property.* Where the property was voluntarily turned over to an arresting officer (not taken from the person), the officer holds it as a bailee and garnishment is permissible. (*Coffee v. Haynes* (1899) 124 C. 561, 566, 57 P. 482.)

(b) *Fruits of crime.* Where the property was originally taken from the judgment creditor by the criminal act of the debtor; i.e., levy on the fruits of the crime is permissible. (*Golden Gate Candy Products Co. v. Superior Court, supra*, 1 C.A.2d 429.)

(c) *Property taken after conviction.* Where the property was taken after conviction. The purpose of the exemption is sufficiently achieved by preventing execution on property taken in connection with an arrest. (See *People v. Willie* (2005) 133 C.A.4th 43, 50, 34 C.R.3d 532 [exemption is not applicable to levy on funds after conviction, such as to enforce restitution fine].) In *Emmanuel v. Sichofsky, supra*, defendant was convicted, and fled while his appeal was pending. On his recapture, money and jewelry were taken from him by the sheriff and turned over to the warden. *Held*, levy on this property was allowable. (198 C. 716.) (See 14 Cal. L. Rev. 321.)

(d) *Inmate trust account.* Where the property is money held in an inmate trust account. The judicially created rule protecting an arrestee's funds from levy has been superseded by *C.C.P. 704.090* (see infra, §198) with respect to money held in a trust account. (*People v. Willie, supra.*)

West's Key Number Digest, Exemptions 32.1

SUPPLEMENT: [This section is current through the latest supplement]



64 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

A. Judgment Lien Generally.

1. Statutory Basis for Lien.

8 Witkin Cal. Proc. Enf Judgm § 64

[§ 64] Statutory Basis for Lien.

Judgment liens did not exist at common law and are wholly dependent on statute. Thus, a judgment creditor must substantially comply with the applicable statutory requirements before a judgment lien will attach. (See *Boggs v. Dunn* (1911) 160 C. 283, 285, 116 P. 743; *Hertweck v. Fearon* (1919) 180 C. 71, 73, 179 P. 190; *Helvey v. Bank of America* (1941) 43 C.A.2d 532, 533, 111 P.2d 390; 46 Am.Jur.2d (2006 ed.), *Judgments* §343.) These requirements are specified in detail in the Enforcement of Judgments Law. (See *C.C.P. 697.010* et seq.; C.E.B., 2 Debt Collection Practice 2d, §11.12 et seq.; C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.74 et seq.; Cal. Civil Practice, 4 Procedure, §30:15 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §§6:150 et seq., 230 et seq.; *infra*, §66 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



65 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

A. Judgment Lien Generally.

2. Former Law.

8 *Witkin Cal. Proc. Enf Judgm* § 65

[§ 65] Former Law.

Some of the governing principles applicable before adoption of the Enforcement of Judgments Law (*infra*, §66 et seq.) are as follows:

(1) *Creation of Lien.* Under the former wording of *C.C.P. 674*, recordation with the county recorder created a lien on all nonexempt real property of the judgment debtor in that county. The statute originally called for recordation of a transcript (copy) of the judgment, and later for a certified abstract (summary). (See *Jones v. Union Oil Co. of Calif.* (1933) 218 C. 775, 776, 25 P.2d 5; *Weadon v. Shahen* (1942) 50 C.A.2d 254, 259, 123 P.2d 88.)

(2) *Types of Judgments.* Unless enforcement had been stayed, a judgment lien was available with respect to (a) judgments or decrees of any California court, including the small claims court; (b) judgments of federal courts of record; (c) sister state money judgments; and (d) orders for reimbursement of support of minors. (Former wording of *C.C.P. 674*.) Although early cases limited the lien to a judgment establishing liability for money in a fixed and determinable sum, and denied a lien where the judgment, e.g., an alimony or support decree, called for periodic payments for an indefinite time (see *Yager v. Yager* (1936) 7 C.2d 213, 217, 60 P.2d 422; *Bird v. Murphy* (1927) 82 C.A. 691, 693, 256 P. 258), this rule was changed in 1959 by the enactment of former *C.C.P. 674.5*, under which recordation of a judgment or order for spousal or child support with the county recorder created a lien on all nonexempt real property of the judgment debtor in that county, with the same force and effect as a lien under *C.C.P. 674*.

(3) *Effect of Death.* Under former *Prob.C. 732*, no execution would issue on a judgment after the death of the judgment debtor, except as provided by the Code of Civil Procedure; but if execution was levied before death, the property could be sold. A judgment rendered after the death of the judgment debtor did not create a judgment lien, but was payable in the course of administration (former wording of *C.C.P. 669*); and, a judgment against an executor or administrator on a claim against the estate was likewise payable during administration. (Former *Prob.C. 730*.)

(4) *Property Subject to Lien.* Under the former wording of *C.C.P. 674*, the lien extended to all real property of the judgment debtor in the county of recordation that was not exempt from execution. (See *Belieu v. Power* (1921) 54 C.A. 244, 246, 201 P. 620.) This included after-acquired property (see *Hertweck v. Fearon* (1919) 180 C. 71, 73, 179 P. 190; *Estate of Polito* (1921) 51 C.A. 752, 755, 197 P. 976), and any increase in the value of the property subject to the lien

(see *Kinney v. Vallentyne* (1975) 15 C.3d 475, 479, 124 C.R. 897, 541 P.2d 537). Personal property was not covered. (See *Summerville v. Stockton Milling Co.* (1904) 142 C. 529, 537, 76 P. 243 [estate for years]; *Mercantile Collection Bureau v. Roach* (1961) 195 C.A.2d 355, 357, 15 C.R. 710 [mechanic's lien]; *Arnett v. Peterson* (1971) 15 C.A.3d 170, 174, 92 C.R. 913 [long-term condominium lease].)

(5) *Judgment Debtor's Title*. The lien attached to property "owned by" the judgment debtor. (Former wording of C.C.P. 674.) Ordinarily, this meant that the judgment debtor must have had beneficial legal title. Hence, the lien did not attach to (a) the equitable interest of a purchaser under an executory contract of sale (*Oaks v. Kendall* (1937) 23 C.A.2d 715, 719, 73 P.2d 1255); (b) the interest of a beneficiary of a trust in land (*Poindexter v. Los Angeles Stone Co.* (1923) 60 C.A. 686, 687, 214 P. 241); (c) a former owner's right to redeem tax-deeded property from the state (*Helvey v. Bank of America* (1941) 43 C.A.2d 532, 535, 111 P.2d 390); (d) a bare record title, without any actual interest in the property (*Wheeler v. Trefftz* (1964) 228 C.A.2d 271, 274, 39 C.R. 507); or (e) legal title as an agent or conduit for passage of title (*Iknoian v. Winter* (1928) 94 C.A. 223, 225, 270 P. 999). If the judgment debtor made a fraudulent conveyance, the grant was void and the legal interest remained in the grantor and was subject to a judgment lien. (*First Nat. Bank of Los Angeles v. Maxwell* (1899) 123 C. 360, 371, 55 P. 980.)

(6) *Priorities*. Where two judgments were obtained against a debtor at different times, the first abstract recorded had priority. (See *Estate of Polito, supra.*) However, where two abstracts had been recorded and the debtor subsequently acquired property, both liens attached at the same time and were equal. Nevertheless, the first creditor to levy and sell the land under execution gained priority by reason of superior diligence in enforcing the judgment. (*Hertweck v. Fearon, supra.*)

(7) *Enforcement*. The normal method of enforcement of a judgment was the issuance of a writ of execution for sale of the debtor's property, including real property subject to a judgment lien. (Former C.C.P. 682(1).) The judgment gave a general lien on all property of the debtor, not a specific lien on a particular piece of property. Hence, a quiet title action was inappropriate and would do no more than affirm the validity of the general judgment lien. (*Stenzel v. Kronick* (1929) 102 C.A. 507, 508, 283 P. 93.)

(8) *Termination*. Originally, the statute of limitations on a judgment and the period of duration of a judgment lien were 5 years. Both were subsequently raised to 10 years. (See former wording of C.C.P. 674; *Provisor v. Nelson* (1965) 234 C.A.2d Supp. 876, 877, 44 C.R. 894, *infra*, §436.) The lien continued unless the judgment became unenforceable (see *McGrath v. Kaelin* (1924) 66 C.A. 41, 45, 225 P. 34), or was stayed (former wording of C.C.P. 674). A lien was discharged on satisfaction of the judgment (see *infra*, §§387 et seq., 507) or bankruptcy (see *infra*, §514 et seq.), or where the judgment creditor took new security (*Valley Title Co. v. Parish Egg Basket* (1973) 31 C.A.3d 776, 780, 107 C.R. 717).

SUPPLEMENT: [This section is current through the latest supplement]



66 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

A. Judgment Lien Generally.

3. Amount of Lien.

8 Witkin Cal. Proc. Enf Judgm § 66

[§ 66] Amount of Lien.

Except as otherwise provided by statute, a lien created to enforce a money judgment is a lien for the amount required to satisfy the money judgment. (*C.C.P. 697.010.*) (On amount required to satisfy money judgment, see *C.C.P. 695.210*, supra, §53.) However, special rules govern the amount of a lien in particular circumstances, including the following:

- (1) Judgment lien on real property. (See *C.C.P. 697.350*, infra, §75.)
- (2) Judgment lien on personal property. (See *C.C.P. 697.540*, infra, §85.)
- (3) Wage garnishment lien. (See *C.C.P. 706.029*, infra, §254.)

West's Key Number Digest, Judgment 776

SUPPLEMENT: [This section is current through the latest supplement]



67 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

A. Judgment Lien Generally.

4. Duration and Extinguishment.

8 *Witkin Cal. Proc. Enf Judgm* § 67

[§ 67] Duration and Extinguishment.

(1) *Duration of Lien.* Except where a shorter period is provided by statute, a lien is effective "during the period of enforceability of the judgment," and may be renewed under *C.C.P. 683.180* et seq. (see *supra*, §39). (*C.C.P. 697.030*.) (On period of enforceability of judgment, see *C.C.P. 683.010* et seq., *supra*, §34.) Under particular statutes, the following are of shorter duration:

(a) Judgment liens on personal property. (See *C.C.P. 697.510(b)*, *infra*, §83.)

(b) Liens of execution. (See *C.C.P. 697.710*, *infra*, §92.)

(2) *Effect of Stay of Enforcement of Judgment.* If enforcement of a judgment is stayed on appeal by giving a sufficient undertaking under *C.C.P. 916* et seq. (see 9 *Cal. Proc. (5th), Appeal*, §221 et seq.), existing liens are extinguished and new liens may not be created during the stay. (*C.C.P. 697.040(a)*.) However, subject to an express contrary order of the court, a limited stay of enforcement of the judgment under *C.C.P. 918* (see 9 *Cal. Proc. (5th), Appeal*, §223) does not extinguish or prevent the creation of a judgment lien on real or personal property, but no other liens may be created or continued during the stay. (*C.C.P. 697.040(b)*.)

In *California Commerce Bank v. Superior Court* (1992) 8 *C.A.4th* 582, 10 *C.R.2d* 418, defendant bank (CCB) filed a notice of appeal from a money judgment against it. Nevertheless, the county marshal served defendant with a writ of execution. Defendant paid the money to the marshal, then filed a stay bond and sought an order to stay execution and to return the levied funds. The trial judge denied the application. *Held*, peremptory writ issued to grant the requested relief. "[W]ith the subsequent filing of the bond in addition to the earlier notice of appeal, the statutory requirements for a stay of enforcement of judgment ... were met. ... The court had the power and was required by the statutory scheme to stay further enforcement of judgment and direct the Marshal to release the property to CCB pursuant to section 699.060." (8 *C.A.4th* 587; on release of property from execution under *C.C.P. 699.060*, see *infra*, §106.)

Subject to an express contrary order of the court, a stay of a sister state support order or money judgment extinguishes existing liens and prevents the creation of new liens during the stay. (*C.C.P. 697.040(c)*) [stays of sister state support orders (see *infra*, §422) under former *C.C.P. 1699* and of sister state money judgments under *C.C.P.*

1710.50 (see infra, §461)].)

(3) *Effect of Vacation of Judgment.* A judgment lien cannot exist apart from the judgment. Thus, where a judgment is vacated, the lien ceases to exist, and the status of the parties prior to the judgment is restored. If the vacating order is reversed on appeal, the judgment is reinstated as originally entered, and the lien again becomes effective. However, in the absence of a stay of the vacating order, the lien does not relate back to the original date of recording and property transferred to a third party during the appeal is taken free from the lien. Thus, the judgment creditor's remedy for protecting the judgment lien pending appeal is a stay of the vacating order. (*Bulmash v. Davis* (1979) 24 C.3d 691, 697, 157 C.R. 66, 597 P.2d 469.)

(4) *Effect of Extinction of Lien.* When a lien is extinguished, property held subject to the lien must be released, unless (a) the property is subject to another lien (e.g., an execution lien in favor of another creditor), or (b) the court orders it retained pending resolution of a dispute concerning its proper disposition (e.g., in proceedings on a third-party claim). (See C.C.P. 697.050; Law Rev. Com. Comment to C.C.P. 697.050.)

West's Key Number Digest, Judgment 795(1)

SUPPLEMENT: [This section is current through the latest supplement]



68 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

A. Judgment Lien Generally.

5. Relation Back and Priorities.

8 *Witkin Cal. Proc. Enf Judgm* § 68

[§ 68] Relation Back and Priorities.

(1) *Relation Back Where Overlapping Liens Exist.* Under *C.C.P. 697.020*, overlapping liens on the same property generally relate back to preserve the judgment creditor's priority at the time of creation of the first such lien. (See Legislative Com. Comment (Assembly) to *C.C.P. 697.020* [noting that this section codifies prior case law]; on priority of judgment liens on real property, see *C.C.P. 697.380*, *infra*, §77; on priority of judgment liens on personal property, see *C.C.P. 697.590, 697.600*, *infra*, §87; on priority of liens generally, see *C.C. 2897 et seq.*, 4 *Summary* (10th), *Secured Transactions in Personal Property*, §105 *et seq.*; 4 *Summary* (10th), *Security Transactions in Real Property*, §48 *et seq.*; 13 *Summary* (10th), *Personal Property*, §216 *et seq.*) The statute is applicable in two situations:

(a) *Prior attachment lien.* If a lien is created on property under the Attachment Law (*C.C.P. 481.010 et seq.*; see 6 *Cal. Proc.* (5th), *Provisional Remedies*, §52 *et seq.*), and a lien to enforce a money judgment is created on the same property under the same claim while the attachment lien is in effect, the priority of the enforcement lien relates back to the date of creation of the attachment lien. (*C.C.P. 697.020(a).*)

(b) *Prior enforcement lien.* If a lien is created under the Enforcement of Judgments Law to enforce a money judgment, and a later lien to enforce a money judgment is created on the same property under the same judgment while the earlier lien is in effect, the priority of the later lien relates back to the date of creation of the earlier lien. (*C.C.P. 697.020(b).*)

In *Bank One Texas v. Pollack* (1994) 24 *C.A.4th* 973, 29 *C.R.2d* 510, judgment was entered under *C.C.P. 1710.10 et seq.* (Sister State Money-Judgments Act; see *infra*, §449 *et seq.*) based on a Texas judgment against a debtor arising from his personal guarantee of real estate development loans. The debtor had died after the entry of judgment in Texas. On discovering that his estate was insolvent, plaintiff, the successor to the lender that obtained the guarantee, moved to amend the California judgment in order to name the debtor's trust as the judgment debtor, and to relate the amended judgment back to the time the original judgment was entered. The trial judge granted the order to amend the judgment but refused to enter it *nunc pro tunc*, on the ground that a subsequent lender, which had also been unsuccessful in enforcing guarantees received from the debtor, had acquired its lien without knowledge of plaintiff's competing lien. *Held*, reversed; it was error to find that the second lender was a bona fide encumbrancer, and not to preserve the priority of plaintiff's lien by entering the amended judgment *nunc pro tunc*. The second lender knew that the estate was insolvent

due to the transfer of assets to the trust, and it had executed the settlement of its claim in exchange for a note secured by the trust assets *after* plaintiff recorded its abstract of judgment based on the Texas judgment. The second lender was also chargeable with knowledge of former Prob.C. 18201 (now *Prob.C. 19001*), providing that property in a revocable trust is subject to the claims of creditors of the settlor's estate (see 13 *Summary* (10th), *Trusts*, §260). (24 *C.A.4th* 981.) Armed with this knowledge, a prudent person would ascertain whether there were liens recorded against the decedent or the decedent's estate. Hence, the second lender was charged with constructive notice of plaintiff's judgment lien, and took its encumbrance with notice of plaintiff's rights. (24 *C.A.4th* 982.)

(2) *Third-Party Rights Are Not Affected*. Nothing in *C.C.P. 697.020* affects priorities or rights of third parties established while the earlier lien was in effect under the law governing the earlier lien. (*C.C.P. 697.020(c)*; see Legislative Com. Comment (Assembly) to *C.C.P. 697.020* [giving examples of third-party priority].)

(3) *Distinction: Judgment Liens on Personal Property*. Despite *C.C.P. 697.020*, the priority of a judgment lien on personal property does not relate back to the date of an earlier judgment lien on personal property. (*C.C.P. 697.510(c)*, *infra*, §87.)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Distinction: Judgment Liens on Personal Property*. In 2009, *C.C.P. 697.510* was amended to delete the language on relation back to an earlier judgment lien.



69 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

1. Creation and Duration.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 69*

[§ 69] In General.

(1) *Nature of Lien.* A judgment lien on real property "is one of the simplest and most effective means by which a judgment creditor may seek to secure payment of the judgment and establish a priority over other judgment creditors. It is among the least disruptive of creditors' remedies because it results in a lien that does not usually interfere with the use of the property. If the judgment is not voluntarily satisfied, the judgment lien is generally enforced by levy on and sale of the real property under a writ of execution. If execution is unavailable, the judgment lien may be foreclosed by an action in equity." (16 Cal. Law Rev. Com. Reports, p. 1041 and footnote 55.)

(2) *Creation of Lien.* Except as otherwise provided by statute, a judgment lien on real property is created by recording an abstract of a money judgment with the county recorder. (*C.C.P. 697.310(a)*; see C.E.B., 1 Debt Collection Practice 2d §7.50; 16 Cal. Law Rev. Com. Reports, p. 1041 et seq.; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.74 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:150 et seq.; Cal. Civil Practice, 4 Procedure, §30:15; for requirements of abstract, see *infra*, §70.) In the case of a money judgment in federal court, an abstract or certified copy may be recorded to create the lien. (*C.C.P. 697.060(a)*.) (For effect of recording sister state judgment, see *infra*, §73; on creation of support judgments, see 11 *Summary* (10th), *Husband and Wife*, §267.)

A city may not circumvent the statutory provisions for creation of judgment liens by passing an ordinance creating a utility lien on real property for the collection of unpaid utility service charges. Lacking an agreement for the imposition of such a lien, a city may only obtain a lien after obtaining a judgment in an action to collect the unpaid charges. (*Isaac v. Los Angeles* (1998) 66 C.A.4th 586, 597, 77 C.R.2d 752.)

(3) *Duration of Lien.* A judgment lien on real property continues for 10 years from the date of entry of the judgment, unless the judgment is satisfied (see *infra*, §§387 et seq., 507) or the lien is released (see *infra*, §80). (*C.C.P. 697.310(b)*.) However, the lien does not continue after expiration of the period of enforceability of the judgment. (*C.C.P. 683.020*, *supra*, §34; *C.C.P. 697.030*, *supra*, §67.) A judgment lien may be renewed under *C.C.P. 683.180* (see *supra*, §39). (*C.C.P. 697.310(b)*.) (See 14 *Pacific L. J.* 404.)

(4) *Installment Judgments.* *C.C.P. 697.310(a)* and (b) are applicable to small claims court judgments (see *C.C.P. 116.610* et seq.), judgments in limited civil cases (see *C.C.P. 582.5*), judgments against uninsured motorists (see *Veh.C. 16380*), and "similar" judgments, even though they may be payable in installments. (*C.C.P. 697.310(c)*.) (For special rules applicable to installment judgments for support or health care, see *infra*, §71; for special rules applicable to workers' compensation awards, see *infra*, §72.)

SUPPLEMENT: [This section is current through the latest supplement]



70 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

1. Creation and Duration.

b. Abstract of Judgment.

8 *Witkin Cal. Proc. Enf Judgm § 70*

[§ 70] Abstract of Judgment.

(1) *Required Contents of Abstract.* An abstract of a money judgment must generally contain the following information:

(a) The title of the court where the judgment is entered and the cause and number of the action. (*C.C.P. 674(a)(1).*)

(b) The date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court. (*C.C.P. 674(a)(2).*)

(c) The name and last known address of the judgment debtor and the address at which service of summons was made. (*C.C.P. 674(a)(3).*)

(d) The name and address of the judgment creditor. (*C.C.P. 674(a)(4).*)

(e) The amount of the judgment as entered or as last renewed. (*C.C.P. 674(a)(5).*)

(f) The last four digits of the Social Security number and driver's license number of the judgment debtor if known to the judgment creditor; and, if either or both of these sets of numbers are not known, indication of that fact. (*C.C.P. 674(a)(6).*)

(g) Whether a stay of enforcement has been ordered by the court and, if so, the date the stay ends. (*C.C.P. 674(a)(7).*)

(h) The date of issuance of the abstract. (*C.C.P. 674(a)(8).*)

The Judicial Council has adopted a mandatory form. (See Judicial Council Form No. EJ-001 [Abstract of Judgment--Civil and Small Claims]; C.E.B., 1 Debt Collection Practice 2d §7.51; Cal. Civil Practice, 4 Procedure, §30:20 [abstract of judgment]; Rutter Group, 2 Enforcing Judgments and Debts §6:178 et seq.; on abstracts of judgment generally, see 7 *Cal. Proc.* (5th), *Judgment*, §64.)

Similar information must be provided in an abstract of a judgment ordering a party to pay spousal, child, or family support. (*Family C. 4506* [requiring, e.g., support obligor's birthdate]; see Judicial Council Form No. FL-480 [Abstract of Support Judgment]; on abstracts of support judgments generally, see 11 *Summary* (10th), *Husband and Wife*, §267.)

(2) *Certification of Abstract and Filing of Affidavit of Identity.* The abstract of judgment must be certified by the clerk of the court where the judgment was entered. It must be certified in the name of the judgment debtor listed on the judgment, and it may also include the additional name or names by which the judgment debtor is known, as set forth in an affidavit of identity (see *C.C.P. 680.135*; supra, §21) filed by the judgment creditor with the application for issuance of the abstract of judgment. The court must approve the affidavit of identity before the clerk certifies the abstract as containing an additional name or names not listed on the judgment. (*C.C.P. 674(c)(1)*.)

(3) *Effect of Omission of Information.* In *Keele v. Reich* (1985) 169 C.A.3d 1129, 215 C.R. 756, the judgment creditor knew the judgment debtor's Social Security number, but improperly listed the number as unknown on the abstract of judgment. In a later action by a transferee of the subject property to declare the lien invalid, the trial judge held that the abstract substantially complied with *C.C.P. 674*. *Held*, reversed. The requirement that the abstract reflect the Social Security number is mandatory; and, because the judgment creditor knew the number but failed to include it, there was no substantial compliance with the statute. (169 C.A.3d 1131, 1132.) "No court has validated a judgment lien where mandated information was *omitted* from an abstract." (169 C.A.3d 1133.)

In *Commonwealth Land Title Co. v. Kornbluth* (1985) 175 C.A.3d 518, 220 C.R. 774, the date of entry of judgment was omitted from one of five abstracts of judgment recorded on the same date. The court held that the omission was an inadvertent clerical error subject to correction, and that the abstract was valid. (175 C.A.3d 530, 531, citing the text.) *Keele* was distinguished on the ground that the error there was purposeful. (175 C.A.3d 531, footnote 6.)

In apparent response to *Keele v. Reich*, the Legislature amended *C.C.P. 674* in 1988. The statute now authorizes the amendment of an abstract to reflect the judgment debtor's Social Security number and driver's license number if both were known at the date of recordation of the original abstract, or one of them if only one was known. It also provides priority as of the date of original recordation except as against those without actual notice of the original abstract, who may assert as a defense against enforcement of the abstract the failure to comply with *C.C.P. 674* or *Family C. 4506* notwithstanding recordation of an amendment. With respect to abstracts recorded before July 10, 1985 (the effective date of the *Keele* case), the defense against enforcement for failure to comply with the statutes may not be asserted by the holder of another abstract of judgment or involuntary lien recorded without actual notice of the prior abstract, unless prejudice and substantial injury would result. The recordation of an amendment does not alter the computation of time for the duration of a lien under *C.C.P. 697.310* (supra, §69). (*C.C.P. 674(b)*.)

In *Dieden v. Schmidt* (2002) 104 C.A.4th 645, 654, 128 C.R.2d 365, the judgment creditor failed to list the judgment debtors' Social Security and driver's license numbers in the abstract, as required where these numbers are known. *Held*, summary judgment was improper in absence of undisputed evidence that he knew the numbers.

(4) *Effect of Mistake in Information.* In *Orr v. Byers* (1988) 198 C.A.3d 666, 244 C.R. 13, plaintiff obtained a judgment against "William Elliott." However, Elliott was incorrectly identified in the written judgment as "William Duane Elliot," and twice in the abstract of judgment as "William Duane Elliot" and "William Duane Eliot." When Elliott sold property to a third person, the title search failed to disclose the abstract of judgment, and plaintiff's judgment was not satisfied from the proceeds of the sale. In this action essentially seeking a judicial foreclosure of his lien, plaintiff argued that a title searcher must be charged, under the doctrine of *idem sonans* (same sound), with knowledge of alternative spellings. *Held*, judgment against plaintiff affirmed; the abstract did not constitute constructive notice.

(a) The doctrine of *idem sonans* has been applied in California to establish sameness of identity, but not to give constructive notice to good faith purchasers for value. (198 C.A.3d 669.) The doctrine is applicable where the issue is whether the change of letters alters the *sound*, but not to descriptions where the *written name* is involved. (198 C.A.3d 671.)

(b) Requiring a searcher to comb the records for other spellings of the same name would unduly burden the transfer of property. (198 C.A.3d 671.) Plaintiff argued that the use of a system known as "Soundex," whereby each last name is reduced to a code, would have uncovered all three spellings of "Elliott" with relative ease to the searcher. However, expert testimony established that this system may generate many extraneous names, the checking of which may be very time-consuming. (198 C.A.3d 672.)

(c) A better alternative is to place the burden on judgment creditors to take all appropriate action, including correctly spelling the names of their judgment debtors, to ensure that judgment liens will be satisfied. (198 C.A.3d 672.)

(5) *Effect of Failure To Properly Record Abstract.* For an abstract of judgment to provide constructive notice of the existence of a lien on the judgment debtor's property, it must be "recorded as prescribed by law" (C.C. 1213), and where the abstract is improperly indexed and hence not locatable by a proper search, mere recordation is insufficient to charge a subsequent purchaser with notice. (*Hochstein v. Romero* (1990) 219 C.A.3d 447, 452, 268 C.R. 202.) (On essentials of recordation, see 12 *Summary* (10th), *Real Property*, §316 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



71 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

1. Creation and Duration.

c. Installment Judgment for Support or Health Care.

8 *Witkin Cal. Proc. Enf Judgm § 71*

[§ 71] Installment Judgment for Support or Health Care.

(1) *Judgment for Support.* If a money judgment for child, family, or spousal support is payable in installments, a judgment lien on real property is created by recording with the county recorder (a) an abstract of the judgment, (b) a certified copy of the judgment, or (c) in a Title IV-D case (see 11 *Summary* (10th), *Husband and Wife*, §308 et seq.), a notice of support order or an interstate lien form promulgated under 42 U.S.C., §652(a)(11). (*C.C.P.* 697.320(a)(1).) (For requirements of abstract, see *supra*, §70.) (See *Family C. 17523.5* [authorizing transmission, filing, and recording of lien arising under *C.C.P.* 697.320 by means of digital or digitized electronic record]; *In re Marriage of Orchard* (1990) 224 *C.A.3d* 155, 158, 273 *C.R.* 499 [valid lien was obtained against realty under *C.C.P.* 697.320, even though child support judgment was attached as exhibit to certified copy of support order; order specifically referred to judgment and incorporated it by reference]; *Cal-Western Reconveyance Corp. v. Reed* (2007) 152 *C.A.4th* 1308, 1314, 62 *C.R.3d* 244 [county secured lien for child and spousal support arrearages by recording abstract of judgment pursuant to *C.C.P.* 697.320; trial court thus properly ordered distribution of surplus proceeds from trustee's sale of obligor spouse's property to county for satisfaction of arrearages].)

Unless the judgment is satisfied (see *infra*, §§387 et seq., 507) or the lien is released (see *infra*, §80), a judgment lien for support continues during the period the judgment remains enforceable (*C.C.P.* 697.320(b)), i.e., until the judgment is paid in full (see *Family C. 291*, *infra*, §403).

(2) *Judgment for Health Care.* If a money judgment against a health care provider under *C.C.P.* 667.7 (part of MICRA) requires periodic payments, a judgment lien on real property is created by recording with the county recorder an abstract or certified copy of the judgment. (*C.C.P.* 697.320(a)(2); on periodic payments under MICRA, see 6 *Summary* (10th), *Torts*, §966 et seq.)

Unless the judgment is satisfied or the lien is released, the lien continues for 10 years from the date of creation (*C.C.P.* 697.320(b)), although it does not continue beyond the period of enforceability of the judgment (see *C.C.P.* 683.020, *supra*, §35; *C.C.P.* 697.030, *supra*, §67).

The lien may be extended for successive 10-year periods by recording a certified copy of the judgment with the

county recorder before expiration of the preceding period. (*C.C.P. 697.320(b)*); see Legislative Com. Comment (Senate) to *C.C.P. 697.320* ["If the judgment lien is not extended by recording within the time prescribed in subdivision (b), this does not prevent the creation of a new judgment lien by recording under subdivision (a), but the new lien does not cover any amounts of the judgment that are not enforceable at the time the new lien is created".].)

West's Key Number Digest, Judgment 766, 795(1)

SUPPLEMENT: [This section is current through the latest supplement]



72 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

1. Creation and Duration.

d. Workers' Compensation Award.

8 *Witkin Cal. Proc. Enf Judgm* § 72

[§ 72] Workers' Compensation Award.

Where a money judgment is entered on a workers' compensation award, the manner of creating a judgment lien on real property depends on whether the judgment is for a lump sum or installments. If the judgment is for a lump sum, the lien is created by recording an abstract of the judgment as provided by *C.C.P. 697.310* for judgments generally (see *supra*, §69). (*C.C.P. 697.330(a)(1)*.) If the judgment is for installments, the lien is created by recording a certified copy of the judgment and, except as otherwise provided, the lien is governed by *C.C.P. 697.320*, relating to installment judgments for support or health care (see *supra*, §71). (*C.C.P. 697.330(a)(2)*.) In either case, the lien is subject to the provisions of the Workers' Compensation Act (see *Lab.C. 3200 et seq.*, 2 *Summary* (10th), *Workers' Compensation*, §4 *et seq.*). (*C.C.P. 697.330(b)*); see *Law Rev. Com. Comment to C.C.P. 697.330* [listing examples of Labor Code provisions governing enforcement of order, decision, or award made under Workers' Compensation Act].)

If the Workers' Compensation Appeals Board exercises its authority under *Lab.C. 5100 et seq.* to commute a workers' compensation award payable in installments to a lump sum, a judgment lien can then be created as provided in *C.C.P. 697.330(a)(1)*. (*Law Rev. Com. Comment to C.C.P. 697.330*.)

SUPPLEMENT: [This section is current through the latest supplement]



73 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

1. Creation and Duration.

e. Sister State Judgment.

8 *Witkin Cal. Proc. Enf Judgm § 73*

[§ 73] Sister State Judgment.

In order to create a judgment lien for a sister state judgment, the judgment must first be reduced to a California judgment. Recordation of the sister state judgment does not create a lien. In *Kahn v. Berman (1988) 198 C.A.3d 1499, 244 C.R. 575*, plaintiffs obtained a money judgment against defendants in a Nevada court. Instead of immediately seeking a California judgment based on the Nevada judgment, as required by the Sister State Money-Judgments Act (see *infra*, §449 et seq.), plaintiffs recorded the Nevada judgment in California, then obtained a writ of execution against defendants' residence and applied for an order of sale, which defendants opposed. *Held*, recordation of the Nevada judgment did not give rise to a judgment lien.

(a) *C.C.P. 697.310* (see *supra*, §69) provides for the creation of a judgment lien on real property by recording an abstract of a money judgment with the county recorder. Although this section does not identify the courts that may issue judgments that are the basis for judgment liens, *C.C.P. 680.230* (see *supra*, §21) defines "judgment" as one entered in a *court of this state*. Hence, "it is apparent that recordation of a sister-state judgment cannot directly give rise to a judgment lien on real property located in California--a sister-state money judgment must first be reduced to a California judgment." (*198 C.A.3d 1505.*)

(b) Although Nevada law provides that recording a copy of a Nevada judgment is sufficient to create a judgment lien on real property located in Nevada, the Full Faith and Credit Clause (see *7 Summary (10th), Constitutional Law*, §31 et seq.) does not require that Nevada procedural law be followed when enforcing a Nevada judgment in *California*. (*198 C.A.3d 1506.*) (See C.E.B., 1 Debt Collection Practice 2d §7.45; Rutter Group, 2 Enforcing Judgments and Debts §6:174.1.)

SUPPLEMENT: [This section is current through the latest supplement]



74 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

2. Interests Subject to Lien.

8 *Witkin Cal. Proc. Enf Judgm* § 74

[§ 74] Interests Subject to Lien.

(1) *General Rule.* Under former law, a judgment lien reached only vested legal ownership interests (see *supra*, §65); the Enforcement of Judgments Law expands the kinds of property interests subject to the lien. Generally, a judgment lien on real property "attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment." (*C.C.P.* 697.340(a); see C.E.B., 1 Debt Collection Practice 2d §7.50; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.75; Rutter Group, 2 Enforcing Judgments and Debts §6:157 et seq.; 14 *Pacific L. J.* 404; on property subject to enforcement of money judgment, see *C.C.P.* 695.010 et seq., *supra*, §55 et seq.) Contingent remainders and equitable interests, such as the interest of a purchaser under a land sale contract, are subject to a judgment lien, as is real property used as a dwelling, even though the property may subsequently be totally or partially exempt. (Legislative Com. Comment (Senate) to *C.C.P.* 697.340; *Reddy v. Gonzalez* (1992) 8 *C.A.4th* 118, 122, 10 *C.R.2d* 55 [dwelling potentially subject to homestead exemption].) A judgment lien attaches to an after-acquired property interest at the time of acquisition. (*C.C.P.* 697.340(b).)

(2) *Interests Not Subject to Lien.* A judgment lien does not attach to the following interests:

(a) Rental payments. (*C.C.P.* 697.340(a).) (On procedure for reaching rents, see *C.C.P.* 700.170, *infra*, §135; *C.C.P.* 708.510, *infra*, §305.)

(b) A leasehold estate with an unexpired term of less than 2 years. (*C.C.P.* 697.340(a).)

(c) The interest of a beneficiary under a trust. (*C.C.P.* 697.340(a).) (On procedure for reaching beneficiary's interests, see *C.C.P.* 709.010, *infra*, §321.)

(d) Real property that is subject to an attachment lien in favor of the creditor and that was transferred before judgment. (*C.C.P.* 697.340(a).)

(e) Certain property described in a preexisting homestead declaration. (*C.C.P.* 704.950, *infra*, §235.)

(f) Real property transferred by the judgment debtor before recordation of the abstract of judgment, even if some

formality of transfer is incomplete at the time the abstract is recorded. (*Casey v. Gray* (1993) 13 C.A.4th 611, 614, 16 C.R.2d 538 [quitclaim deed not recorded until after recordation of abstract of judgment].)

(3) *Joint Tenancy Interests.* While a judgment lien attaches to the interest of a joint tenant, if the judgment debtor joint tenant dies before the execution sale is completed, although after a levy is recorded, the debtor's interest dies with him and the lien is unenforceable against the surviving joint tenant. (*Grothe v. Cortlandt Corp.* (1992) 11 C.A.4th 1313, 1318, 15 C.R.2d 38.) However, an execution sale during the lifetime of the debtor joint tenant effects a severance of the joint tenancy, and the purchaser becomes a tenant in common with the other joint tenant. (*Schoenfeld v. Norberg* (1970) 11 C.A.3d 755, 760, 90 C.R. 47.)

West's Key Number Digest, Judgment 777(1)

SUPPLEMENT: [This section is current through the latest supplement]



75 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

3. Amount of Lien.

8 *Witkin Cal. Proc. Enf Judgm* § 75

[§ 75] Amount of Lien.

(1) *In General.* "Except as otherwise provided by statute, a judgment lien on real property is a lien for the amount required to satisfy the money judgment." (*C.C.P. 697.350(a)*); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.77; Rutter Group, 2 Enforcing Judgments and Debts §6:194 et seq.; on amount required to satisfy money judgment, see *C.C.P. 695.210*, supra, §53.)

(2) *Installment Judgments.* Where the judgment is payable in installments, the amount depends on the type of judgment involved. For small claims court judgments under *C.C.P. 116.610* et seq., judgments in limited civil cases under *C.C.P. 582.5*, judgments against uninsured motorists under *Veh.C. 16380*, or "similar" judgments that are payable in installments, the judgment lien is for the full amount required to satisfy the judgment, but, unless the court so orders, the lien may not be enforced for the amount of any unmatured installment. (*C.C.P. 697.350(b)*.) This provision protects the judgment lienholder's priority over subsequent transferees and encumbrancers, as established by *C.C.P. 697.390* (see infra, §78). However, it precludes enforcement of the lien for amounts not yet due where enforcement would defeat the purpose of permitting installment payments. (Law Rev. Com. Comment to *C.C.P. 697.350*.) (On specified installment judgments as basis for judgment lien on real property, see supra, §69.)

For support and health care judgments created under *C.C.P. 697.320* (see supra, §71), the lien is for the amount of matured installments, plus interest and costs added under *C.C.P. 685.010* et seq. (see supra, §42 et seq.) less any partial satisfaction. However, there is no lien on any installment until it becomes due and payable. (*C.C.P. 697.350(c)*.)

(3) *Effect of Modification of Judgment Generally.* Where a judgment is modified in amount, an abstract of the modified judgment or a certified copy of the modification order may be recorded in the manner used to create a lien (see supra, §69). Recordation has the effect of conforming the terms of the judgment lien with the modified judgment. (*C.C.P. 697.360(a)*.) If the modification reduces the amount of the judgment, a previously created judgment lien is considered modified, whether or not the modification is recorded. (*C.C.P. 697.360(b)*); see Law Rev. Com. Comment to *C.C.P. 697.360* [judgment lien may be enforced only to extent of modified judgment].) If the amount of the judgment is increased, the lien continues under its original terms until the modification is recorded. Once the modified judgment is recorded, the lien extends to that judgment, but the priority for the increased amount dates only from the time of recording. (*C.C.P. 697.360(c)*.)

(4) *Effect of Modification of Installment Support Judgment.* Where a judgment lien on real property has been created under a money judgment by recording an abstract of support judgment for child, family, or spousal support payable in installments under *C.C.P. 697.320(a)(1)* (see supra, §71), and the support order is increased in amount, the judgment lien extends to the judgment as modified without having to record another abstract. However, the priority for the added amount under the judgment dates from the effective date of the modification. (*C.C.P. 697.360(d)*.) A support obligee must respond in a timely manner to (a) a request by a title or escrow company for a demand statement needed to close an escrow relating to a support judgment lien, or (b) a support obligor who claims the amount of alleged arrears is in error. (*C.C.P. 697.360(e)*.) A support obligor is entitled to the remedies provided for satisfaction of judgment under *C.C.P. 724.010* et seq. (see infra, §387 et seq.), if the obligor complies with the procedure specified in those statutes. (*C.C.P. 697.360(f)*.)

West's Key Number Digest, Judgment 777(1)

SUPPLEMENT: [This section is current through the latest supplement]



76 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

4. Notice of Lien.

8 *Witkin Cal. Proc. Enf Judgm § 76*

[§ 76] Notice of Lien.

(1) *By County Recorder.* On recordation of an abstract of judgment creating a judgment lien on real property, unless the judgment creditor has filed proof of service of notice of the lien, the county recorder may, within 10 days of recordation, give notice of the lien to the judgment debtor or the debtor's attorney by mail. (*Govt.C. 27297.5(a)*); see *Govt.C. 27297.5(h)* [although giving notice is optional, "the Legislature encourages the county recorder to continue taking the action formerly mandated".])

(2) *By Judgment Creditor.* As an alternative to notice by the recorder, the judgment creditor may give notice of the lien by serving on the judgment debtor a copy of the abstract of judgment by personal delivery, by substitute service, or by registered or certified mail. (*Govt.C. 27297.5(b)*.) The judgment creditor may add the actual cost of service to the lien, but the cost may not exceed that of giving notice under *Govt.C. 27297.5(a)*. (*Govt.C. 27297.5(c)*.)

(3) *Effect of Failure To Give Notice.* Failure of the recorder or the judgment creditor to give notice does not affect either the constructive notice otherwise imparted by recordation or the force, effect, or priority otherwise accorded the lien. (*Govt.C. 27297.5(f)*.)

SUPPLEMENT: [This section is current through the latest supplement]



77 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

5. Priority of Liens.

8 *Witkin Cal. Proc. Enf Judgm § 77*

[§ 77] Priority of Liens.

(1) *General Principles.* Judgment liens on real property are subject to the following priorities:

(a) *Lump sum judgments.* As between judgment liens created under *C.C.P. 697.310* (see *supra*, §69), an earlier lien has priority over a later created lien. (*C.C.P. 697.380(a)(2)*, (c).)

(b) *Installment judgments.* As between judgment liens created under *C.C.P. 697.320* (see *supra*, §71), an earlier lien has priority over a later created lien on installments matured, interest accrued, and costs added prior to the creation of the second lien. For subsequent installments, interest, and costs, priority depends on earlier maturing, accruing, and addition, respectively. (*C.C.P. 697.380(a)(1)*, (f).)

(c) *Competing lump sum and installment judgments.* As between lump sum liens and installment liens, a lump sum lien has priority over an installment lien on installments maturing, interest accruing, and costs added after creation of the lump sum lien. (*C.C.P. 697.380(d)*.) However, an earlier installment lien has priority over a later created lump sum lien on installments matured, interest accrued, and costs added prior to creation of the lump sum lien. (*C.C.P. 697.380(e)*.)

(d) *After-acquired property.* Where two liens attach to after-acquired property at the same time under *C.C.P. 697.340(b)* (see *supra*, §74), the earlier created lien "has priority as to all amounts that are due and payable on that judgment at the time the property is acquired." (*C.C.P. 697.380(g)*; see Law Rev. Com. Comment to *C.C.P. 697.380* [this provision changes former rule under which creditor levying first obtained priority].)

(2) *Exceptions.* The priorities established by *C.C.P. 697.380* are subject to exceptions "otherwise provided by law." (*C.C.P. 697.380(b)*.) For example, under *C.C.P. 697.020*, the priority of a later lien may relate back to the date of an earlier lien. (See *supra*, §68.) (On priorities as between judgment liens on real property and certain security interests in real property, see C.E.B., 2 Debt Collection Practice 2d §13.28; 4 *Summary* (10th), *Security Transactions in Real Property*, §49 [unrecorded mortgage], §64 [federal tax lien], §74 [purchase money mortgage]; on priorities generally, see Rutter Group, 2 Enforcing Judgments and Debts §6:210 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



78 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law
 IV. MONEY JUDGMENTS: LIENS
 B. Judgment Lien on Real Property.
 6. Transfer or Encumbrance of Interest.

8 *Witkin Cal. Proc. Enf Judgm* § 78

[§ 78] Transfer or Encumbrance of Interest.

(1) *Lien to Which Interest Remains Subject.* Where an interest in real property subject to a judgment lien is transferred or encumbered, the interest remains subject to an existing and unsatisfied judgment lien as follows:

(a) The interest remains subject to a lien created under *C.C.P. 697.310* (see supra, §69) in the same amount as if the interest had not been transferred or encumbered and the lien includes interest and costs added to the judgment after the transfer or encumbrance. (*C.C.P. 697.390(a)*; Law Rev. Com. Comment to *C.C.P. 697.390*; see *Federal Deposit Ins. Corp. v. Charlton* (1993) 17 *C.A.4th* 1066, 1069, 21 *C.R.2d* 686 [transferees of property encumbered by abstract of judgment have constructive knowledge of lien and take subject to it]; *In re Marriage of Cloney* (2001) 91 *C.A.4th* 429, 438, 110 *C.R.2d* 615 [valid judgment lien recorded against judgment debtor under one name gave constructive notice of lien to subsequent purchaser to whom debtor sold real property under different name where purchaser's escrow agent, acting in course and scope of agency, gained actual knowledge of both names; this knowledge was imputed to purchaser]; *Dieden v. Schmidt* (2002) 104 *C.A.4th* 645, 650, 128 *C.R.2d* 365 [judgment lien on real property interest held by tenant in common survived change in title to joint tenancy].)

(b) The interest remains subject to a lien on an installment judgment created under *C.C.P. 697.320* (see supra, §71) in the amount of the lien at the time of transfer or encumbrance, plus subsequent interest on that amount, but the amount of the lien does not include costs added to the judgment or installments maturing after the date of transfer or encumbrance or interest on unmaturing installments. (*C.C.P. 697.390(b)*; Law Rev. Com. Comment to *C.C.P. 697.390*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.78; Rutter Group, 2 *Enforcing Judgments and Debts* §6:209 et seq.)

(2) *Effect of Fraudulent Transfer.* Where a transfer or encumbrance is a fraud on creditors, a creditor may follow the property into the hands of the transferee even in the absence of a preexisting lien. (Law Rev. Com. Comment to *C.C.P. 697.390*; on remedies of creditors where transfer is fraudulent, see *infra*, §498.)

(3) *Effect of Expungement of Lis Pendens.* An order expunging a *lis pendens* does not affect a previously recorded abstract of judgment. Thus, a purchaser of property subject to a judgment lien created by the abstract does not, by reason of the expungement, become a bona fide purchaser, but rather remains subject to the lien. (*Federal Deposit Ins.*

Corp. v. Charlton (1993) 17 C.A.4th 1066, 1069, 21 C.R.2d 686 [there is no statutory procedure for "expunging" abstract of judgment].)

West's Key Number Digest, Judgment 793(1)

SUPPLEMENT: [This section is current through the latest supplement]



79 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

7. Recording Satisfaction of Judgment.

8 Witkin Cal. Proc. Enf Judgm § 79

[§ 79] Recording Satisfaction of Judgment.

The judgment debtor, judgment creditor, or owner may extinguish a judgment lien on real property in whole or in part by recording any of the following documents with the county recorder:

(1) An acknowledgment of satisfaction of the judgment executed under *C.C.P. 724.060* (see *infra*, §390). (*C.C.P. 697.400(a).*)

(2) A certificate of satisfaction of the judgment issued under *C.C.P. 724.100* (see *infra*, §391). (*C.C.P. 697.400(a).*)

(3) An acknowledgment of satisfaction of matured installments executed under *C.C.P. 724.250* (see *infra*, §395). (*C.C.P. 697.400(b).*)

(4) A release or subordination of the judgment lien executed under *C.C.P. 697.370* (see *infra*, §80). (*C.C.P. 697.400(c).*)

SUPPLEMENT: [This section is current through the latest supplement]



80 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

8. Release or Subordination.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 80*

[§ 80] In General.

(1) *Right of Judgment Creditor.* A judgment creditor may release all or part of the real property subject to a judgment lien or subordinate the judgment lien on all or part of the property to another lien or encumbrance. (*C.C.P. 697.370(a)*); see C.E.B., 1 Debt Collection Practice 2d §7.54 et seq.; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.79; Rutter Group, 2 Enforcing Judgments and Debts §6:216 et seq.)

(2) *Execution and Contents.* A release or subordination must be executed in the same manner as an acknowledgment of satisfaction of judgment (see *infra*, §390). (*C.C.P. 697.370(b)*.) It must contain the following:

(a) A description of the property being released or on which the lien is being subordinated, and the name of the record owner, if the judgment debtor does not have an interest of record. If a release covers all of a judgment debtor's real property in a county or if the debtor has no known interest in real property in that county, in lieu of a description, the release must contain a statement substantially as follows: "This is a release from the judgment lien described herein of all of the interests in real property in ___ County presently owned or hereafter acquired of the herein named judgment debtor subject to the lien." (*C.C.P. 697.370(b)(1)*.)

(b) The date of creation of the lien and the location in the county records where evidence of the lien is recorded. (*C.C.P. 697.370(b)(2)*.)

(c) The title of the court where the judgment was entered and the cause and number of the action. (*C.C.P. 697.370(b)(3)*.)

(d) The date of entry of the judgment and of any subsequent renewals and their location in the court records. (*C.C.P. 697.370(b)(4)*.)

(e) The names and addresses of the judgment creditor, any assignee of the creditor, and the judgment debtor whose interest in the property is released or with respect to whom the lien is subordinated. (*C.C.P. 697.370(b)(5)*.)

(3) *Effect.* A release or subordination "substantially complying" with these requirements is effective even though it

contains minor errors that are not seriously misleading. (*C.C.P. 697.370(c)*.) However, the execution of a release or subordination does not release or subordinate the lien as to judgment debtors not named in the release pursuant to *C.C.P. 697.370(b)(5)*. (*C.C.P. 697.370(d)*.) (For form of release, see Cal. Civil Practice, 4 Procedure, §30:21.)

SUPPLEMENT: [This section is current through the latest supplement]



81 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

B. Judgment Lien on Real Property.

8. Release or Subordination.

b. Release of Erroneous Lien.

8 *Witkin Cal. Proc. Enf Judgm § 81*

[§ 81] Release of Erroneous Lien.

(1) *In General.* If an owner's real property is subject to a recorded lien because the owner's name is the same as or similar to that of a judgment debtor, the owner is entitled to a release. (*C.C.P. 697.410.*) The procedure is comparable to that governing release of an erroneous lien on personal property (see *C.C.P. 697.660*, *infra*, §91), and applies to a recorded abstract of a money judgment based on an affidavit of identity that appears to create a judgment lien on real property of a person who is not the judgment debtor. (*C.C.P. 674(c)(2)*; on affidavit of identity, see *supra*, §70.)

(2) *Demand for Release.* The owner may deliver to the judgment creditor a written demand for a recordable document releasing the lien, accompanied by proof to the creditor's satisfaction that the owner is not the judgment debtor "and that the property is not subject to enforcement of the judgment against the judgment debtor." (*C.C.P. 697.410(a).*) The quoted requirement prevents the spouse of the judgment debtor from seeking release of community property properly subject to a judgment against the debtor spouse. (Law Rev. Com. Comment to *C.C.P. 697.410.*)

(3) *Delivery of Release.* Within 15 days after receipt of the demand and the accompanying proof, the creditor must deliver a recordable document releasing the lien. Improper failure to do so results in liability "for all damages sustained by reason of such failure" and \$ 100. (*C.C.P. 697.410(b).*) These damages are not in derogation of "any other damages or penalties to which an aggrieved party may be entitled by law." (*C.C.P. 697.410(e).*)

(4) *Motion for Release.* If the creditor fails to deliver the recordable document, the owner may make a noticed motion, served personally or by mail on the creditor, for an order releasing the lien. On presentation of satisfactory evidence that the owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the court must order the creditor to prepare and deliver a recordable document releasing the lien or must issue an order releasing the lien, which may be recorded with the same effect as the recordable document. (*C.C.P. 697.410(c).*) Reasonable attorneys' fees must be awarded to the prevailing party. (*C.C.P. 697.410(d).*)

SUPPLEMENT: [This section is current through the latest supplement]



82 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

C. Judgment Lien on Personal Property.

1. In General.

8 Witkin Cal. Proc. Enf Judgm § 82

[§ 82] In General.

Under prior law, personal property was not subject to a judgment lien. (See *supra*, §65.) The Enforcement of Judgments Law provides a procedure (see *C.C.P. 697.510* et seq., *infra*, §83 et seq.) for obtaining a lien on certain types of business personal property in a manner analogous to the Uniform Commercial Code procedure for perfecting a security interest. (See 16 Cal. Law Rev. Com. Reports, pp. 1048 et seq., 1288 et seq.; C.E.B., 1 Debt Collection Practice 2d §7.52; 14 *Pacific L. J.* 405; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.84 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:230 et seq.)

The primary advantage of the procedure is that it gives a judgment creditor a fast and inexpensive method of obtaining priority over certain other creditors, and thus may enable the judgment creditor to avoid the delay, expense, and uncertainty involved in seeking a levy of execution. A lien on personal property will also pressure a debtor to reach settlement with the creditor, because the lien prevents the debtor from pledging the property to finance the business. (16 Cal. Law Rev. Com. Reports, pp. 1051, 1289.)

A creditor may use the procedure alone or in conjunction with other procedures under the Enforcement of Judgments Law. (See *C.C.P. 697.520* [referring to levy of execution under *C.C.P. 699.010* et seq. and miscellaneous creditors' remedies under *C.C.P. 708.010* et seq.].) If the lien does not result in satisfaction of the judgment, the normal remedy will be levy of execution. Unless the judgment debtor consents, the judgment creditor may not use the remedies of self-help repossession or private sale authorized by U.C.C. 9609 et seq. (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §178 et seq.). (16 Cal. Law Rev. Com. Reports, pp. 1051, 1289.)

SUPPLEMENT: [This section is current through the latest supplement]

Undefined terms in *C.C.P. 697.510* et seq. (text, p. 126) have the definitions set forth in the Commercial Code. (*C.C.P. 697.510(m)*, added in 2009.)



83 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

C. Judgment Lien on Personal Property.

2. Creation and Duration.

8 *Witkin Cal. Proc. Enf Judgm* § 83

[§ 83] Creation and Duration.

(1) *Judgments Supporting Lien on Personal Property.* A money judgment entered in California (*C.C.P. 697.510(a)*) or a money judgment of a federal court enforceable in California (*C.C.P. 697.060(b)*) may be the basis for a judgment lien on personal property. However, except as provided by court order for certain judgments under *C.C.P. 697.540(b)* (see *infra*, §85), a money judgment payable in installments will not support a judgment lien on personal property unless all the installments have become due and payable at the time the notice of judgment lien is filed. (*C.C.P. 697.510(a)*; see *C.E.B.*, 1 Debt Collection Practice 2d, §7.52; *C.J.E.R.*, Judges Benchbook: Civil Proceedings--After Trial §6.84 et seq.; *Cal. Civil Practice*, 4 Procedure, §§30:17, 30:18.)

(2) *Creation of Lien.* A judgment lien on personal property is created by filing a notice of judgment lien in the office of the Secretary of State. (*C.C.P. 697.510(a)*.) (On content of notice and procedure for filing, see *infra*, §86.)

(3) *Duration of Lien.* Unless the judgment is satisfied or the lien is terminated or released, the lien continues for 5 years from the date of filing. (*C.C.P. 697.510(b)*.) Thus, the lien may be effective for the same period as the financing statement under U.C.C. 9515. (See 4 *Summary* (10th), *Secured Transactions in Personal Property*, §97.) "Unlike a security interest, however, the judgment lien on personal property may not be extended beyond the five-year period. The five-year period is sufficient to permit the judgment creditor to apply the property to the satisfaction of the judgment by execution or otherwise." (Legislative Com. Comment (Assembly) to *C.C.P. 697.510*.)

West's Key Number Digest, Judgment 777

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Duration of Lien.* *C.C.P. 697.510*, as amended in 2009, provides for the continuation of a judgment lien on personal property.

(a) Generally, the judgment lien continues for 5 years from the date of filing. (*C.C.P. 697.510(b)*.) The effectiveness of the lien lapses on the expiration of the 5-year period, unless a continuation statement is filed. (*C.C.P. 697.510(c)*.)

(b) The continuation statement may be filed within 6 months of the expiration of the 5-year period. (*C.C.P. 697.510(d)*.)

(c) A continuation statement not filed within 6 months of the expiration of the 5-year period is ineffective. On timely filing of a continuation statement, the effectiveness of the initial notice of judgment lien continues for another 5 years. Succeeding continuation statements may be filed. (*C.C.P. 697.510(e)*.)

(d) The continuation statement must (1) identify the initial notice of judgment lien by its file number and (2) indicate that it is a continuation statement for that notice of judgment lien. (*C.C.P. 697.510(f)*.)

(e) The lien is extinguished by (1) satisfaction of the money judgment, (2) termination of the period of enforceability of the judgment, or (3) termination or release of the lien. (*C.C.P. 697.510(g)*.)

(f) If a judgment creditor does not file a notice of release, the person who made the demand may seek a court order releasing the judgment lien. The prevailing party may be awarded attorneys' fees in any action under this statute. Other forms of relief are not precluded. (*C.C.P. 697.510(h)*, (i), (j).)

(g) The fee for filing and indexing a record, or for responding to a request for information from the filing office, is provided in U.C.C. 9525. The fee for filing is: (1) \$ 10 if the record is communicated in writing and is one or two pages; (2) \$ 20 if communicated in writing and is more than two pages; (3) \$ 5 if communicated by another authorized medium. For responding to a request for information the fee is: (1) \$ 10 if communicated in writing; (2) \$ 5 if communicated by another authorized medium. (*C.C.P. 697.510(k)*.)

(h) The provisions of U.C.C. 9522 and 9523 (maintenance of records; information from filing office; see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §§92, 93) apply to a notice of judgment lien to the same extent as to a filed financing statement. (*C.C.P. 697.510(l)*.)

The Secretary of State is authorized to prescribe a form for a statement of continuation of a judgment lien on personal property. (*C.C.P. 697.670(a)(1)*, as amended in 2009.)



84 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

C. Judgment Lien on Personal Property.

3. Interests Subject to Lien.

8 *Witkin Cal. Proc. Enf Judgm* § 84

[§ 84] Interests Subject to Lien.

(1) *Types of Property.* A judgment lien on personal property attaches to all interests subject to enforcement of the judgment under *C.C.P. 695.010* et seq. (see supra, §55 et seq.) in six enumerated types of personal property at the time the lien is created, if a security interest in the property could be perfected under the Commercial Code by filing a financing statement at that time with the Secretary of State. (*C.C.P. 697.530(a)*.) Thus, the lien does not attach to items as to which a security interest is generally perfected by taking possession (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §68 et seq.) or filing with the county recorder (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §87). (See Legislative Com. Comment (Assembly) to *C.C.P. 697.530*.) The enumerated types of property are:

- (a) Accounts receivable. (*C.C.P. 697.530(a)(1)*.)
- (b) Chattel paper. (*C.C.P. 697.530(a)(2)*.)
- (c) Equipment. (*C.C.P. 697.530(a)(3)*.)
- (d) Farm products. (*C.C.P. 697.530(a)(4)*.)
- (e) Inventory. (*C.C.P. 697.530(a)(5)*.)
- (f) Negotiable documents of title. (*C.C.P. 697.530(a)(6)*.)

(2) *After-Acquired Property.* The lien attaches to after-acquired property at the time of acquisition of that property. (*C.C.P. 697.530(b)*.) (On priorities with respect to after-acquired property, see *C.C.P. 697.600(b)*, infra, §87.)

(3) *Proceeds on Disposition.* To the extent provided by *C.C.P. 697.620* (see infra, §88), a judgment lien on personal property continues on the proceeds from sale or other disposition of the property. (*C.C.P. 697.530(c)*.)

(4) *Exceptions.* The lien does not attach to the following property:

(a) A vehicle or vessel required to be registered with the Department of Motor Vehicles, or a mobilehome or commercial coach required to be registered under the Health and Safety Code. (*C.C.P. 697.530(d)(1)*.)

(b) Inventory of a retail merchant held for sale except to the extent that it consists of durable goods with a unit retail value of at least \$ 500. (*C.C.P. 697.530(d)(2)*) [excepting certain persons and cooperative associations from definition of "retail merchant".]

(c) Fixtures. (Legislative Com. Comment (Assembly) to *C.C.P. 697.530*.) If property subject to a lien becomes a fixture, as defined in U.C.C. 9102(a)(41), the judgment lien is extinguished. (*C.C.P. 697.530(e)*); on goods that may become fixtures, see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §131.)

Where there has not been a levy of execution under *C.C.P. 699.010* et seq. (see *infra*, §99 et seq.), a person obligated on an account receivable or chattel paper subject to a judgment lien may pay or compromise the amount without the judgment creditor's notice or consent, but is subject to the miscellaneous remedies provided by *C.C.P. 708.010* et seq. (see *infra*, §275 et seq.). (*C.C.P. 697.530(f)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Types of Property*. See *Waltrip v. Kimberlin* (2008) 164 C.A.4th 517, 529, 79 C.R.3d 460 [existing judgment liens on debtor's personal property, for which creditor filed notices with Secretary of State, did not extend to settlement proceeds of debtor's subsequent commercial tort litigation, and thus attorney's lien in tort litigation had priority over judgment liens].

C.C.P. 697.530(a) was amended in 2009. The statute no longer requires that, for a judgment lien on personal property to attach, a security interest in the property could be perfected under the Commercial Code at the time the lien is created. *C.C.P. 697.530(a)(1)-(a)(6)* now require that the enumerated types of personal property or the judgment debtor be located in California. The determination whether a person is located in California is made pursuant to the Commercial Code. (*C.C.P. 697.530(g)*, added in 2009.)(4) *Exceptions*.

(b) *Inventory*. In 2009, *C.C.P. 697.530(d)(2)* was renumbered *C.C.P. 697.530(d)(3)*.

(d) (*New*) *As-extracted collateral and uncut timber*. The lien does not attach to as-extracted collateral, as defined by U.C.C. 9102(a)(6), and timber to be cut. (*C.C.P. 697.530(d)(2)*, added in 2009.)



85 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

C. Judgment Lien on Personal Property.

4. Amount of Lien.

8 *Witkin Cal. Proc. Enf Judgm* § 85

[§ 85] Amount of Lien.

(1) *In General.* "Except as otherwise provided by statute, a judgment lien on personal property is a lien for the amount required to satisfy the money judgment." (*C.C.P. 697.540(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.87; on amount required to satisfy money judgment, see *C.C.P. 695.210*, *supra*, 53.)

(2) *Installment Judgments.* For judgments in limited civil cases under *C.C.P. 582.5*, small claims court judgments under *C.C.P. 116.610* et seq., and judgments against uninsured motorists under *Veh.C. 16380* that are payable in installments, the judgment lien is for the full amount required to satisfy the judgment; but, unless the court so orders, the lien may not be enforced for unmatured installments. (*C.C.P. 697.540(b)*); on specified installment judgments as basis for judgment lien on personal property, see *supra*, §83.)

SUPPLEMENT: [This section is current through the latest supplement]



86 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

C. Judgment Lien on Personal Property.

5. Notice of Lien.

8 *Witkin Cal. Proc. Enf Judgm* § 86

[§ 86] Notice of Lien.

(1) *Contents of Notice.* A notice of judgment lien on personal property must be executed under oath by the judgment creditor's attorney or by the judgment creditor, if there is no attorney. (*C.C.P. 697.550.*) The notice must contain the following information:

(a) The name and mailing address of the judgment creditor. (*C.C.P. 697.550(a).*)

(b) The name and last known mailing address of the judgment debtor. (*C.C.P. 697.550(b).*)

(c) A statement that: "All property subject to enforcement of a money judgment against the judgment debtor to which a judgment lien on personal property may attach under *Section 697.530 of the Code of Civil Procedure* is subject to this judgment lien." (*C.C.P. 697.550(c).*)

(d) The title of the court where the judgment is entered and the cause and number of the action. (*C.C.P. 697.550(d).*)

(e) The date of entry of the judgment and of any subsequent renewals of the judgment and where entered in the records of the court. (*C.C.P. 697.550(e).*)

(f) The amount required to satisfy the judgment at the date of the notice. (*C.C.P. 697.550(f).*)

(g) The date of the notice. (*C.C.P. 697.550(g).*)

(2) *Form of Notice.* The Secretary of State may prescribe a form of notice of judgment lien, which is deemed to comply with the requirements of *C.C.P. 697.510 et seq.*, and supersedes any requirements specified for the notice. (*C.C.P. 697.670.*) The Secretary of State has adopted Secretary of State Form JL-1 [Notice of Judgment Lien on Personal Property and Addendum]. (For form of notice, see Secretary of State website: http://sos.ca.gov/business/bpd_forms.htm; Rutter Group, 2 *Enforcing Judgments and Debts*, Forms 6:H and 6:H.1; *Cal. Civil Practice, 4 Procedure*, §30:22.)

(3) *Service on Judgment Debtor.* When the notice of lien is filed or "promptly thereafter," the judgment creditor must serve a copy of the notice on the judgment debtor, either personally or by mail. Failure to do so does not affect the validity of the lien, but the creditor may be liable to the debtor for failure to give the notice. (*C.C.P. 697.560*; Law Rev. Com. Comment to *C.C.P. 697.560*.)

(4) *Filing, Marking, and Indexing.* On presentation of the notice and tender of the filing fee to the Secretary of State's office, the notice must be filed, marked, and indexed in the same manner as a financing statement, and the filing fee is the same as that for filing a standard financing statement. A notice presented more than 10 days after the date the notice is executed may not be filed. (*C.C.P. 697.570*.) (On filing financing statements under the Uniform Commercial Code, see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §86 et seq.)

(5) *Certificate and Copies.* On the request of any person, the Secretary of State must issue a certificate showing (a) whether there is a notice of judgment lien on file against the property of a particular person named in the request, and (b) if there is, the date and hour of filing of each notice and the judgment creditor's name and address. (*C.C.P. 697.580(a)*.) On request, the Secretary of State must also furnish a copy of any notice of judgment lien or notice affecting a notice of judgment lien. (*C.C.P. 697.580(b)*.) The certificate must be issued as part of a combined certificate under U.C.C. 9528 (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §93) showing judgment liens, attachment liens, financing statements, and tax liens, and the fees for the certificate and copies are governed by that section. (*C.C.P. 697.580(b)*.) U.C.C. 9528 does not provide for fees. However, the fee for issuing a certificate showing whether a financing statement naming a particular debtor is on file is \$ 10 if the request is in writing and \$ 5 if it is communicated by another authorized medium. (U.C.C. 9525(c); on fees for filing financing statements and related records, see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §88.)

West's Key Number Digest, Judgment 7

SUPPLEMENT: [This section is current through the latest supplement]



87 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

C. Judgment Lien on Personal Property.

6. Priority of Liens.

8 *Witkin Cal. Proc. Enf Judgm § 87*

[§ 87] Priority of Liens.

(1) *Definitions.* *C.C.P. 697.590*, governing the priority of judgment liens on personal property, provides the following definitions:

(a) *Filing.* As to a judgment lien on personal property, "filing" means filing a notice of the lien with the Secretary of State to create a judgment lien on personal property (see *supra*, §83). As to a security interest, "filing" means filing a financing statement under U.C.C. 9101 et seq. (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §76 et seq.). (*C.C.P. 697.590(a)(1).*)

(b) *Perfection.* "Perfection" means perfection of a security interest under U.C.C. 9101 et seq. (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §61 et seq.). (*C.C.P. 697.590(a)(2).*)

(c) *Personal property.* As to a judgment lien on personal property, "personal property" means property to which a judgment lien has attached (see *supra*, §84). As to a security interest, "personal property" means the collateral subject to a security interest under U.C.C. 9101 et seq. (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §50 et seq.). (*C.C.P. 697.590(a)(3).*)

(d) *Purchase money security interest.* "Purchase money security interest" has the meaning provided by U.C.C. 9103 (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §38). (*C.C.P. 697.590(a)(4).*) U.C.C. 9103 provides detailed conditions under which a purchase money security interest may exist in goods, software, inventory, and transactions other than those related to consumer goods.

(2) *Priority Against Purchase Money Security Interests.* A purchase money security interest has priority over a conflicting judgment lien on the same personal property or its proceeds if the security interest is perfected at the time when, or within 20 days after, the judgment debtor receives possession of the property. (*C.C.P. 697.590(d).*) A judgment lien on inventory that is subject to a purchase money security interest on inventory is also subject to a conflicting security interest that has priority over the purchase money security interest under U.C.C. 9324 (priority of purchase money security interests; see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §119 et seq.), notwithstanding that the conflicting security interest would not otherwise have priority over the judgment lien. (*C.C.P.*

697.590(e); see Law Rev. Com. Comment to *C.C.P.* 697.590 [noting how this provision resolves a circular priority problem].)

(3) *Priority Against Other Security Interests.* Priority between a judgment lien on personal property and a conflicting security interest in the same personal property, other than a purchase money security interest, is determined by priority in time of filing or perfection. Priority of a judgment lien dates from the time filing is first made covering the personal property. Priority of a security interest dates from the time a filing is first made covering the personal property or the time the security interest is first perfected, whichever is earlier, "provided that there is no period thereafter when there is neither filing nor perfection." (*C.C.P.* 697.590(b).) A date of filing or perfection for personal property is also the date of filing or perfection for proceeds. (*C.C.P.* 697.590(c).) (See *In re Marriage of Braendle* (1996) 46 C.A.4th 1037, 1043, 54 C.R.2d 397 [former wife's security interest in stock owned by former husband, based on award in dissolution judgment, took priority over later judgment lien of former husband's creditor]; 16 *Pacific L. J.* 523; on priorities as between judgment liens on personal property and state tax liens and withholding orders, see 9 *Summary* (10th), *Taxation*, §116.)

A judgment lien that has attached to personal property and is subordinate to a security interest in the same property is only subordinate to the extent that the security interest secures advances made before the judgment lien attached or within 45 days thereafter or made without knowledge of the judgment lien or pursuant to a commitment entered into without knowledge of the judgment lien. For this purpose, a secured party is deemed not to have knowledge of a judgment lien on personal property until (a) the judgment creditor serves a copy of the notice of judgment lien on the secured party, personally or by mail, and (b) the secured party has knowledge of the lien as "knowledge" is defined by the Uniform Commercial Code. If service is by mail, it must be sent to the secured party at the address in the financing statement or security agreement. (*C.C.P.* 697.590(f) [referring to U.C.C. 1201, which formerly defined "knowledge" as actual knowledge].) Under U.C.C. 1202(b), a person "knows" or has "knowledge" of a fact when the person has actual knowledge of it.

(4) *Priority Against Other Judgment Liens.* A judgment lien on personal property has priority over later liens. (*C.C.P.* 697.600(a).) Where two or more liens attach to after-acquired property at the same time under *C.C.P.* 697.530(b) (see *supra*, §84), the lien first filed has priority. (*C.C.P.* 697.600(b).) (On priority rules governing judgment liens on personal property generally, see Rutter Group, 2 *Enforcing Judgments and Debts* §6:268 et seq.; C.E.B., 2 *Debt Collection Practice* 2d §13.29.)

(5) *No Relation Back.* Notwithstanding *C.C.P.* 697.020 (see *supra*, §68), the priority of a judgment lien on personal property does not relate back to the date an earlier judgment lien on the property was created. (*C.C.P.* 697.510(c).)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Definitions.*

(a) *Filing.* With respect to agricultural liens, as well as security interests, "filing" means filing a financing statement under U.C.C. 9101 et seq. (*C.C.P.* 697.590(a)(1), as amended in 2009.)

(c) *Personal property.* The definition of "personal property" also includes farm products subject to an agricultural lien. (*C.C.P.* 697.590(a)(3), as amended in 2009.) (3) *Priority Against Other Security Interests.* In 2009, *C.C.P.* 697.590(b) was amended to treat agricultural liens on personal property the same as security interests when determining priorities. (4) *Priority Against Other Judgment Liens.* A perfected agricultural lien on personal property has priority over a judgment lien on the same property if the statute creating the lien so provides. (*C.C.P.* 697.590(g), added in 2009.) A security interest in personal property perfected under the laws of another jurisdiction has priority over a judgment lien on the same property. (*C.C.P.* 697.590(h), added in 2009.)

(5) *No Relation Back.* In 2009, *C.C.P.* 697.510 was amended to delete the language on relation back to an earlier judgment lien.



88 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

C. Judgment Lien on Personal Property.

7. Transfer of Property.

8 *Witkin Cal. Proc. Enf Judgm § 88*

[§ 88] Transfer of Property.

(1) *Continuation of Lien on Property.* Except where the property is disposed of after default under U.C.C. 9617 (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §188) or where the judgment creditor has accepted collateral in full or partial satisfaction of the obligation under U.C.C. 9622 (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §195), a judgment lien on personal property continues even though the property is sold or otherwise disposed of unless the transferee is one of the following:

(a) A buyer in the ordinary course of business (as defined by U.C.C. 1201) who, under U.C.C. 9320, would take free of a security interest created by the seller (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §111). (*C.C.P. 697.610(a).*)

(b) A lessee in the ordinary course of business (as defined by U.C.C. 10103(a)(15)) who, under U.C.C. 9321, would take free of a security interest created by the lessor (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §112). (*C.C.P. 697.610(b).*)

(c) A holder to whom a negotiable document of title has been negotiated under U.C.C. 7501 (see 4 *Summary* (10th), *Sales*, §139; 4 *Summary* (10th), *Secured Transactions in Personal Property*, §143). (*C.C.P. 697.610(c).*)

(d) A purchaser of chattel paper who, under U.C.C. 9330, would have priority over another security interest in the chattel paper (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §130). (*C.C.P. 697.610(c).*)

C.C.P. 697.610 has no effect on the rights of persons not taking from the judgment debtor; e.g., the assignee of a security interest that has priority over the judgment creditor's lien may enforce the security interest under the terms of the Uniform Commercial Code. (Legislative Com. Comment (Senate) to *C.C.P. 697.610.*)

(2) *Lien on Proceeds.* A lien on personal property continues with the same priority on the identifiable cash proceeds (money, checks, deposit accounts, and the like) received on the sale or other disposition of the property. (*C.C.P. 697.620(a), (b).*) However, if insolvency proceedings (as defined by U.C.C. 1201) are instituted by or against the judgment debtor, the lien continues only on the following proceeds: (a) proceeds in a deposit account containing only

proceeds; (b) money that is neither commingled nor deposited prior to the insolvency proceedings; and (c) checks and the like that are not deposited prior to the insolvency proceedings. (*C.C.P. 697.620(c)*.)

The judgment lien will attach to proceeds that do not qualify as identifiable cash proceeds only if the proceeds qualify as after-acquired property under *C.C.P. 697.530(b)* (see *supra*, §84). (Law Rev. Com. Comment to *C.C.P. 697.620*.)

SUPPLEMENT: [This section is current through the latest supplement]



89 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

C. Judgment Lien on Personal Property.

8. Recording Satisfaction of Judgment.

8 Witkin Cal. Proc. Enf Judgm § 89

[§ 89] Recording Satisfaction of Judgment.

(1) *Filing as Extinguishing Lien.* A judgment lien on personal property is extinguished as a matter of record when the judgment creditor, the judgment debtor, the owner of the property subject to the lien, or a person holding a security interest in the property or a lien on the property files with the Secretary of State either (a) an acknowledgment of satisfaction of judgment executed under *C.C.P. 724.060* (see *infra*, §390), or (b) a clerk's certificate of satisfaction of judgment issued under *C.C.P. 724.100* (see *infra*, §391). In either case, the filing must be accompanied by a statement containing the name of the judgment creditor, the name and address of the judgment debtor, and the file number of the notice of judgment lien. (*C.C.P. 697.640(a)*.)

The Secretary of State may prescribe the form for the statement to accompany the acknowledgment or certificate, and may specify situations in which the form is or is not required. (*C.C.P. 697.670(a)(2)*.) The Secretary of State has not adopted a special form for this purpose.

C.C.P. 697.640 applies only to complete satisfaction of the judgment. It does not authorize an acknowledgment or certificate of partial satisfaction or of satisfaction of matured installments under an installment judgment. (Legislative Com. Comment (Senate) to *C.C.P. 697.640*.)

(2) *Treatment of Acknowledgment or Certificate by Filing Officer.* The filing officer must treat the acknowledgment or certificate and the accompanying statement in the same manner as a termination statement filed under U.C.C. 9525. (*C.C.P. 697.640(b)*.) The filing fee is the same as the fee for a termination statement (\$ 10 if record is in writing and consists of one or two pages; \$ 20 if record is in writing and consists of more than two pages; \$ 5 if record is communicated by another authorized medium). (See *C.C.P. 697.640(a)* [referring to fee in U.C.C. 9525]; *Govt.C. 12194(a)-(c)* [incorporated by reference in U.C.C. 9525]; 4 *Summary* (10th), *Secured Transactions in Personal Property*, §88.)

SUPPLEMENT: [This section is current through the latest supplement]



90 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

C. Judgment Lien on Personal Property.

9. Release or Subordination.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 90*

[§ 90] In General.

(1) *Judgment Creditor's Options.* The judgment creditor may by a writing do any of the following:

(a) Release the judgment lien on all the personal property subject to the lien of a sole judgment debtor or of all the judgment debtors. (*C.C.P. 697.650(a)(1).*)

(b) If the notice of judgment lien names more than one judgment debtor, release the judgment lien on all the personal property subject to the lien of one or more but of less than all the judgment debtors. (*C.C.P. 697.650(a)(2).*)

(c) Release the judgment lien on all or a part of the personal property subject to the lien. (*C.C.P. 697.650(a)(3).*)

(d) Subordinate to a security interest or other lien or encumbrance the judgment lien on all or a part of the personal property subject to the judgment lien. (*C.C.P. 697.650(a)(4).*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.89; Rutter Group, 2 *Enforcing Judgments and Debts* §6:284 et seq.)

(2) *Contents of Statement of Release or Subordination.* A statement of release or subordination is sufficient if it is signed by the judgment creditor and contains (a) the name and address of the judgment debtor, (b) the file number of the notice of judgment lien, and (c) wording appropriate to bring the statement within *C.C.P. 697.650(a)*. Where there is a release on all or a part of the personal property subject to the lien, the statement of release must also describe the property being released. In the case of subordination under *C.C.P. 697.650(a)(4)*, the statement of subordination must also "describe the property on which the judgment lien is being subordinated and describe the security interest or other lien or encumbrance to which the judgment lien is being subordinated." (*C.C.P. 697.650(b).*)

(3) *Form.* The Secretary of State may prescribe the form of a statement of release or subordination, which is deemed to comply with *C.C.P. 697.510* et seq., and supersedes any requirements specified for the statement. (*C.C.P. 697.670.*) The Secretary of State has adopted Secretary of State Form JL-3 [Judgment Lien on Personal Property--Statement of Release or Subordination]. (For form of notice, see Secretary of State website: http://www.sos.ca.gov/business/bpd_forms.htm.)

(4) *Treatment of Statement of Release or Subordination by Filing Officer.* The filing officer must treat the filing of a statement of release under *C.C.P. 697.650(a)(1)* in the same manner as a termination statement filed under U.C.C. 9513 and 9519 (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §§91, 103). The filing officer must treat the filing of a statement of release under *C.C.P. 697.650(a)(2)* in the same manner as a comparable amendment filed under U.C.C. 9512 and 9519 (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §§91, 100, 102). The filing officer must treat the filing of statements of release and of subordination under *C.C.P. 697.650(a)(3)* and (a)(4) in the same manner as statements of release filed under U.C.C. 9512 and 9519 (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §§91, 100, 102). (*C.C.P. 697.650(c)*.)

(5) *Filing Fee.* The filing fee is the same as that provided in U.C.C. 9525 (\$ 10 if record is in writing and consists of one or two pages; \$ 20 if record is in writing and consists of more than two pages; \$ 5 if record is communicated by another authorized medium). (See *C.C.P. 697.650(d)* [fees are same as those in U.C.C. 9525]; *Govt.C. 12194(a)-(c)* [incorporated by reference in U.C.C. 9525]; 4 *Summary* (10th), *Secured Transactions in Personal Property*, §88.)

SUPPLEMENT: [This section is current through the latest supplement]



91 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

C. Judgment Lien on Personal Property.

9. Release or Subordination.

b. Release of Erroneous Lien.

8 *Witkin Cal. Proc. Enf Judgm § 91*

[§ 91] Release of Erroneous Lien.

(1) *In General.* Where a notice of judgment lien on personal property filed with the Secretary of State appears to create a judgment lien on personal property of a person who is not the judgment debtor because the property owner's name is the same as or similar to that of the judgment debtor, the property owner or the holder of a security interest or lien on the property is entitled to release of the lien. (*C.C.P. 697.660.*) The procedure is comparable to that governing release of an erroneous lien on real property. (See *C.C.P. 697.410*, *supra*, §81.)

(2) *Demand for Release.* The party seeking release may deliver to the judgment creditor a written demand for a statement releasing the lien, accompanied by proof to the creditor's satisfaction that the owner "is not the judgment debtor and that the property is not subject to enforcement of the judgment against the judgment debtor." (*C.C.P. 697.660(a).*)

(3) *Delivery of Release.* Within 15 days after receipt of the demand and the accompanying proof, the creditor must file a statement of release with the Secretary of State. Improper failure to do so results in liability "for all damages sustained by reason of such failure" and \$ 100. (*C.C.P. 697.660(b).*) These damages are not "in derogation of any other damages or penalties to which an aggrieved person may be entitled by law." (*C.C.P. 697.660(e).*)

(4) *Motion for Release.* If the creditor fails to file the statement of release, the party seeking release may make a noticed motion, served personally or by mail on the creditor, for an order releasing the lien. On presentation of satisfactory evidence that the owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the court must order the creditor to file the statement of release or must issue an order releasing the lien, which may be filed with the same effect as a statement of release. (*C.C.P. 697.660(c).*) Reasonable attorneys' fees must be awarded to the prevailing party. (*C.C.P. 697.660(d).*)

(5) *Filing Fee.* The fee for filing a statement of release or a court order is \$ 10 if the statement or order is written and consists of one or two pages; \$ 20 if the statement or order is written and consists of more than two pages; and \$ 5 if the statement or order is communicated by another medium authorized by rule of the filing office. (*C.C.P. 697.660(f)* [referring to fee provided by U.C.C. 9525]; see *Govt.C. 12194(a)-(c)* [incorporated by reference in U.C.C. 9525]; on

filing fees under U.C.C. 9525, see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §88.)

SUPPLEMENT: [This section is current through the latest supplement]



92 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

D. Execution Lien.

1. Creation and Duration.

8 *Witkin Cal. Proc. Enf Judgm* § 92

[§ 92] Creation and Duration.

(1) *Former Law.* Under former law, issuance of a writ of execution had no effect on property until the levy (former C.C.P. 688(d)), and the lien normally began at the time of levy (see *Lean v. Givens* (1905) 146 C. 739, 742, 81 P. 128). But where an attachment or judgment lien was in effect, the title of the execution purchaser related back to the time of commencement of the earlier lien. (Former C.C.P. 700.) The execution lien lasted for 1 year after issuance of the writ except for levy on undistributed property of a decedent's estate. (Former C.C.P. 688(e).) However, an alias execution could be issued and levied where an earlier levy was ineffective. (See *Jones v. Toland* (1931) 117 C.A. 481, 483, 4 P.2d 178 [recognizing validity, but holding that lien of alias execution did not relate back to time of earlier ineffectual levy].)

(2) *General Rule: 2-Year Lien Created by Levy.* As a general rule, under the Enforcement of Judgments Law, a levy on property under a writ of execution creates an execution lien on the property from the time of levy until the expiration of 2 years after the date of issuance of the writ unless the judgment is sooner satisfied. (C.C.P. 697.710; see *Kahn v. Berman* (1988) 198 C.A.3d 1499, footnote 7, 244 C.R. 575, [nothing in statutory scheme for execution of judgment requires judgment creditor to create judgment lien; creditor may simply choose to levy execution, thereby creating execution lien]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §§6.92, 6.93; Rutter Group, 2 Enforcing Judgments and Debts §6:422 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.11; on execution generally, see *infra*, §99 et seq.; on limitation on period for enforcement of judgment and effect of renewal, see *supra*, §34 et seq.) An execution lien is not affected by failure to post, serve, or mail a writ of execution, notice of levy, or list of exemptions. (C.C.P. 699.550, *infra*, §117.)

(3) *Lien on Personal Property in Decedent's Estate.* Notwithstanding C.C.P. 697.710, an execution lien created by levy on personal property in the estate of a decedent continues for 1 year after the decree distributing the interest has become final, unless the judgment is sooner satisfied. (C.C.P. 700.200(d), *infra*, §138.)

(4) *Lien on Payments From Employee Benefit Plan To Enforce Support Order.* Notwithstanding C.C.P. 697.710, an execution lien on an employee's right to payments from an employee benefit plan to enforce an order for child, family, or spousal support (see *infra*, §403) continues until the plan has withheld and paid the full amount specified in the notice of levy, unless the plan is sooner directed by the levying officer or by court order to stop withholding. (*Family C. 5103(b).*)

(5) *Renewal of Lien by Subsequent Levy.* In *Oliver v. Bledsoe* (1992) 5 C.A.4th 998, 7 C.R.2d 382, B pledged a promissory note in his favor to a bank in February 1988, as collateral for a line of credit, and the bank took possession of it. In July 1988, O obtained a judgment against B and directed the sheriff to serve on the bank a notice of levy under writ of execution. The bank contended that the note was not reached by the levy and, when B defaulted on the line of credit, proceeded under former U.C.C. 9505(2) (now U.C.C. 9620 and 9621), allowing secured parties in possession to retain the collateral in satisfaction of the underlying debt. After learning of this development, O caused the sheriff to serve a second notice of levy on the bank in July 1989. In O's subsequent action against B, the bank, as a third-party claimant, argued that, under the 2-year limitations period provided by C.C.P. 697.710, the execution lien arising from O's first notice of levy expired in July 1990, which was prior to the date that the trial judge ordered the bank to account for proceeds from the note. *Held*, the lien did not expire; it was extended by the second levy.

(a) The bank's retention (or strict foreclosure) of the note was a transfer of the lien property from B to itself. The transfer is governed by C.C.P. 697.740 (see *infra*, §96), which provides that, unless a transfer is among the enumerated exceptions, the property levied on remains subject to the execution lien after the transfer. Because C.C.P. 697.740 does not mention retention of collateral by a secured party, and the bank did not suggest that any of the specified exceptions applied, O's lien came within C.C.P. 695.070 (see *supra*, §55), which provides that, where transferred property remains subject to the lien, the judgment may be enforced against the property in the same manner as if it had not been transferred. (5 C.A.4th 1009.)

(b) Unless a transfer of the lien property comes within one of the enumerated exceptions, the lienholder's rights against the property remain as they were before the transfer. One of those rights is the right to levy successively on the property. (5 C.A.4th 1009.) Under C.C.P. 697.020(b) (see *supra*, §68), as long as each successive levy takes place before the existing lien has expired, the lien thus created relates back to the time of creation of the first lien. Under C.C.P. 697.710, each such levy creates an execution lien on the property from the time of levy until the expiration of 2 years after the date of issuance of the writ, unless the judgment is sooner satisfied. (5 C.A.4th 1010.)

(c) Here, the bank's retention of the note was a transfer subject to the general rule of C.C.P. 697.740. Consequently, O's ability to protect and enforce his execution lien, including his right to renew the lien by a timely subsequent levy, was unimpaired by the transfer. His second levy was therefore effective to extend the life of his lien. (5 C.A.4th 1010.)

(6) *Extent of Lien.* A judgment creditor who attempts to levy against the property of the debtor obtains a lien only on the debtor's interest in the property, and where no actual interest is shown, the creditor gets nothing. (*In re Marriage of Finnell* (1986) 182 C.A.3d 52, 56, 227 C.R. 38.)

West's Key Number Digest, Execution 107, 116

SUPPLEMENT: [This section is current through the latest supplement]



93 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

D. Execution Lien.

2. Priorities.

8 *Witkin Cal. Proc. Enf Judgm* § 93

[§ 93] Priorities.

Under the Uniform Commercial Code, an execution lien created by levy on personal property ordinarily takes priority over an unperfected security interest. (U.C.C. 9317(a)(2), 4 *Summary* (10th), *Secured Transactions in Personal Property*, §106.)

If an execution lien is created and a later execution or other lien is created pursuant to the Enforcement of Judgments Law on the same property under the same judgment, the priority of the later lien relates back to the date the earlier lien was created. (*C.C.P. 697.020(b)*, supra, §68.) The Enforcement of Judgments Law otherwise does not address priorities of execution liens. However, under the former law (see supra, §92), the following rules of priority were recognized:

(1) As between execution creditors, the creditor who first levied had priority. (*Hertweck v. Fearon* (1919) 180 C. 71, 75, 179 P. 190; *Mitchell v. Alpha Hardware & Supply Co.* (1935) 7 C.A.2d 52, 57, 45 P.2d 442; *Partch v. Adams* (1942) 55 C.A.2d 1, 10, 130 P.2d 244; *Estate of Badivian* (1973) 31 C.A.3d 737, 739, 107 C.R. 537.)

(2) As between an execution creditor and a prior valid lienholder, such as a mortgagee, the prior lienholder had priority. (See *Chelhar v. Acme Garage* (1936) 18 C.A.2d Supp. 775, 777, 61 P.2d 1232.)

(3) A prior grantee under an unrecorded deed prevailed over an execution creditor, because the creditor was not a bona fide purchaser. (See *Boye v. Boerner* (1940) 38 C.A.2d 567, 570, 101 P.2d 757 [attaching creditor].) The grantee could be defeated, however, if the creditor became a bona fide purchaser at the execution sale. (See *Widenmann v. Weniger* (1913) 164 C. 667, 672, 130 P. 421; *McCune v. McCune* (1937) 23 C.A.2d 295, 297, 72 P.2d 883.)

(4) Priority of state or county tax claims depended on whether a statute expressly or by reasonable implication gave the governmental claim precedence over private liens. (See 4 *Summary* (10th), *Security Transactions in Real Property*, §59 [priority of tax lien over private lien on realty]; 6 *Cal. Proc.* (5th), *Provisional Remedies*, §186 [priority of federal tax liens over personal property liens].) An execution lien takes priority over a federal tax lien unless proper notice of the lien has been filed before the levy. (26 U.S.C., §6323(a); see 41 *Cal. L. Rev.* 256, 261; 35 *Am.Jur.2d* (2001 ed.), *Federal Tax Enforcement* §250.)

SUPPLEMENT: [This section is current through the latest supplement]



94 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

D. Execution Lien.

3. Transfer or Encumbrance of Real Property.

8 Witkin Cal. Proc. Enf Judgm § 94

[§ 94] Transfer or Encumbrance of Real Property.

If an interest in real property subject to an execution lien is transferred or encumbered, the interest remains subject to the lien after the transfer or encumbrance, except as provided by *C.C.P. 701.630*, governing the extinction of liens on sale (see *infra*, §156). (*C.C.P. 697.720.*)

SUPPLEMENT: [This section is current through the latest supplement]



95 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

D. Execution Lien.

4. Transfer or Encumbrance of Personal Property.

a. Property in Levying Officer's Custody.

8 Witkin Cal. Proc. Enf Judgm § 95

[§ 95] Property in Levying Officer's Custody.

If tangible personal property subject to an execution lien is in the custody of a levying officer and is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance, except as provided by *C.C.P. 701.630*, governing the extinction of liens on sale (see *infra*, §156). (*C.C.P. 697.730(a)*.) If, however, the levy is made by placing a keeper in charge of a business, the following rules apply:

(1) A purchaser in the ordinary course of business (as defined by U.C.C. 1201) takes free of the execution lien if, under U.C.C. 9320, the purchaser would take free of a security interest created by the seller (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §111). (*C.C.P. 697.730(b)(1)*.)

(2) A lessee in the ordinary course of business (as defined by U.C.C. 10103(a)(15)) takes free of the lien if, under U.C.C. 9321, the lessee would take free of a security interest created by the lessor (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §112). (*C.C.P. 697.730(b)(2)*.)

West's Key Number Digest, Execution 115

SUPPLEMENT: [This section is current through the latest supplement]



96 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

D. Execution Lien.

4. Transfer or Encumbrance of Personal Property.

b. Property Not in Levying Officer's Custody.

8 *Witkin Cal. Proc. Enf Judgm § 96*

[§ 96] Property Not in Levying Officer's Custody.

If personal property subject to an execution lien is not in the custody of the levying officer and is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance except as follows:

- (1) As provided by *C.C.P. 701.630*, governing the extinction of liens on sale (see *infra*, §156). (*C.C.P. 697.740*.)
- (2) As provided by U.C.C. 9617 (disposal of property after default; see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §188) and U.C.C. 9622 (acceptance of collateral by secured party in full or partial satisfaction of obligation; see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §195). (*C.C.P. 697.740*.)
- (3) Where the transfer or encumbrance is made to one of the following persons:
 - (a) A person who, without knowledge of the lien, acquires an interest in the property under California law for reasonably equivalent value. For purposes of this provision, value is given for a transfer or encumbrance if property is transferred or an antecedent debt is secured or satisfied. (*C.C.P. 697.740(a)*.)
 - (b) A buyer in the ordinary course of business (as defined by U.C.C. 1201) who, under U.C.C. 9320, would take free of a security interest created by the seller or encumbrancer (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §111). (*C.C.P. 697.740(b)*.)
 - (c) A lessee in the ordinary course of business (as defined by U.C.C. 10103(a)(15)), or a licensee in the ordinary course of business (as defined by U.C.C. 9321(a)), who, under U.C.C. 9321 (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §§112, 113), would take free of a security interest created by the lessor or licensor. (*C.C.P. 697.740(c)*.)
 - (d) A holder in due course (as defined by U.C.C. 3302) of a negotiable instrument within the meaning of U.C.C. 3104 (see *Summary* (10th), *Negotiable Instruments*, §§11 et seq.). (*C.C.P. 697.740(d)*.)
 - (e) A holder to whom a negotiable document of title has been duly negotiated within the meaning of U.C.C. 7501

(see 4 *Summary* (10th), *Sales*, §139). (C.C.P. 697.740(e).)

(f) A protected purchaser (as defined in U.C.C. 8303) of a security or a person entitled to the benefits of U.C.C. 8502 or 8510 (person acquiring security entitlement for value and without notice is not subject to adverse claims; see 9 *Summary* (10th), *Corporations*, §147 et seq.). (C.C.P. 697.740(f).)

(g) A purchaser of chattel paper giving new value and taking possession in good faith and in the ordinary course of business, or a purchaser of an instrument giving value and taking possession in good faith. (C.C.P. 697.740(g).)

(h) A holder of a purchase money security interest (as defined in U.C.C. 9103; see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §38). (C.C.P. 697.740(h).)

(i) A collecting bank holding a security interest in items being collected and accompanying documents and proceeds, pursuant to U.C.C. 4210 (see 4 *Summary* (10th), *Negotiable Instruments*, §106). (C.C.P. 697.740(i).)

(j) A person acquiring any right or interest in letters of credit, advices of credit, or money. (C.C.P. 697.740(j).)

(k) A person acquiring any right or interest in property subject to another jurisdiction's certificate-of-title statute under which perfection of the security interest requires indication of the interest on the certificate of title. (C.C.P. 697.740(k).)

SUPPLEMENT: [This section is current through the latest supplement]

(j) *Letters of credit:* See *Credit Suisse First Boston Mortg. Capital, LLC v. Danning, Gill, Diamond & Kollitz* (2009) 178 C.A.4th 1290, 1297, 101 C.R.3d 192 [reference to "money" in C.C.P. 697.740(j) is limited to money involved in letter of credit transaction; term did not apply to money that judgment debtor gave to law firm, for services and retainer, after lien arose on judgment creditor's service of order to appear at debtor examination (see text, §278)].



97 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IV. MONEY JUDGMENTS: LIENS

D. Execution Lien.

4. Transfer or Encumbrance of Personal Property.

c. Crops, Timber, and Minerals.

8 Witkin Cal. Proc. Enf Judgm § 97

[§ 97] Crops, Timber, and Minerals.

Because a levy on growing crops, timber to be cut, or minerals to be extracted is accomplished by recording a copy of the writ and a notice of levy with the county recorder (*C.C.P. 700.020*, *infra*, §122), a potential transferee or person taking an encumbrance has constructive notice of the levy. (Law Rev. Com. Comment to *C.C.P. 697.750*.) Therefore, notwithstanding *C.C.P. 697.740* (see *supra*, §96), where growing crops, timber to be cut, or minerals (including oil and gas) to be extracted (and accounts receivable from the sale of minerals) are transferred or encumbered, the property remains subject to the execution lien after the transfer or encumbrance, except as provided by *C.C.P. 701.630*, governing the extinction of liens on sale (see *infra*, §156), or as provided by U.C.C. 9617, governing a secured party's right to dispose of collateral after default (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §188). (*C.C.P. 697.750*.)

West's Key Number Digest, Execution 115

SUPPLEMENT: [This section is current through the latest supplement]



98 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IV. MONEY JUDGMENTS: LIENS

E. Other Liens.

8 *Witkin Cal. Proc. Enf Judgm* § 98

[§ 98] Other Liens.

A lien on real or personal property that is created in an examination proceeding (see *infra*, §279), a creditor's suit (see *infra*, §295), or a charging order proceeding (see *infra*, §296) has the same effect as an execution lien on personal property not in the custody of the levying officer. (See *C.C.P.* 697.910, 697.920; Legislative Com. Comment (Assembly) to *C.C.P.* 697.920.) (On execution liens on personal property not in custody of levying officer, see *supra*, §96.)

Thus, where property subject to such a lien is transferred or encumbered, the lien continues on the property except (1) as provided by *C.C.P.* 701.630, governing the extinction of liens on sale (see *infra*, §156), (2) as provided by U.C.C. 9617, governing a secured party's right to dispose of collateral after default (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §188), or (3) where the transfer or encumbrance is made to a person listed in *C.C.P.* 697.740 (see *supra*, §96). (*C.C.P.* 697.920.)

SUPPLEMENT: [This section is current through the latest supplement]



99 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

A. In General.

1. Nature of Execution.

8 Witkin Cal. Proc. Enf Judgm § 99

[§ 99] Nature of Execution.

The most common procedure for collection of a money judgment is execution. (See 16 Cal. Law Rev. Com. Reports, p. 1054; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.99 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:300 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.2 et seq.; Cal. Civil Practice, 4 Procedure, §30:23 et seq.; 30 *Am.Jur.2d* (2005 ed.), *Executions and Enforcement of Judgments* §47 et seq.; 9A *Am.Jur.* P.P. Forms (2005 ed.), *Executions* §1 et seq.; 11 *So. Cal. L. Rev.* 224.) Except as otherwise provided by statute, *C.C.P.* 699.010 et seq. govern this procedure. (*C.C.P.* 699.010.)

A writ of execution from the court requires a levying officer to enforce the judgment. (*C.C.P.* 699.510, 699.520, *infra*, §107 et seq.; *In re Marriage of Schenck* (1991) 228 *C.A.3d* 1474, 1479, 279 *C.R.* 651, citing the text.) The officer does so by levying on the property, i.e., by seizing the property under the writ, either constructively or actually. The method of levy depends on the form of the property levied on. (See *C.C.P.* 700.010 et seq., *infra*, §117 et seq.) Levy creates an execution lien (*C.C.P.* 697.710, *supra*, §92), which is satisfied by sale or collection of the property under *C.C.P.* 701.510 et seq. (see *infra*, §144 et seq.).

A writ of execution is available to enforce a judgment lien on real property perfected prior to the judgment debtor's bankruptcy. (See *Songer v. Cooney* (1989) 214 *C.A.3d* 387, 391, 264 *C.R.* 1, *infra*, §514.)

West's Key Number Digest, Execution 1 et seq.

SUPPLEMENT: [This section is current through the latest supplement]



100 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 A. In General.

2. Levy on Property in Private Place.

8 *Witkin Cal. Proc. Enf Judgm § 100*

[§ 100] Levy on Property in Private Place.

(1) *Limitation on Levying Officer's Authority.* The right to seize personal property from a judgment debtor's possession is limited by the debtor's right of privacy. (See 16 Cal. Law Rev. Com. Reports, p. 1061.) In recognition of these competing interests, *C.C.P. 699.030* specifies the procedure to be followed when levying on personal property in a private place. The levying officer must demand that the debtor deliver the property, and must advise the debtor that he or she may be liable for costs and attorneys' fees incurred in further proceedings to obtain delivery. If the debtor fails to deliver, the officer may make no further efforts to obtain custody and must notify the judgment creditor of the failure to obtain custody. (*C.C.P. 699.030(a)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:492 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.17.)

(2) *Application for Order Directing Seizure.* Regardless of whether a demand has been made under *C.C.P. 699.030(a)* or a writ has been issued, the judgment creditor may apply *ex parte*, or on noticed motion if the court so directs or a court rule so requires, for an order directing the levying officer to seize the property. The application must describe the property to be levied on and its location "with particularity," according to the creditor's best knowledge, information, and belief. The order may not issue unless the creditor shows "probable cause to believe that property sought to be levied upon is located in the place described." (*C.C.P. 699.030(b)*); see 14 *Pacific L. J.* 407.) *C.C.P. 699.030(b)* is based on comparable provisions relating to claim and delivery. (Law Rev. Com. Comment to *C.C.P. 699.030*; on claim and delivery provisions, see 6 *Cal. Proc.* (5th), *Provisional Remedies*, §268.)

(3) *Levy Pursuant to Order.* When demanding delivery of property under an order, the levying officer must announce the officer's identity, purpose, and authority. If the property is not voluntarily delivered, the place where the property is believed to be located may be broken open in the manner "the levying officer reasonably believes will cause the least damage," but the officer may not enter if he or she reasonably believes that "entry and seizure of the property will involve a substantial risk of death or serious bodily harm to any person" and must report to the court the reasons for believing that the risk exists. The court then must make appropriate orders. (*C.C.P. 699.030(b)*.) When the levying officer gains entry pursuant to a court order, his or her authority to levy on property is restricted by the terms of the order. (See Law Rev. Com. Comment to *C.C.P. 699.030*.)

SUPPLEMENT: [This section is current through the latest supplement]



101 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

A. In General.

3. Turnover Order.

8 *Within Cal. Proc. Enf Judgm § 101*

[§ 101] Turnover Order.

As in claim and delivery (see 6 *Cal. Proc. (5th), Provisional Remedies*, §263) and attachment (see 6 *Cal. Proc. (5th), Provisional Remedies*, §114), the court may issue a turnover order to aid in execution. (*C.C.P. 699.040*; see *Cal. Civil Practice*, 4 Procedure, §30:68; *Rutter Group*, 2 Enforcing Judgments and Debts §6:359 et seq.; *C.E.B.*, 2 Debt Collection Practice 2d, §9.44; *Cal. Civil Practice*, 4 Procedure, §30:23 et seq.) A judgment creditor may apply ex parte, or on noticed motion if the court so directs or a court rule so requires, for an order directing the judgment debtor to transfer either or both of the following to the levying officer:

(1) Possession of the property sought to be levied on if the property is sought to be levied on by taking it into custody. (*C.C.P. 699.040(a)(1)*.)

(2) Possession of documentary evidence of title to property of or a debt owed to the judgment debtor that is sought to be levied on. (*C.C.P. 699.040(a)(2)* [order may be served when property or debt is levied on or thereafter].)

The order is issued on a showing of need. (*C.C.P. 699.040(b)*.) It must be personally served on the judgment debtor and must contain a notice that failure to comply may subject the judgment debtor to arrest and punishment for contempt. (*C.C.P. 699.040(c)*.) (For forms of ex parte application for transfer order and transfer order, see *Cal. Civil Practice*, 4 Procedure, §§30:72, 30:73.)

"Use of a turnover order in appropriate cases may avoid the need to obtain an order for a levy on property in a private place, may facilitate reaching intangible assets with a situs outside California, and by permitting a turnover of evidence of title may facilitate eventual collection of a debt or sale of property such as a motor vehicle." (16 *Cal. Law Rev. Com. Reports*, p. 1062.)

SUPPLEMENT: [This section is current through the latest supplement]

See *Palacio Del Mar Homeowners Assn. v. McMahon (2009) 174 C.A.4th 1386, 1391, 95 C.R.3d 445 [C.C.P. 699.040* did not authorize order requiring judgment debtor to turn over website domain name to judgment creditor; statute is limited to tangible property and does not allow direct delivery to creditor, and creditor failed to show that domain name, owned by debtor's wife, was in debtor's possession].



102 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
V. MONEY JUDGMENTS: EXECUTION

A. In General.

4. Preservation of Property.

8 *Within Cal. Proc. Enf Judgm § 102*

[§ 102] Preservation of Property.

(1) *In General.* The Enforcement of Judgments Law provides for the protection of the value of property levied on by execution in the same way that the Attachment Law protects the value of attached property. (See *C.C.P. 699.070*; on preservation of attached property, see *C.C.P. 488.700, 6 Cal. Proc. (5th), Provisional Remedies*, §191; for general discussion of protection of property subject to levy of execution, see Rutter Group, 2 *Enforcing Judgments and Debts* §6:655 et seq.; *C.E.B., 2 Debt Collection Practice 2d*, §9.20.)

(2) *Conditions.* Under *C.C.P. 699.070(a)*, the court may appoint a receiver or take any action "necessary to preserve the value of property," including sale of the property, if the court determines any of the following:

- (a) The property is perishable.
- (b) The property will greatly deteriorate or greatly depreciate in value.
- (c) The interests of the parties will be best served by the order.

(3) *Application.* A preservation order may be made on application of the judgment creditor, the judgment debtor, or a person who has filed a third-party claim under *C.C.P. 720.010* et seq. (see *infra*, §364 et seq.). The application may be *ex parte* unless the court or a court rule requires a noticed motion. (*C.C.P. 699.070(a)*.)

(4) *When Officer May Act Without Order.* If the levying officer determines "that property levied on is extremely perishable or will greatly deteriorate or greatly depreciate in value" before a court order can be obtained, the officer may "take any action necessary to preserve the value of the property or may sell the property." The officer is not liable for a good faith determination that action without a court order is necessary. (*C.C.P. 699.070(b)*.)

(5) *Sale.* Except as otherwise provided by court order, a sale pursuant to *C.C.P. 699.070* must be made in the manner of an execution sale under *C.C.P. 701.510* et seq. (see *infra*, §144 et seq.), except that notice of the sale must be posted and served at a reasonable time before the sale, considering the character and condition of the property. The proceeds of the sale must be applied to satisfaction of the judgment as provided by *C.C.P. 701.810* et seq. (see *infra*, §158 et seq.). (*C.C.P. 699.070(c)*.)

(6) *Receiver*. If a receiver is appointed, the court must fix the receiver's daily fee, and may order the judgment creditor to pay the receiver's fees and expenses in advance or may direct that any or all of the fees and expenses be paid from the proceeds of a sale of the property. In other respects, the statutes governing receivers (see *C.C.P.* 564 et seq.; 6 *Cal. Proc.* (5th), *Provisional Remedies*, §419 et seq.) and undertakings of persons handling private property or funds (see *C.C.P.* 571; 2 *Cal. Proc.* (5th), *Courts*, §343) are applicable. (*C.C.P.* 699.070(d).)

West's Key Number Digest, Execution 149; Receivers 24

SUPPLEMENT: [This section is current through the latest supplement]



103 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 A. In General.

5. Levy by Registered Process Server.

8 *Witkin Cal. Proc. Enf Judgm § 103*

[§ 103] Levy by Registered Process Server.

(1) *Property Subject to Levy and Manner of Levy.* A registered process server may levy under a writ of execution on specified types of property. (See *C.C.P. 699.080(a)* [specifying types of property subject to levy]; 16 Cal. Law Rev. Com. Reports, p. 1060; for definition of registered process server, see *C.C.P. 680.330*, supra, §21.) The process server's authority "is limited to cases where the levy does not involve the possibility of taking immediate possession of the property." (Legislative Committee (Assembly) and Law Rev. Com. Comments to *C.C.P. 699.080*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:438 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.14.) A registered process server may levy more than once under the same writ of execution, provided that the writ is still valid. (*C.C.P. 699.080(g)*.)

(2) *Duties of Process Server.* Before levying under a writ of execution, a registered process server must deposit a copy of the writ with the levying officer and pay the fee provided by *Govt.C. 26721* (fee for serving or executing process or notice). (*C.C.P. 699.080(b)*.)

A registered process server must (a) comply with applicable levy, posting, and service provisions of *C.C.P. 700.010* et seq. (see infra, §117 et seq.), and (b) request any third person served to give a garnishee's memorandum under *C.C.P. 701.030* (see infra, §140) on a form provided by the process server. (*C.C.P. 699.080(c)*.)

Within 5 court days after the levy, the process server must file the following with the levying officer: (a) the writ of execution, (b) proof of service stating the manner of levy, (c) proof of service on third persons under *C.C.P. 700.010* et seq. (see infra, §117 et seq.), and (d) written instructions under *C.C.P. 687.010* (see supra, §29). (*C.C.P. 699.080(d)*.)

(3) *Duties of Levying Officer.* The levying officer must then, provided that the fee under *Govt.C. 26721* is paid, return the writ to the court and "perform all other duties under the writ as if the levying officer had levied under the writ." (*C.C.P. 699.080(e)*); on duties of levying officer generally, see supra, §29 et seq.)

(4) *Effect of Failure To Comply With Statute.* If a registered process server does not comply with *C.C.P. 699.080(b)* and (d), 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 levied on. (*C.C.P. 699.080(e)*.) (On release of property, see infra, §106.)

(5) *General Rule Precluding Liability.* A registered process server is not liable for actions taken in conformance with the Enforcement of Judgments Law, including actions taken in reliance on information in the written instructions of the judgment creditor (see *supra*, §29), except to the extent that the process server has actual knowledge that the information is incorrect. This provision does not limit liability of the judgment creditor if the process server acts on incorrect information in the written instructions. (*C.C.P. 687.040(a)*, *supra*, §33.)

(6) *Process Server's Fee Is Recoverable Cost.* Recoverable costs include a registered process server's fee, in an amount determined under *C.C.P. 1033.5* (see 3 *Cal. Proc. (5th), Actions*, §999). (*C.C.P. 699.080(f)*.) (On recovery of costs of enforcing judgment, see *supra*, §46 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



104 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

A. In General.

6. Levy Based on Record Ownership.

8 Within Cal. Proc. Enf Judgm § 104

[§ 104] Levy Based on Record Ownership.

A judgment creditor, the levying officer, and the sureties on the creditor's undertaking given in third-party claims proceedings are not liable to a third person for levy under a writ of execution on property required by law to be registered or recorded in the name of the owner, if "it appears at the time of the levy that the judgment debtor was the registered or record owner of the property and the judgment creditor caused the levy to be made and the lien maintained in good faith and in reliance upon such registered or recorded ownership." (*C.C.P. 699.090*, see Rutter Group, 2 Enforcing Judgments and Debts §§6:446, 6:447.) (On third-party claims, see *C.C.P. 720.110* et seq., *720.210* et seq., *infra*, §364 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



105 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

A. In General.

7. Payment by Debtor of Judgment Debtor.

8 Within Cal. Proc. Enf Judgm § 105

[§ 105] Payment by Debtor of Judgment Debtor.

At any time after delivery of a writ of execution to a levying officer and before its return, a person indebted to the judgment debtor may pay the levying officer as much of the debt as is necessary to satisfy the money judgment. The levying officer's receipt for the amount paid discharges that amount of the debt. (*C.C.P. 699.020.*) (See *Mutual Bldg. & Loan Assn. of Long Beach v. Corum (1936) 16 C.A.2d 212, 215, 60 P.2d 316* [under predecessor statute, debt was discharged even though judgment debtor, without knowledge of third person, had assigned debt prior to third person's payment to sheriff]; Rutter Group, 2 Enforcing Judgments and Debts §6:382.)

SUPPLEMENT: [This section is current through the latest supplement]



106 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

A. In General.

8. Release of Property.

8 *Within Cal. Proc. Enf Judgm § 106*

[§ 106] Release of Property.

(1) *When Required.* A levying officer must release property levied on when the officer receives (a) a written direction to release the property from the judgment creditor's attorney of record, or from the judgment creditor if there is no attorney, or (b) a certified copy of a court order for release. The property must also be released "when otherwise required." (*C.C.P. 699.060(a)*; see Legislative Com. Comment to *C.C.P. 699.060* [noting that section superseded part of former statute that incorporated procedure for release of attached property]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:432 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.19; on release of attachment, see 6 *Cal. Proc.* (5th), *Provisional Remedies*, §210 et seq.)

(2) *Effect of Release.* The release extinguishes any execution lien or attachment lien in favor of the judgment creditor on the released property. (*C.C.P. 699.060(a)*.)

(3) *Property Taken into Custody.* Property taken into custody is released to the person from whom it was taken unless otherwise ordered by the court. If the person does not claim the property, the levying officer must retain custody and serve the person, personally or by mail, with notice where possession of the property may be obtained. If the property is not claimed within 30 days after the notice, the levying officer must sell the property as provided by *C.C.P. 701.510* et seq. (see *infra*, §144 et seq.). The proceeds, less the officer's costs, must be deposited with the county treasurer. If the amount deposited is not claimed within 5 years, it must be paid into the county general fund. (*C.C.P. 699.060(b)*) [excepting from sale requirement "cash which does not have a value exceeding its face value"].)

(4) *Property Not Taken into Custody.* If the property has not been taken into custody, the levying officer must release the property by issuing a written notice of release and serving it, personally or by mail, on the person who was served with a copy of the writ and a notice of levy to create the lien. (*C.C.P. 699.060(c)*.)

(5) *Recording or Filing Notice of Release.* If the property to be released was levied on by recording or filing a copy of the writ and notice of levy, the officer must record or file a written notice of release in the same office. (*C.C.P. 699.060(d)*.)

(6) *Nonliability for Release.* The levying officer is not liable for properly releasing property levied on, and no other

person is liable for acting in conformity with the release. (*C.C.P. 699.060(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]



107 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

B. Writ of Execution and Notice of Levy.

1. Issuance of Writ.

a. Application to Clerk.

8 *Witkin Cal. Proc. Enf Judgm § 107*

[§ 107] Application to Clerk.

(1) *In General.* After entry of a money judgment and on the application of the judgment creditor, the clerk of the court must issue a writ of execution, directed to the levying officer in the county where the levy is to be made and to any registered process server. A separate writ must be issued for each county where levy is to be made. (*C.C.P. 699.510(a)*); on registered process servers, see *C.C.P. 699.080*, supra, §103; for form of application for writ, see Cal. Civil Practice, 4 Procedure, §30:39.) "Where writs of execution are issued for two or more counties, the judgment creditor has a duty to see that an excessive levy is not made." (Legislative Com. Comment (Assembly) to *C.C.P. 699.510*; on liability for excessive attachment, see 6 *Cal. Proc.* (5th), *Provisional Remedies*, §231.) The writ must direct the levying officer to enforce the money judgment. (*C.C.P. 699.520*, infra, §111.) The fee for issuing the writ is \$ 15. (*Govt.C. 70626(a)(1)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:339 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.3.)

(2) *Duty To Issue as Ministerial Act.* Issuance of the writ is ordinarily a ministerial act. (See *Da Arauje v. Rodriques* (1942) 50 *C.A.2d* 425, 431, 123 *P.2d* 154 [justice court judge issued writ in same ministerial capacity as clerk of court of record].) Hence, on an ordinary judgment, the clerk has no discretion to refuse, and may be compelled to perform this duty by a writ of mandamus. (*De Garmo v. Superior Court* (1934) 1 *C.2d* 83, 85, 33 *P.2d* 411; *Phillips v. Patterson* (1939) 34 *C.A.2d* 481, 484, 93 *P.2d* 807; but see *Zagoren v. Hall* (1932) 122 *C.A.* 460, 462, 10 *P.2d* 202 [mandamus was refused where remedy was futile--no property was available].)

However, where a judicial question arises as to the right to a writ, the clerk cannot decide it and should not be compelled to do so. The proper procedure is a motion for an order that the writ issue. (See *Adams v. Bell* (1933) 219 *C.* 503, 505, 27 *P.2d* 757 [conditional judgment; "the better and safer practice would seem to be to present to the court the facts showing nonfulfillment of the condition and obtain an order of court"]; *Cochrane v. Cochrane* (1943) 57 *C.A.2d* 937, 135 *P.2d* 714.) Appeal is an adequate remedy to attack orders after final judgment. (*Phelan v. Superior Court* (1950) 35 *C.2d* 363, 371, 217 *P.2d* 951, 8 *Cal. Proc.* (5th), *Extraordinary Writs*, § 130.)

Also, the clerk may not issue a writ of execution based on an affidavit of identity without court approval of the affidavit. (See *C.C.P. 699.510(c)(1)*, infra, §110.)

West's Key Number Digest, Execution 77

SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General.* *Govt.C. 70626* was amended in 2009. The fee for issuing the writ is \$ 25 until July 1, 2017. (*Govt.C. 70626(a)(1), (e).*)



108 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

B. Writ of Execution and Notice of Levy.

1. Issuance of Writ.

b. Successive Writs.

8 Within Cal. Proc. Enf Judgm § 108

[§ 108] Successive Writs.

The Enforcement of Judgments Law permits issuance of successive writs until the judgment is satisfied, although a new writ for a particular county may be issued only once every 180 days, unless the prior writ is first returned. (*C.C.P. 699.510(a)*.) During the 180-day period of enforcement (see *infra*, §112), multiple levies are permitted under the same writ. However, one writ may be retained by the levying officer to complete a sale or continue collection, while another may be issued in the same county to reach newly discovered property after the 180-day period for levy under the first writ has expired. (Legislative Com. Comment (Assembly) to *C.C.P. 699.510*.)

SUPPLEMENT: [This section is current through the latest supplement]



109 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

B. Writ of Execution and Notice of Levy.

1. Issuance of Writ.

c. Writ To Enforce Support Order.

8 Within Cal. Proc. Enf Judgm § 109

[§ 109] Writ To Enforce Support Order.

The clerk of the court must give priority to the application and issuance of writs of execution on child and spousal support orders. (*C.C.P. 699.510(a).*)

A judgment creditor seeking a writ of execution to enforce a judgment under the Family Code must satisfy the requirements of that Code as well as those of the Enforcement of Judgments Law. (*C.C.P. 699.510(b)*); on enforcement of support judgments by execution, see 11 *Summary* (10th), *Husband and Wife*, §262 et seq.; on enforcement of judgments under the Family Code generally, see *infra*, §403 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



110 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

B. Writ of Execution and Notice of Levy.

1. Issuance of Writ.

d. Writ Based on Affidavit of Identity.

8 Witkin Cal. Proc. Enf Judgm § 110

[§ 110] Writ Based on Affidavit of Identity.

The writ of execution must be issued in the name of the judgment debtor listed on the judgment, but it may also include the additional name or names by which the judgment debtor is known, as set forth in an affidavit of identity filed by the judgment creditor with the application for issuance of the writ. (*C.C.P. 699.510(c)(1)*); for definition of affidavit of identity, see *C.C.P. 680.135*, supra, §21; on contents of writ generally, see *infra*, §111.)

The court must approve the affidavit of identity before the clerk issues a writ of execution containing the additional name or names. If the court determines, without hearing or notice, that the affidavit states sufficient facts on which the judgment creditor has identified additional names of the judgment debtor, the court must authorize the issuance of the writ of execution with the additional name or names. (*C.C.P. 699.510(c)(1)*.)

SUPPLEMENT: [This section is current through the latest supplement]



111 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

B. Writ of Execution and Notice of Levy.

2. Contents of Writ.

8 *Witkin Cal. Proc. Enf Judgm § 111*

[§ 111] Contents of Writ.

The writ of execution must direct the levying officer to enforce the money judgment. (*C.C.P. 699.520*; see Rutter Group, 2 Enforcing Judgments and Debts §6:325 et seq.; C.E.B., 2 Debt Collection Practice 2d, §§9.4, 9.5.) It must include the following information:

- (1) The date of issuance of the writ. (*C.C.P. 699.520(a)*.)
- (2) The title of the court and the cause and number of the action. (*C.C.P. 699.520(b)*.)
- (3) The name and address of the judgment creditor and the name and last known address of the judgment debtor. (*C.C.P. 699.520(c)*.) The writ must be issued in the name of the judgment debtor listed on the judgment but may also include additional names set forth in an affidavit of identity. (*C.C.P. 699.510(c)(1)*, supra, §110.)
- (4) The dates of entry of the judgment and any renewals and the location of these entries in the court records. (*C.C.P. 699.520(d)*.)
- (5) The total amount of the initial or renewed judgment plus costs added under *C.C.P. 685.090* (see supra, §49), plus interest accrued on the judgment from the date of entry or renewal to the date of issuance of the writ, less any partial satisfaction, and less any amount no longer enforceable. (*C.C.P. 699.520(e)*.)
- (6) The amount required to satisfy the judgment on the date the writ is issued. (*C.C.P. 699.520(f)*.)
- (7) The amount of daily interest on the principal amount of the judgment from the date the writ is issued. (*C.C.P. 699.520(g)*.)
- (8) The name and mailing address of any person who has requested notice of sale under the judgment. (*C.C.P. 699.520(h)*.)
- (9) The sum of fees and costs added to the judgment under *Govt.C. 6103.5* (recovery of certain fees by clerk or by officer serving process; see 4 *Cal. Proc. (5th), Pleading, §27*) or *Govt.C. 68511.3* (recovery of fees and costs by court

where litigant proceeds in forma pauperis; 3 *Cal. Proc. (5th), Actions*, §§418, 425) that is in addition to the amount owing to the creditor on the judgment. (*C.C.P. 699.520(i)*.)

(10) Whether the writ includes additional names of the judgment debtor pursuant to an affidavit of identity. (*C.C.P. 699.520(j)*; on affidavit of identity, see *supra*, §110.)

The Judicial Council has approved a form for a writ of execution for optional use. (See Judicial Council Form No. EJ-130 [Writ of Execution]; Rutter Group, 2 *Enforcing Judgments and Debts*, Form 6:K; *Cal. Civil Practice*, 4 *Procedure*, §30:40; 9A *Am.Jur. P.P. Forms* (2005 ed.), *Executions* §30 et seq.)

West's Key Number Digest, Execution 78

SUPPLEMENT: [This section is current through the latest supplement]

(9) *Sum of fees and costs added to judgment: Govt.C. 68511.3* was repealed in 2008. *Govt.C. 68630* et seq. now govern the waiver of court fees and costs for litigants proceeding *in forma pauperis*.



112 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 B. Writ of Execution and Notice of Levy.
 3. Delivery and Execution of Writ.

8 *Witkin Cal. Proc. Enf Judgm § 112*

[§ 112] Delivery and Execution of Writ.

(1) *Former Law.* Under former law, the levying officer executed a writ of execution by levying on sufficient property of the judgment debtor, collecting or selling it, and paying out an amount sufficient to satisfy the judgment and accrued costs. If the debtor's property was more than sufficient, the debtor could direct what portion should be levied on. (Former C.C.P. 691.) Property was to be levied on in a specified order, with levy against personal property generally required before levy against real property. However, where the judgment was against particular property, that property was levied on first. (Former C.C.P. 682.) (See *Del Riccio v. Superior Court (1952) 115 C.A.2d 29, 31, 251 P.2d 678* [money taken by officer on valid execution then ceased to be that of debtor, who immediately became entitled to partial or full satisfaction judgment].)

(2) *Procedure Under Enforcement of Judgments Law.* After receiving a writ of execution and the judgment creditor's written instructions (see *supra*, §29), the levying officer must execute the writ "in the manner prescribed by law." (C.C.P. 699.530(a).) The mandatory order of levy of former law is not continued in the Enforcement of Judgments Law, but the judgment creditor may designate the order of levy by written instructions. (See Law Rev. Com. Comment (Assembly) to C.C.P. 699.530; 16 Cal. Law Rev. Com. Reports, p. 1057; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.100; C.E.B., 2 Debt Collection Practice 2d, §9.6.) (On service of writ of execution and effect of failure to serve on validity of execution lien, see *infra*, §117.)

(3) *Enforcement of Support Obligation.* The local child support agency may perform the duties of the levying officer in enforcing a support obligation under *Family C. 17000 et seq.* (see 11 *Summary (10th), Husband and Wife*, §308 et seq.) when a writ of execution has been issued. (C.C.P. 689.040(a), *infra*, §405.)

(4) *Limitation on Time for Levy.* The levying officer may levy on property under a writ for 180 days from the date the writ is issued. (C.C.P. 699.530(b); see Rutter Group, 2 *Enforcing Judgments and Debts* §6:379; C.E.B., 2 *Debt Collection Practice 2d*, §9.8.)

SUPPLEMENT: [This section is current through the latest supplement]



113 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 B. Writ of Execution and Notice of Levy.
 4. Notice of Levy.

8 Witkin Cal. Proc. Enf Judgm § 113

[§ 113] Notice of Levy.

A judgment debtor and certain third persons must be served with a notice of levy. (*C.C.P. 700.010* et seq., *infra*, §117 et seq.; see C.E.B., 2 Debt Collection Practice 2d, §§9.9, 9.10; Rutter Group, 2 Enforcing Judgments and Debts §6:413 et seq.; 9A Am.Jur. P.P. Forms (2005 ed.), Executions §67 et seq.) The notice must inform the person notified of all of the following:

- (1) The capacity in which the person is notified. (*C.C.P. 699.540(a)*.)
- (2) The identity of the property levied on. (*C.C.P. 699.540(b)*.)
- (3) The person's rights under the levy, including the right to claim an exemption under *C.C.P. 703.010* et seq. (see *infra*, §169 et seq.), and the right to make a third-party claim under *C.C.P. 720.010* et seq. (see *infra*, §364 et seq.). (*C.C.P. 699.540(c)*.)
- (4) The person's duties under the levy. (*C.C.P. 699.540(d)*.)
- (5) All names listed in the writ of execution pursuant to any affidavit of identity (see *supra*, §110). (*C.C.P. 699.540(e)*.)

The judgment creditor must supply the levying officer with written instructions sufficient to prepare the notice of levy. (Legislative Com. Comment (Assembly) to *C.C.P. 699.540*; on instructions to levying officer, see *supra*, §29.)

Service on the judgment debtor, or any other party, of a copy of the original notice of levy that has been served on a third party holding the property and of any affidavit of identity constitutes sufficient notice of levy to that person. (*C.C.P. 699.545*.)

The Judicial Council has approved a form for notice of levy for optional use. (See Judicial Council Form No. EJ-150 [Notice of Levy].)

SUPPLEMENT: [This section is current through the latest supplement]



114 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 B. Writ of Execution and Notice of Levy.
 5. Return of Writ.

8 *Witkin Cal. Proc. Enf Judgm* § 114

[§ 114] Return of Writ.

(1) *In General.* Except as otherwise provided, the levying officer must return the writ of execution to the court with a report of the officer's actions and an accounting of property collected and costs incurred, at the earliest of the following times:

(a) Two years from the date the writ is issued. (*C.C.P.* 699.560(a)(1).)

(b) Promptly after the officer's duties under the writ are performed. (*C.C.P.* 699.560(a)(2).)

(c) When the judgment creditor requests the return in writing. (*C.C.P.* 699.560(a)(3).)

(d) Promptly after the expiration of 180 days following the issuance of the writ, if no levy has taken place within that time. (*C.C.P.* 699.560(a)(4).)

(e) On expiration of the time for enforcement of the money judgment. (*C.C.P.* 699.560(a)(5).) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.102; Rutter Group, 2 Enforcing Judgments and Debts §6:381 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.41; for forms of return of execution, see 9A Am.Jur. P.P. Forms (2005 ed.), Executions §134 et seq.)

(2) *Execution Where Earnings Withholding Order Remains in Effect.* Where execution is levied under the Wage Garnishment Law (*C.C.P.* 706.010 et seq., *infra*, §241 et seq.), *C.C.P.* 699.560(a) governs return of the writ even if an earnings withholding order remains in effect. The levying officer must make a *supplemental return* on termination of the earnings withholding order as provided in *C.C.P.* 706.033 (see *infra*, §260). (*C.C.P.* 699.560(d).)

(3) *Execution on Personal Property in Decedent's Estate.* Where execution is levied on an interest in personal property in a decedent's estate, the writ must be returned within 1 year after the decree distributing the interest is final. (*C.C.P.* 699.560(b); *C.C.P.* 700.200(e), *infra*, §138.)

(4) *Execution on Employee Benefit Plan.* Where execution is levied under *Family C. 5103* on a judgment debtor's right to the payment of benefits from an employee benefit plan, the writ must be returned within 1 year after expiration

of the execution lien. (*C.C.P. 699.560(c); Family C. 5103(c), 11 Summary (10th), Husband and Wife, §264.*)

West's Key Number Digest, Execution 90

SUPPLEMENT: [This section is current through the latest supplement]



115 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

C. Property Subject to Execution.

8 Witkin Cal. Proc. Enf Judgm § 115

[§ 115] Property Subject to Execution.

Except as otherwise provided (see *infra*, §116), all property subject to enforcement of a money judgment under *C.C.P.* 695.010 et seq. (see *supra*, §55 et seq.) is subject to levy under a writ of execution to satisfy a money judgment. (*C.C.P.* 699.710.) This statute supersedes provisions of former law that purported to prescribe the types of property subject to execution. (Legislative Com. Comment (Assembly) to *C.C.P.* 699.710.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:317; C.E.B., 2 Debt Collection Practice 2d, §§9.13, 13.37.)

SUPPLEMENT: [This section is current through the latest supplement]



116 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 D. Property Not Subject to Execution.

8 *Witkin Cal. Proc. Enf Judgm § 116*

[§ 116] Property Not Subject to Execution.

(1) *Under Enforcement of Judgments Law.* Certain property is not subject to execution (*C.C.P. 699.720(a)*), but may be applied to the satisfaction of a money judgment by using other procedures (*C.C.P. 699.720(b)*). (See Legislative Com. Comment (Assembly) to *C.C.P. 699.720(b)*; Rutter Group, 2 *Enforcing Judgments and Debts* §6:318 et seq.; on property exempt from enforcement of money judgment by any means, see *supra*, §60, and *infra*, §§168 et seq.)

Specifically, the following property is not subject to execution:

(a) An alcoholic beverage license transferable under *B. & P.C. 24070* et seq. (*C.C.P. 699.720(a)(1)*.) (On enforcement against alcoholic beverage license by appointment of receiver, see *C.C.P. 708.630*, *infra*, §311.) (See *40 A.L.R.4th* 927 [liquor license as subject to execution or attachment].)

(b) The interest of a partner in a partnership or a member in a limited liability company where the partnership or limited liability company is not the judgment debtor. (*C.C.P. 699.720(a)(2)*.) (On enforcement against partnership interests by charging order, see *C.C.P. 708.310*, *infra*, §296.) However, a debtor partner's partnership interest may be subject to execution either where the creditor has previously obtained a charging order and the judgment remains unsatisfied (see *9 Summary* (10th), *Partnership*, §92) or where the partnership property has been transferred in fraud of creditors (see *Taylor v. S & M Lamp Co. (1961) 190 C.A.2d 700, 710, 12 C.R. 323*).

(c) A cause of action that is the subject of a pending action or proceeding. (*C.C.P. 699.720(a)(3)*.) (On enforcement against cause of action by lien, see *C.C.P. 708.410* et seq., *infra*, §297 et seq.)

(d) A judgment in favor of a judgment debtor prior to expiration of the time for appeal or, if an appeal is filed, prior to the final determination of the appeal. (*C.C.P. 699.720(a)(4)*.)

(e) A debt (other than earnings owed and unpaid) by a public entity. (*C.C.P. 699.720(a)(5)*.) (On enforcement against debt of public entity, see *C.C.P. 708.710* et seq., *infra*, §312 et seq.)

(f) The loan value of an unmaturing life insurance, endowment, or annuity policy. (*C.C.P. 699.720(a)(6)*.) (On enforcement against loan value of policy, see *C.C.P. 704.100*, *infra*, §199.)

(g) A franchise granted by a public entity. (*C.C.P. 699.720(a)(7)*.) (On enforcement against franchise, see *C.C.P. 708.920*, *infra*, §320.)

(h) The interest of a trust beneficiary. (*C.C.P. 699.720(a)(8)*.) (On enforcement against interest in trust, see *C.C.P. 709.010*, *infra*, §§321, 322.)

(i) A contingent remainder, executory interest, or other interest in property that is not vested. (*C.C.P. 699.720(a)(9)*.) (On enforcement against contingent interests, see *C.C.P. 709.020*, *infra*, §323.)

(j) Property in a guardianship or conservatorship estate. (*C.C.P. 699.720(a)(10)*.) (On enforcement against guardianship or conservatorship estate, see *C.C.P. 709.030*, *infra*, §324.)

(2) *Under Other State Statutes.* Particular statutes exempt certain property of charitable institutions from execution and forced sale. For example, property conveyed to an endowed hospital by a recorded grant is exempt (*Health & Saf.C. 32508*), and property conveyed to an educational institution by a recorded grant is exempt from execution and forced sale to satisfy a judgment against the grantor unless proceedings are begun within 2 years of the recording of the grant (*Educ.C. 21116*).

SUPPLEMENT: [This section is current through the latest supplement]



117 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law
V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm § 117*

[§ 117] In General.

(1) *Nature of Procedures.* Levy is the act by which property to be taken and sold is designated or set aside. (See *Lehnhardt v. Jennings* (1897) 119 C. 192, 194, 195, 51 P. 195 [new levy on real property was unnecessary where property was already subject to attachment or judgment lien]; *Magnaud v. Traeger* (1924) 66 C.A. 526, 530, 226 P. 990; *Grothe v. Cortlandt Corp.* (1992) 11 C.A.4th 1313, 1320, 15 C.R.2d 38, citing the text [distinguishing between levy and sale].)

The Enforcement of Judgments Law includes detailed provisions governing the manner of levy for various types of property (see *infra*, §118 et seq.), and generally employs the terminology of the Uniform Commercial Code (see *supra*, §21). However, the actual procedures are largely the same as levy procedures used for attachment. (See 16 Cal. Law Rev. Com. Reports, pp. 1058, 1059; Rutter Group, 2 Enforcing Judgments and Debts §6:394 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.21 et seq.; 14 *Pacific L. J.* 409.)

(2) *Four Methods of Levy.* The Enforcement of Judgments Law provides four methods of levy applicable to particular kinds of property:

(a) Taking custody and serving a writ and notice of levy--used where tangible personal property to be levied on is in the judgment debtor's possession. (See *infra*, §124.)

(b) Serving a writ and notice of levy without taking custody (garnishment)--used for levy on intangible personal property, tangible personal property under the control of a third person, or property under estate administration. (See *infra*, §§124, 135, 138.)

(c) Filing or recording a writ and notice of levy--used to levy on real property, growing crops, standing timber, minerals to be extracted, or a final money judgment. (See *infra*, §§119, 121, 122, 137.)

(d) Delivering a writ and instructions to levy to the levying officer ("paper levy")--used to levy on property already levied on by levying officer. (See *infra*, §125.)

(3) *Service of Papers.* At the time of levy or "promptly thereafter," the levying officer must serve the judgment

debtor with a copy of the following:

(a) The writ of execution (see supra, §112). (*C.C.P. 700.010(a)(1).*)

(b) The notice of levy (see supra, §113). (*C.C.P. 700.010(a)(2).*)

(c) If the judgment debtor is a natural person, the form listing exemptions prepared by the Judicial Council pursuant to *C.C.P. 681.030* (see supra, §25) and the list of cost-of-living adjusted exemption amounts published pursuant to *C.C.P. 703.150* (see infra, §179). (*C.C.P. 700.010(a)(3).*)

(d) Any affidavit of identity for names of the debtor listed on the writ of execution (see supra, §110). (*C.C.P. 700.010(a)(4).*)

Service must be made personally or by mail. (*C.C.P. 700.010(b).*)

(4) *Effect of Failure To Serve.* Failure to serve the writ of execution, notice of levy, or list of exemptions does not affect the validity of the execution lien created by the levy. (*C.C.P. 699.550*; see Law Rev. Com. Comment to *C.C.P. 699.550*.) (On execution liens, see supra, §92 et seq.)

(5) *No Fee for Service.* If property is levied on and a copy of the writ of execution and a notice of levy are required by statute to be served, personally or by mail, no fee may be charged for that service. (*Govt.C. 26721.*)

West's Key Number Digest, Execution 127 et seq.

SUPPLEMENT: [This section is current through the latest supplement]



118 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

2. Real Property.

a. Property Subject to Levy.

8 Witkin Cal. Proc. Enf Judgm § 118

[§ 118] Property Subject to Levy.

Any legal or equitable interest in real property, including a leasehold interest, that is subject to the enforcement of a money judgment is subject to execution unless another exclusive method of enforcement is specified. (Legislative Com. Comment (Assembly) to *C.C.P. 700.015*; for definition of real property, see *C.C.P. 680.320*, supra, §21; on property subject to enforcement of money judgment, see *C.C.P. 695.010*, supra, §55 et seq.; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.105; Rutter Group, 2 Enforcing Judgments and Debts §6:458 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.37 et seq.; on property subject to execution, see *C.C.P. 699.710*, supra, §115.)

West's Key Number Digest, Execution 134

SUPPLEMENT: [This section is current through the latest supplement]



119 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

2. Real Property.

b. Recording With County Recorder.

8 Witkin Cal. Proc. Enf Judgm § 119

[§ 119] Recording With County Recorder.

To levy on real property, the levying officer must record the writ of execution and a notice of levy with the recorder of the county where the real property is located. The notice must describe the property and state that the judgment debtor's interest in the property has been levied on. If the debtor's interest stands in the county records in the name of a person other than the judgment debtor, the notice must identify the third person and the recorder must index the writ and notice in the names of both the judgment debtor and the third person. (*C.C.P. 700.015(a)*; see *In re Marriage of Schenck* (1991) 228 C.A.3d 1474, 1479, 279 C.R. 651, citing the text; 14 *Pacific L. J.* 409.)

SUPPLEMENT: [This section is current through the latest supplement]



120 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

2. Real Property.

c. Service of Writ and Notice.

8 *Witkin Cal. Proc. Enf Judgm § 120*

[§ 120] Service of Writ and Notice.

(1) *Service on Third Person.* At the time of levy or "promptly thereafter," the levying officer must serve a copy of the writ and a notice of levy, personally or by mail, on any third person in whose name the judgment debtor's interest in the real property is recorded in the county records. If service is by mail, it must be sent to the address of the third person in the records of the county tax assessor or, if no address is shown, to the address used by the county recorder for the return of the instrument creating the third person's interest in the property. (*C.C.P. 700.015(b)*.)

(2) *Service on Occupant.* At the time of levy or "promptly thereafter," the levying officer must serve a copy of the writ and a notice of levy on an occupant of the real property. Service on the occupant must be made "by leaving the copy of the writ and a notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household." If an occupant cannot be served, the levying officer must post the copy of the writ and the notice of levy in a conspicuous place on the property. Only one service or posting is required for a continuous, unbroken tract of property, even though the tract is divided into distinct lots, parcels, or governmental subdivisions. (*C.C.P. 700.015(c)*; see *In re Marriage of Schenck (1991) 228 C.A.3d 1474, 1479, 279 C.R. 651*, citing the text.)

SUPPLEMENT: [This section is current through the latest supplement]



121 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

3. Crops, Timber, and Minerals.

a. In General.

8 Witkin Cal. Proc. Enf Judgm § 121

[§ 121] In General.

The manner of levy on growing crops, timber to be cut, or minerals to be extracted or resulting accounts receivable, by recordation of the writ of execution and a notice of levy, is set forth in the Enforcement of Judgments Law. (See *C.C.P. 700.020(a)*, *infra*, §122; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.106; Rutter Group, 2 Enforcing Judgments and Debts §6:471 et seq.)

Once the crops are harvested, the timber is cut, or the minerals are extracted, the property may be levied on under the procedure provided for tangible personal property (see *C.C.P. 700.030* et seq., *infra*, §124 et seq.). The levying officer or a receiver may cultivate, care for, harvest, pack, and sell the property levied on, if necessary, pursuant to a court order for preservation of the property under *C.C.P. 699.070* (see *supra*, §102). (Legislative Com. Comment (Assembly) to *C.C.P. 700.020*.)

SUPPLEMENT: [This section is current through the latest supplement]



122 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

3. Crops, Timber, and Minerals.

b. Recording With County Recorder.

8 Witkin Cal. Proc. Enf Judgm § 122

[§ 122] Recording With County Recorder.

To levy on growing crops, timber to be cut, or minerals (including oil and gas) to be extracted or accounts receivable resulting from the sale of minerals at the wellhead or minehead, the levying officer must record a copy of the writ of execution and a notice of levy with the county recorder for the county in which the property is located. The notice of levy must describe the real property where the crops, timber, or minerals are located, and must describe the property levied on and state that the judgment debtor's interest in that property has been levied on. If the judgment debtor's interest in the crops, timber, or minerals is recorded in the name of a person other than the judgment debtor, or if the property where the crops, timber, or minerals are located is recorded in the name of a person other than the judgment debtor, the notice must identify the third person, and the recorder must index the writ and notice in the names of both the judgment debtor and the third person. (*C.C.P. 700.020(a).*)

SUPPLEMENT: [This section is current through the latest supplement]



123 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

3. Crops, Timber, and Minerals.

c. Service of Writ and Notice.

8 *Witkin Cal. Proc. Enf Judgm § 123*

[§ 123] Service of Writ and Notice.

(1) *Service on Third Person.* At the time of levy or "promptly thereafter," the levying officer must serve a copy of the writ and a notice of levy, personally or by mail, on any third person in whose name the judgment debtor's interest in the crops, timber, or minerals is recorded in the county records, and on any third person in whose name the real property is recorded in the county records. If service is by mail, it must be sent to the address of the third person shown on the records of the county assessor or, if no address is shown, to the address used by the county recorder for the return of the instrument creating the third person's interest in the property. (*C.C.P. 700.020(b)(1).*)

(2) *Service on Secured Party.* At the time of levy or "promptly thereafter," the levying officer must serve a copy of the writ and a notice of levy, personally or by mail, on any secured party who has filed a financing statement with respect to the crops, timber, or minerals (or accounts receivable), prior to the date of the levy. (*C.C.P. 700.020(b)(2).*) This notice allows the secured party to obtain protection in the event the crops, timber, or minerals are sold at execution or the levying officer or a receiver is ordered to cultivate, harvest, or sell the property because of its perishable nature. (16 Cal. Law Rev. Com. Reports, p. 1066.)

(3) *Service on Occupant.* At the time of levy or "promptly thereafter," the levying officer must serve a copy of the writ and a notice of levy on an occupant of the real property where the crops, timber, or minerals are located. Service on the occupant must be made "by leaving the copy of the writ and a notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household." If an occupant or suitable person cannot be served, the levying officer must post the copy of the writ and the notice of levy in a conspicuous place on the property, although this requirement is inapplicable where the levy is made on minerals or the like (other than oil and gas), and no dwelling is located on the property. Only one service or posting is required for a continuous, unbroken tract of property, even though the tract is divided into distinct lots, parcels, or government subdivisions. (*C.C.P. 700.020(c).*)

SUPPLEMENT: [This section is current through the latest supplement]



124 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

4. Tangible Personal Property.

a. Property in Possession of Debtor or Third Person.

8 *Witkin Cal. Proc. Enf Judgm § 124*

[§ 124] Property in Possession of Debtor or Third Person.

(1) *Property in Possession of Judgment Debtor.* Unless another method of levy is provided by *C.C.P. 700.010* et seq. (see *infra*, §125 et seq.), the levying officer must levy on tangible personal property in the possession or under the control of the judgment debtor by taking the property into custody. (*C.C.P. 700.030.*) (For manner of taking custody, see *C.C.P. 687.030*, *supra*, §32.) Other methods of levy are provided for tangible personal property of a going business (see *C.C.P. 700.070*, *infra*, §126) and for personal property used as a dwelling (see *C.C.P. 700.080*, *infra*, §127). (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.107; Rutter Group, 2 Enforcing Judgments and Debts §6:472 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.21.)

(2) *Property in Possession of Third Person.* Unless another method of levy is provided by *C.C.P. 700.010* et seq., the levying officer must levy on tangible personal property in the possession or under the control of a third person by personally serving a copy of the writ of execution and a notice of levy on the third person. (*C.C.P. 700.040(a).*) Other methods of levy are provided for goods in the possession of a bailee (see *infra*, this section), property in the custody of a levying officer (see *C.C.P. 700.050*, *infra*, §125), and property in a safe deposit box (see *C.C.P. 700.150*, *700.160*, *infra*, §§133, 134). (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.108; Rutter Group, 2 Enforcing Judgments and Debts §6:500 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.21.)

(3) *Goods in Possession of Bailee.* For purposes of levy, "bailee" has the meaning specified by U.C.C. 7102 (see 13 *Summary* (10th), *Personal Property*, §167). (*C.C.P. 700.040(b)*, *700.060(a).*) (See 16 *Cal. Law Rev. Com. Reports*, p. 1067; 14 *Pacific L. J.* 419.) Levy must proceed as follows:

(a) *Goods subject to negotiable document of title.* Goods in the possession of a bailee who has issued a negotiable document of title for the goods may not be levied on, but the negotiable document of title is subject to levy under *C.C.P. 700.120* (see *infra*, §131). (*C.C.P. 700.040(b).*)

(b) *Other goods.* To levy on goods in the possession of a bailee other than one who has issued a negotiable document of title on the goods, the levying officer must personally serve a copy of the writ of execution and a notice of levy on the bailee. If these goods are subject to a security interest, and the judgment creditor so instructs, the levying

officer must serve a copy of the writ of execution and a notice of levy on the secured party, personally or by mail. (*C.C.P. 700.040(b), 700.060.*) (On rights and duties of secured party, see *C.C.P. 701.040*, infra, § 141.) A levy on goods subject to a security interest under *C.C.P. 700.060* reaches both the judgment debtor's interest in any surplus remaining after satisfaction of the interest of the secured party and the judgment debtor's right to redeem the property from the security interest. (Legislative Com. Comment (Assembly) to *C.C.P. 700.060.*)

SUPPLEMENT: [This section is current through the latest supplement]



125 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

4. Tangible Personal Property.

b. Property in Custody of Levying Officer.

8 *Witkin Cal. Proc. Enf Judgm § 125*

[§ 125] Property in Custody of Levying Officer.

(1) *Function of Procedure.* The Enforcement of Judgments Law establishes a procedure for levying on personal property already in the custody of a levying officer ("paper levy"). It applies where the property is in custody under a previous attachment or execution. (See *C.C.P. 700.050*; Legislative Com. Comment (Assembly) to *C.C.P. 700.050*; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.110; Rutter Group, 2 *Enforcing Judgments and Debts* §6:519 et seq.)

(2) *Delivery or Service of Writs.* If the writ of execution is directed to the levying officer having custody of the property, the judgment creditor must deliver the writ to the levying officer. (*C.C.P. 700.050(a)(1)*.) If the writ is directed to another levying officer, that officer must serve a copy of the writ and a notice of levy on the officer having custody, personally or by mail. (*C.C.P. 700.050(a)(2)*.)

(3) *Compliance With Writs in Order Received.* The levying officer having custody of the property must comply with the writs in the order received, and is not subject to *C.C.P. 701.010* et seq., governing the duties and liabilities of third persons after levy (see *infra*, §139 et seq.). (*C.C.P. 700.050(b)*.) "This procedure enables a second judgment creditor to establish a lien on the surplus proceeds that might remain after a sale of the property and to prevent the release of the property should the lien of the first judgment creditor cease, such as pursuant to satisfaction of the first judgment or otherwise at the direction of the first judgment creditor." (16 Cal. Law Rev. Com. Reports, p. 1066.)

West's Key Number Digest, Execution 127

SUPPLEMENT: [This section is current through the latest supplement]



126 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

4. Tangible Personal Property.

c. Property of Going Business.

8 *Witkin Cal. Proc. Enf Judgm § 126*

[§ 126] Property of Going Business.

(1) *Alternative Procedures.* To levy on tangible personal property of a going business in the possession or control of the judgment debtor, the levying officer must take the property into custody under *C.C.P. 700.030* (see *supra*, §124) unless the judgment creditor instructs the levying officer to levy on the property by means of installing a keeper. (*C.C.P. 700.070*; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.111; Rutter Group, 2 Enforcing Judgments and Debts §6:478 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.22.) (For definition of "tangible personal property," see *C.C.P. 680.370*, *supra*, §21; on procedure for acquiring judgment lien on property of going business, see *C.C.P. 697.510* et seq., *supra*, §83 et seq.)

(2) *Placement of Keeper in Charge of Business.* If so instructed, the levying officer must place a keeper in charge of the business for the period requested by the judgment creditor. The business may continue to operate provided that all sales are final and for cash or a cash equivalent (including checks). The levying officer is not liable for accepting payment in the form of a cash equivalent and, unless otherwise directed by the judgment creditor, must take custody of the proceeds of sales. (*C.C.P. 700.070(a)*; on keeper's fee, see *Govt.C. 26726*.)

(3) *Duration of Placement of Keeper.* Generally, the levying officer must take the property into exclusive custody at the end of 10 days from the time the keeper is placed in charge of the business, or at an earlier time at which the creditor requests that the officer take exclusive custody or the debtor objects to placement of a keeper. (*C.C.P. 700.070(b)*.) Where, however, a keeper is placed in a business for the purpose of taking into custody tangible personal property consisting solely of money or equivalent proceeds of sales, the levying officer must take the property into exclusive custody at the end of each daily keeper period. (*C.C.P. 700.070(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]



127 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

4. Tangible Personal Property.

d. Property Used as Dwelling.

8 *Witkin Cal. Proc. Enf Judgm § 127*

[§ 127] Property Used as Dwelling.

(1) *Service on Occupant.* To levy on personal property used as a dwelling, the levying officer must serve a copy of the writ of execution and a notice of levy on an occupant of the property by leaving a copy of the writ and the notice with the occupant personally or, "in the occupant's absence, with a person of suitable age and discretion found at the property when service is attempted who is a member of the occupant's family or household." If service on an occupant cannot be accomplished, the levying officer must make the levy by posting the copy of the writ and notice in a conspicuous place on the property. (*C.C.P. 700.080(a)*; see *C.C.P. 700.080(d)* [personal property used as a dwelling includes mobilehome, regardless whether occupied at time of levy]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:515 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.24.)

(2) *Placement of Keeper.* If the judgment creditor so instructs, the levying officer must place a keeper in charge of the property for a period requested by the creditor. (*C.C.P. 700.080(b)*.)

(3) *Removal of Occupants.* If the occupants do not voluntarily vacate the property, the judgment creditor may apply on noticed motion for an order directing the levying officer to remove them. Notice must be served, personally or by mail, (a) on the occupant, (b) on the judgment debtor, if the debtor is not the occupant, (c) on any legal owner served under *C.C.P. 700.090* (see *infra*, §128), and (d) on any junior lienholder served under *C.C.P. 700.090*. At the hearing, the court must determine the occupant's right to possession and make an appropriate order. (*C.C.P. 700.080(c)*.) (See 16 *Cal. Law Rev. Com. Reports*, p. 1068.)

SUPPLEMENT: [This section is current through the latest supplement]



128 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

4. Tangible Personal Property.

e. Motor Vehicles, Vessels, Manufactured Homes, Mobilehomes, and Coaches.

8 *Witkin Cal. Proc. Enf Judgm § 128*

[§ 128] Motor Vehicles, Vessels, Manufactured Homes, Mobilehomes, and Coaches.

(1) *In General.* Where levy is made on a vehicle, vessel, mobilehome, or commercial coach for which a certificate of ownership or record of title is in effect, the levying officer must determine from either the Department of Motor Vehicles (vehicle or vessel) or the Department of Housing and Community Development (manufactured home, mobilehome, or commercial coach) the name and address of the legal owner and junior lienholders on the property. The legal owner and junior lienholders who are neither the judgment debtor nor in possession of the property must be served, personally or by mail, with a copy of the writ of execution and a notice of levy at the time of levy or "promptly thereafter." (*C.C.P. 700.090*; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:513; C.E.B., 2 *Debt Collection Practice* 2d, §9.23.)

(2) *Distinction: Mobilehome Park Owner's Lien Is Not Subject to Execution.* *Health & Saf.C. 18080.9* provides a special procedure for the owner of a mobilehome park to perfect a lien against a manufactured home or mobilehome in order to enforce a final money judgment for unpaid rent against the registered owner of the home. This lien is not subject to execution. (*Health & Saf.C. 18080.9(d).*)

West's Key Number Digest, Execution 130

SUPPLEMENT: [This section is current through the latest supplement]



129 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

5. Chattel Paper.

8 *Within Cal. Proc. Enf Judgm § 129*

[§ 129] Chattel Paper.

(1) *Method of Levy.* If chattel paper is in the judgment debtor's possession, the levying officer must take it into custody. If chattel paper is in a third person's possession, levy is accomplished by personally serving a copy of the writ of execution and a notice of levy on that person. (*C.C.P. 700.100(a)*); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.114; Rutter Group, 2 Enforcing Judgments and Debts §6:523 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.25; on duties and liabilities of garnishee, see *C.C.P. 701.010* et seq., infra, §§139, 140; on procedure for acquiring judgment lien on chattel paper, see *C.C.P. 697.510* et seq., supra, §83 et seq.)

(2) *Service on Account Debtor.* The levying officer must serve a copy of the writ of execution and a notice of levy on an account debtor, personally or by mail, (a) if instructed to do so by the judgment creditor, and (b) if the levying officer obtains custody of the chattel paper or, under a security agreement, the judgment debtor has the ability to collect or compromise the chattel paper or accept the return of goods or make repossessions. (*C.C.P. 700.100(b)*.) The interest of a secured party in the chattel paper is protected by a determination of priority under the third-party claim procedure (see *C.C.P. 720.010* et seq., infra, §364 et seq.). (See Legislative Com. Comment (Assembly) to *C.C.P. 700.100*.)

(3) *Lien on Goods.* The levy creates a lien on all of the judgment debtor's rights in the property subject to the chattel paper. (*C.C.P. 700.100(c)*.) "This enables a creditor who levies on chattel paper to have priority over another creditor who later levies on the property." (Legislative Com. Comment (Assembly) to *C.C.P. 700.100*.)

SUPPLEMENT: [This section is current through the latest supplement]



130 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

6. Instruments.

8 *Within Cal. Proc. Enf Judgm § 130*

[§ 130] Instruments.

(1) *Method of Levy.* An instrument, whether negotiable or nonnegotiable, is levied on by personally serving a copy of the writ of execution and a notice of levy on a third person possessing the instrument or by taking custody of the instrument from the judgment debtor. (*C.C.P. 700.110(a)*; see 16 Cal. Law Rev. Com. Reports, p. 1071; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.115; Rutter Group, 2 Enforcing Judgments and Debts §6:524 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.25; for definition of "instrument," see *C.C.P. 680.220*, supra, §21; on duty of levying officer to indorse and present instrument for payment, see *C.C.P. 687.020*, supra, §31.)

(2) *Notice to Obligor.* If the levying officer obtains custody of the instrument and the judgment creditor so instructs, the officer must serve a copy of the writ of execution and a notice of levy, personally or by mail, on the obligor. (*C.C.P. 700.110(b)*.) The restriction of notice to situations in which the levying officer has custody is intended to prevent interference with the rights of secured parties and holders in due course. (Legislative Com. Comment (Assembly) to *C.C.P. 700.110*.) (On duties and liabilities of obligor, see *C.C.P. 701.060*, infra, §143.)

SUPPLEMENT: [This section is current through the latest supplement]



131 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

7. Documents of Title and Securities.

8 *Within Cal. Proc. Enf Judgm § 131*

[§ 131] Documents of Title and Securities.

(1) *Negotiable Documents of Title.* A negotiable document of title is levied on by serving a copy of the writ of execution and a notice of levy personally on a third person possessing the document or by taking custody of the document in the possession of the judgment debtor. (*C.C.P. 700.120*; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.116; Rutter Group, 2 Enforcing Judgments and Debts §6:525 et seq.; for definition of "document of title," see *C.C.P. 680.180*, supra, §21; on procedure for acquiring judgment lien on negotiable document of title, see *C.C.P. 697.510* et seq., supra, §83 et seq.) Goods in the possession of a third person that are covered by a negotiable document of title are not subject to levy. (*C.C.P. 700.040(b)*, supra, §124.)

(2) *Securities.* To levy on a security, the levying officer must comply with U.C.C. 8112, governing the rights of creditors (see 9 *Summary* (10th), *Corporations*, §141). The legal process referred to in U.C.C. 8112 means that process "required by the state in which the chief executive office of the issuer of the security is located and, where that state is California, means personal service by the levying officer of a copy of the writ of execution and notice of levy on the person who is to be served." (*C.C.P. 700.130*; see Rutter Group, 2 Enforcing Judgments and Debts §6:534 et seq.; for definition of "security," see *C.C.P. 680.345*, supra, §21.)

SUPPLEMENT: [This section is current through the latest supplement]



132 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

8. Deposit Accounts.

8 *Witkin Cal. Proc. Enf Judgm* § 132

[§ 132] Deposit Accounts.

(1) *Service on Financial Institution.* To levy on a deposit account, the levying officer must personally serve a copy of the writ of execution and the notice of levy (a) on the financial institution maintaining the account, or (b) to a centralized location within the county designated by the financial institution. If the writ is received at the designated central location, it applies to all deposit accounts held by the financial institution regardless of the location of that property. (*C.C.P. 700.140(a)*) [financial institution is not required to designate centralized location for service]; see *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §6.117; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:545 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §9.26; for definitions of "deposit account" and "financial institution," see *C.C.P. 680.170* and *680.200*, respectively, *supra*, §21; on levy on deposit by local child support agency by personal service at central location designated by financial institution, see *C.C.P. 689.040(b)*, *infra*, §405.)

The authority to levy under these provisions is subject to the restrictions imposed by *C.C.P. 700.160*, governing levy on deposit accounts not exclusively in the name of the judgment debtor (see *infra*, §134). (*C.C.P. 700.140(a)*.)

(2) *Service on Third Person.* At the time of levy or "promptly thereafter," the levying officer must serve, personally or by mail, a copy of the writ of execution and a notice of levy on any third person in whose name the deposit account stands. (*C.C.P. 700.140(b)*.) (On service of court order authorizing levy on third person, see *C.C.P. 700.160(a)*, *infra*, §134.) For this purpose, neither of the following is a third person in whose name the deposit account stands:

(a) A beneficiary of a Totten trust. (*C.C.P. 700.140(f)(1)*.)

(b) A designated payee in a pay-on-death account pursuant to *Fin.C. 18318.5* (multiple-party account investment or thrift certificate), *Prob.C. 5140* (pay-on-death ("p.o.d.") account), or a similar provision. (*C.C.P. 700.140(f)(2)*); on pay-on-death accounts, see *Prob.C. 5100* et seq., 4 *Summary* (10th), *Negotiable Instruments*, §77 et seq.)

(3) *Restriction on Payment by Financial Institution.* During the time the execution lien is in effect, the financial institution may not honor a check or other payment order or pay a withdrawal that would reduce the account to less than the amount levied on. Items in collection may not be considered in determining the amount in the account. (*C.C.P. 700.140(c)*.) (On execution liens, see *supra*, §92 et seq.)

(4) *Limitation on Liability of Financial Institution.* Subject to the requirements of *C.C.P. 700.140(c)*, the financial institution is not liable for any of the following while the lien is in effect:

- (a) Performing the duties of a garnishee. (*C.C.P. 700.140(d)(1)*.) (On duties of garnishee, see *infra*, §§139, 140.)
- (b) Refusing to honor a check or other payment order. (*C.C.P. 700.140(d)(2)*.)
- (c) Refusing to pay a withdrawal. (*C.C.P. 700.140(d)(3)*.)

(5) *Extent and Termination of Execution Lien.* An execution lien on a deposit account reaches only amounts in the account at the time of service on the financial institution, including any item in the process of being collected, unless the item is returned unpaid. (*C.C.P. 700.140(a)*.) The lien terminates when the amount levied on is paid to the levying officer. (*C.C.P. 700.140(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Service on Financial Institution.* In 2009, *C.C.P. 700.140(a)* was amended to allow service to a centralized location within the state, rather than within the county, designated by the financial institution.



133 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

9. Safe Deposit Boxes.

8 *Witkin Cal. Proc. Enf Judgm* § 133

[§ 133] Safe Deposit Boxes.

(1) *Service on Financial Institution.* To levy on property in a safe deposit box, the levying officer must personally serve a copy of the writ of execution and a notice of levy on the financial institution where the box is maintained. This authority to levy is subject to the restrictions imposed by *C.C.P. 700.160*, governing levy on safe deposit boxes not exclusively in the name of the judgment debtor (see *infra*, §134). (*C.C.P. 700.150(a)*); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.118; Rutter Group, 2 Enforcing Judgments and Debts §6:545 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.26; for definition of "financial institution," see *C.C.P. 680.200*, *supra*, §21.)

(2) *Service on Third Person.* At the time of levy or "promptly thereafter," the levying officer must serve, personally or by mail, a copy of the writ of execution and a notice of levy on any third person in whose name the safe deposit box stands. (*C.C.P. 700.150(b)*.) (On service of court order authorizing levy on third person, see *C.C.P. 700.160(a)*, *infra*, §134.)

(3) *Removal of Contents.* During the time the execution lien is in effect, the financial institution may not permit the contents of the safe deposit box to be removed except as directed by the levying officer. (*C.C.P. 700.150(c)*.) The levying officer may give the holder of the box an opportunity to open it to permit removal of the property levied on, and the financial institution may refuse to permit forcible opening unless the judgment creditor pays in advance the cost of forcible opening and of repairing any damage. (*C.C.P. 700.150(e)*.) These costs may be recovered from the judgment debtor. (Legislative Com. Comment (Assembly) to *C.C.P. 700.150*; on right to costs of enforcing judgment, see *C.C.P. 685.040*, *supra*, §46.)

(4) *Limitation on Liability of Financial Institution.* During the time the execution lien is in effect, the financial institution is not liable for any of the following:

- (a) Performing the duties of a garnishee. (*C.C.P. 700.150(f)(1)*.) (On duties of garnishee, see *infra*, §§139, 140.)
- (b) Refusing to permit access to the safe deposit box by the person in whose name it stands. (*C.C.P. 700.150(f)(2)*.)
- (c) Allowing removal of any of the contents pursuant to the levy. (*C.C.P. 700.150(f)(3)*.)

(5) *Fees for Levy.* On receipt of a garnishee's memorandum from a financial institution under *C.C.P. 701.030* (see *infra*, §140), indicating that a safe deposit box is under levy, the levying officer must promptly mail a written notice to the judgment creditor demanding an additional fee of \$ 125 for opening the box, plus costs, within 3 business days plus the extended time period specified in *C.C.P. 1013(a)* for service by mail by the levying officer (see 6 *Cal. Proc.* (5th), *Proceedings Without Trial*, §30). (*C.C.P. 700.150(d)*; *Govt.C. 26723.*)

West's Key Number Digest, Execution 130

SUPPLEMENT: [This section is current through the latest supplement]



134 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

10. Deposit Accounts and Boxes in Third Person's Name.

8 *Within Cal. Proc. Enf Judgm § 134*

[§ 134] Deposit Accounts and Boxes in Third Person's Name.

(1) *Court Order Is Generally Required.* Subject to specified exceptions (see *infra*, this section), a deposit account or safe deposit box in the name of a third person, either alone or with others, is subject to levy only by court order. (*C.C.P. 700.160(a)*; see *C.E.B.*, 2 Debt Collection Practice 2d, §9.26; *16 Pacific L. J.* 523; Rutter Group, 2 Enforcing Judgments and Debts §6:547 et seq.) "This requirement is designed to protect the rights of persons who are not parties to the action and who may not have any relationship to the judgment debtor." (Legislative Committee Comment (Assembly) to *C.C.P. 700.160*.) The Legislative Committee Comment suggests that the court order may be obtained in a number of ways, depending on the facts. These include, for example, examination of the third person pursuant to *C.C.P. 708.120, 708.180* (see *infra*, §279 et seq.), a creditor's suit pursuant to *C.C.P. 708.210* et seq. (see *infra*, §291 et seq.), and an action under the Uniform Fraudulent Transfer Act (see *C.C. 3439* et seq.; *infra*, §488 et seq.).

(2) *Exceptions.* A court order is not required for levy on a deposit account or safe deposit box held in the name of any of the following:

(a) The judgment debtor, whether alone or with others. (*C.C.P. 700.160(b)(1)*.)

(b) The judgment debtor's spouse, whether alone or with others. An affidavit showing that the account holder is the judgment debtor's spouse must be delivered to the financial institution at the time of levy. (*C.C.P. 700.160(b)(2)*); see *Grover v. Bay View Bank (2001) 87 C.A.4th 452, 456, 104 C.R.2d 677* [valid levy on account in name of judgment debtor's spouse requires either court order authorizing levy or affidavit showing marital relationship; in absence of either, it is bank's duty to honor spouse's withdrawals.]

(c) A fictitious business name, if an unexpired fictitious business name statement filed under *B. & P.C. 17900* et seq. lists as the persons doing business either the judgment debtor or the judgment debtor's spouse, or both the debtor and the debtor's spouse, but not any other person. A certified copy of the fictitious business name statement must be delivered to the financial institution at the time of levy; and, if a person other than the debtor is listed in the statement, an accompanying affidavit must show that the other person is the debtor's spouse. (*C.C.P. 700.160(b)(3)*.)

(d) The additional name of a judgment debtor listed on the writ of execution pursuant to any affidavit of identity,

whether alone or together with third persons. (*C.C.P. 700.160(b)(4)*); on affidavit of identity, see *supra*, §110.)

(3) *Service on Third Person.* At the time of levy or "promptly thereafter," the levying officer must serve, personally or by mail, a copy of the writ of execution and a notice of levy on the third person. (*C.C.P. 700.140(b)*, *supra*, §132; *C.C.P. 700.150(b)*, *supra*, §133.) A copy of the court order must be served at the same time. (*C.C.P. 700.160(a)*.)

(4) *Waiting Period Before Payment.* In the case of levy on a deposit account in the name of a third person, whether alone or with the judgment debtor, the financial institution may not pay the amount levied on until the levying officer notifies it to do so, and the officer may not require the financial institution to pay the amount until 15 days after service of notice of levy on the third person. (*C.C.P. 700.160(c)*.) The holding period is intended to provide the third person with an opportunity to file a third-party claim (see *C.C.P. 720.010* et seq., *infra*, §364 et seq.) before the amount is paid to the levying officer. (Legislative Com. Comment (Assembly) to *C.C.P. 700.160*.)

SUPPLEMENT: [This section is current through the latest supplement]



135 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

11. Accounts Receivable and General Intangibles.

8 *Witkin Cal. Proc. Enf Judgm* § 135

[§ 135] Accounts Receivable and General Intangibles.

(1) *Service on Account Debtor.* Unless another method of levy is provided by *C.C.P. 700.010* et seq., the levying officer must levy on accounts receivable or general intangibles by personally serving a copy of the writ of execution and a notice of levy on the account debtor. (*C.C.P. 700.170(a)*); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.119; Rutter Group, 2 Enforcing Judgments and Debts §6:561 et seq.; for definitions of "account debtor," "account receivable," and "general intangibles," see *C.C.P. 680.120*, *680.130*, and *680.210*, respectively, supra, §21; on procedure for obtaining judgment lien on accounts receivable and general intangibles, see *C.C.P. 697.510* et seq., supra, §83 et seq.) Certain accounts receivable and general intangibles are subject to levy under different rules. (See, e.g., *C.C.P. 700.140*, supra, §132 [deposit accounts]; *C.C.P. 700.020*, supra, §§121, 122 [receivables from sale of minerals, oil, and gas].)

(2) *Service on Third Person Indebted to Judgment Debtor.* If levy on a receivable or intangible is made under *C.C.P. 700.170(a)*, if payments are made to a person other than the judgment debtor, and if the judgment creditor so instructs, the levying officer must personally serve a copy of the writ of execution and a notice of levy on that person. The service is a levy on any amounts owed to the judgment debtor by the third person. (*C.C.P. 700.170(b)*.) Service on the third person "protects the rights of the judgment creditor, for example, to any surplus payments remaining after satisfaction of a security interest or to payments in the hands of a collecting agent." (Legislative Com. Comment (Assembly) to *C.C.P. 700.170*.) (See 16 Cal. Law Rev. Com. Reports, p. 1073.)

(3) *Spousal Support as General Intangible.* Spousal support withheld by a supporting spouse's employer under a wage assignment order is a general intangible owned by the supported spouse. (*Vineyard v. Sisson* (1990) 223 C.A.3d 931, 936, 272 C.R. 914.)

SUPPLEMENT: [This section is current through the latest supplement]



136 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

12. Property Subject of Pending Action.

8 *Witkin Cal. Proc. Enf Judgm § 136*

[§ 136] Property Subject of Pending Action.

(1) *General Rule Prohibiting Levy.* Except as provided by *C.C.P. 700.180(a)* (see *infra*, this section), levy on property that is the subject of a pending action or special proceeding is not effective. (*C.C.P. 700.180(b)*); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.127; Rutter Group, 2 *Enforcing Judgments and Debts* §6:570 *et seq.*; C.E.B., 2 *Debt Collection Practice* 2d, §§11.12, 11.20; on garnishee's memorandum where attempted levy is ineffective, see *C.C.P. 700.180(c)*, *infra*, §140.) An action or proceeding is pending from the time the action or proceeding is commenced until judgment has been entered and the time for appeal has expired or, if an appeal is filed, until the appeal has been finally determined. (*C.C.P. 700.180(d)*.)

(2) *Property Subject to Levy.* The following property is subject to levy even though it may also be the subject of a pending action or proceeding:

(a) Real property. (*C.C.P. 700.180(a)(1)*); for method of levy, see *C.C.P. 700.015*, *supra*, §119.)

(b) Growing crops, timber to be cut, minerals (including oil and gas) to be extracted, and accounts receivable resulting from the sale of minerals at the wellhead or minehead. (*C.C.P. 700.180(a)(2)*); for method of levy, see *C.C.P. 700.020*, *supra*, §§121, 122.)

(c) Tangible personal property in the possession or control of the judgment debtor or in the custody of a levying officer. (*C.C.P. 700.180(a)(3)*); for method of levy, see *C.C.P. 700.030*, *supra*, §124 [tangible personal property in possession of judgment debtor]; *C.C.P. 700.050*, *supra*, §125 [personal property in custody of levying officer].)

(d) The testate or intestate interest of a judgment debtor in personal property in a decedent's estate. (*C.C.P. 700.180(a)(4)*); for method of levy, see *C.C.P. 700.200*, *infra*, §138.)

Property subject to levy under these provisions is levied on just as if there were no pending action or proceeding, and the levying officer serves the notice of levy on the same persons and in the same manner as is required in connection with any other levy on the property. (Legislative Com. Comment (Assembly) to *C.C.P. 700.180*.)

(3) *Alternative Lien Procedure.* *C.C.P. 700.180* does not limit a judgment creditor's right to obtain a lien on the

pending action under *C.C.P. 708.410* et seq. (see *infra*, §297 et seq.). (*C.C.P. 700.180(e)*.) The availability of a lien protects the rights of the judgment creditor and, at the same time, permits the third person to await the outcome of the pending litigation before making a decision concerning whether to deliver the property or to pay the debt that is the subject of the litigation. (Legislative Com. Comment (Assembly) to *C.C.P. 700.180*.)

West's Key Number Digest, Execution 135

SUPPLEMENT: [This section is current through the latest supplement]



137 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

13. Final Money Judgment.

8 *Witkin Cal. Proc. Enf Judgm* § 137

[§ 137] Final Money Judgment.

(1) *In General.* A final money judgment that is entered in the judgment debtor's favor in another action is subject to levy. (See *C.C.P. 700.190*; *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §6.121; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:569; *C.E.B.*, 2 *Debt Collection Practice* 2d, §9.27.) A final money judgment is "a money judgment after the time for appeal from the judgment has expired or, if an appeal is filed, after the appeal has been finally determined." (*C.C.P. 700.190(a)*.)

(2) *Method of Levy.* To levy on a final money judgment, the levying officer must file a copy of the writ of execution and a notice of levy with a clerk of the court that entered the judgment. The clerk must endorse the judgment with a statement of the existence of the execution lien and the time of its creation. If an abstract of the judgment is issued, it must include a statement of the execution lien in favor of the judgment creditor. (*C.C.P. 700.190(b)*); see *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:569; *C.E.B.*, 2 *Debt Collection Practice* 2d, §9.27; on execution liens, see *supra*, §92 et seq.)

(3) *Where Judgment Is Not Money Judgment.* *C.C.P. 700.190* has no effect on the manner of levy where the judgment is not a money judgment. The effect of a nonmoney judgment is generally to determine the judgment debtor's interest in property. The debtor's interest may then be levied on as if there were no final judgment relating to it. (*Law Rev. Com. Comment to C.C.P. 700.190*.)

(4) *Notice to Judgment Debtor Under Judgment.* At the time of levy or "promptly thereafter," the levying officer must serve a copy of the writ of execution and a notice of levy on the person obligated under the final money judgment, either personally or by mail. (*C.C.P. 700.190(c)*.)

(5) *Duty of Judgment Debtor To Pay Levying Officer.* Where a levying officer levies on a final money judgment and serves the person obligated under that judgment pursuant to the levy, the person obligated must make payments to the officer. Payments made to another person after receipt of notice of the levy do not discharge the debtor's obligation. (*C.C.P. 701.070*.)

SUPPLEMENT: [This section is current through the latest supplement]



138 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

E. Methods of Levy.

14. Interest in Personal Property in Decedent's Estate.

8 *Witkin Cal. Proc. Enf Judgm* § 138

[§ 138] Interest in Personal Property in Decedent's Estate.

(1) *Method of Levy.* To levy on a judgment debtor's testate or intestate interest in personal property in a decedent's estate, the levying officer must personally serve a copy of the writ of execution and a notice of levy on the personal representative of the decedent. The levy does not impair the personal representative's power over the property during administration. (*C.C.P. 700.200(a)*; see C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.123; Rutter Group, 2 *Enforcing Judgments and Debts* §6:565 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.28.)

(2) *Delivery of Property to Levying Officer.* The personal representative must report the levy to the probate court when any petition for distribution is filed. If distribution is ordered, the court must order the property levied on to be delivered to the levying officer, but delivery may not be made until the distribution decree becomes final. To the extent that the property so delivered is not necessary to satisfy the judgment, it must be released to the judgment debtor. (*C.C.P. 700.200(b)*.)

(3) *Service on Judgment Debtor.* Promptly after the property is delivered to the levying officer, the officer must serve the judgment debtor, personally or by mail, with a notice describing the property. (*C.C.P. 700.200(c)*.)

(4) *Time Limits Extended.* When the interest is levied on, the following time limits are extended as indicated:

(a) Time for filing claim of exemption under *C.C.P. 703.520* (see *infra*, §181): 10 days after the notice under *C.C.P. 700.200(c)* is served on the judgment debtor. (*C.C.P. 700.200(c)*.)

(b) Duration of execution lien under *C.C.P. 697.710* (see *supra*, §92): 1 year after the decree distributing the interest is final, unless the judgment is satisfied earlier. (*C.C.P. 700.200(d)*.)

(c) Return of writ under *C.C.P. 699.560* (see *supra*, §114): not later than 1 year after the decree distributing the interest is final. (*C.C.P. 700.200(e)*.)

West's Key Number Digest, Execution 29

SUPPLEMENT: [This section is current through the latest supplement]



139 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

F. Rights and Duties of Third Persons After Levy.

1. Duties of Garnishee.

a. Delivery or Payment to Levying Officer.

8 Witkin Cal. Proc. Enf Judgm § 139

[§ 139] Delivery or Payment to Levying Officer.

(1) *Duty To Deliver or Pay.* Generally, where property is levied on by serving a copy of the writ of execution and a notice of levy on a third person, the third person must promptly do all of the following:

(a) Deliver property levied on in the third person's possession and control to the levying officer, unless the third person claims the right to possession. (*C.C.P. 701.010(a)*, (b)(1).)

(b) Pay the amount of an obligation levied on due and payable to the judgment debtor both (1) at the time of levy and (2) during the period of the execution lien, to the extent that the third person does not deny the obligation or claim priority over the judgment creditor's lien. (*C.C.P. 701.010(a)*, (b)(2).)

(c) If the third party makes delivery or payment, execute and deliver any documents required for the transfer of the property. (*C.C.P. 701.010(a)*, (b)(3).) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:573 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.31; *14 Pacific L. J. 410*; *60 A.L.R.3d 1190* [liability insurer's potential liability for failure to settle claim against insured as subject to garnishment by insured's judgment creditors]; *60 A.L.R.3d 1301* [garnishment against executor or administrator by creditor of estate]; *36 A.L.R.4th 824* [garnishee's duty to give debtor notice of garnishment prior to delivery of money without judgment against garnishee on debt].)

(2) *Interests Subject to Garnishment.* A variety of interests have been determined to be subject to garnishment on execution. The following are illustrative:

(a) Defendant's interest as payee of nonnegotiable promissory note. (*Pavlovich v. Watts (1941) 46 C.A.2d 103, 106, 115 P.2d 511.*)

(b) Pledgor's interest in pledged note. (*Puissegur v. Yarbrough (1946) 29 C.2d 409, 412, 175 P.2d 830* [writ left with officer of pledgee bank].)

(c) Beneficiary's equitable interest in trust. (*Houghton v. Pacific Southwest Trust & Savings Bank (1931) 111 C.A. 509, 513, 295 P. 1079* [writ left with trustee].)

(d) Corporate stock. (*Partch v. Adams (1942) 55 C.A.2d 1, 5, 130 P.2d 244* [writ left with corporate officer].)

(e) Devisee's interest during administration. (*Estate of Lind (1934) 1 C.2d 291, 292, 34 P.2d 486* [writ left with executor].)

(f) Debts owed to employers delinquent in unemployment contributions. (*Unemp.Ins.C. 1755.*)

However, certain other interests have been determined to be not subject to garnishment:

(a) Contingent, nonassignable pension payments. (*Thomas v. Thomas (1961) 192 C.A.2d 771, 778, 13 C.R. 872.*)

(b) Liquor license. (*Grover Escrow Corp. v. Gole (1969) 71 C.2d 61, 64, 77 C.R. 21, 453 P.2d 461.*)

(c) Contingent interest in future rental payments. (*Hustead v. Superior Court (1969) 2 C.A.3d 780, 785, 83 C.R. 26.*)

(d) Real estate broker's contingent and uncertain interest in escrow account. (*First Cen. Coast Bank v. Cuesta Title Guarantee Co. (1983) 143 C.A.3d 12, 16, 191 C.R. 433.*)

(e) Contingent right to payment under executory letter of credit. (*Studwell v. Korean Exchange Bank (1997) 55 C.A.4th 1185, 1194, 64 C.R.2d 538.*)

(3) *Where Delivery or Payment Is Not Required.* Where a third person has good cause for not making delivery or payment, they are not required. (*C.C.P. 701.010(b).*) "Good cause" includes, but is not limited to, a showing that the third person did not know or have reason to know of the levy from all the facts and circumstances known to the third person. (*C.C.P. 701.010(c).*) In addition, delivery and payment are not required where "otherwise provided by statute." (*C.C.P. 701.010(a).*) (See, e.g., *C.C.P. 700.050*, supra, §125 ["paper levy" on levying officer]; *C.C.P. 700.200*, supra, §138 [power of personal representative over property in decedent's estate].)

If the writ of execution lists a name other than that listed on the judgment, a third person in possession or control of the levied property may not pay or deliver the property to the levying officer until being notified to do so by the officer. The officer may not require the person to pay or deliver until 15 days after service of notice of levy. (*C.C.P. 699.510(c)(2).*)

Where a garnishment is invalid but the garnishee is nevertheless ordered to pay and faces contempt or other sanctions for failure to comply, the remedy by appeal from the order is available but is seldom adequate, and relief by extraordinary writ is appropriate. (*Hustead v. Superior Court*, supra, 2 C.A.3d 792 [prohibition to prevent trial court from enforcing order; mandamus to compel court to recall and quash execution and set aside orders denying garnishee's motions for relief].)

A third person whose property is erroneously subject to an enforcement of judgment proceeding based on an affidavit of identity (see supra, §§70, 110) may recover from the judgment creditor reasonable attorneys' fees and costs incurred in releasing the person's property from a writ of execution, in addition to any other damages or penalties to which an aggrieved person may be entitled to by law, including those under third-party claims procedures (*C.C.P. 720.010 et seq.*; see infra, §364 et seq.). (*C.C.P. 699.510(c)(3).*)

(4) *Liability for Noncompliance.* A third person who fails or refuses to deliver property or make payments without good cause is liable to the judgment creditor for the lesser of (a) the value of the judgment debtor's interest in the property, (b) the amount required to be paid, or (c) the amount required to satisfy the judgment. (*C.C.P. 701.020(a).*)

Liability continues until the property is delivered or the payments are made to the levying officer, the property is released under *C.C.P. 699.060* (see supra, §106), or the judgment is satisfied or discharged, whichever occurs first. (*C.C.P. 701.020(b).*) A third person whose liability is established may, in the discretion of the court, be required to pay

the costs and reasonable attorneys' fees incurred in establishing liability. (*C.C.P. 701.020(c)*.)

The judgment creditor may also enforce liability in an examination proceeding under *C.C.P. 708.110* et seq. (see *infra*, §279 et seq.) or by a creditor's suit under *C.C.P. 708.210* et seq. (see *infra*, §291 et seq.). (Law Rev. Com. Comment to *C.C.P. 701.020*; see *Hustead v. Superior Court, supra*, 2 *C.A.3d* 791 [decided under prior law].)

(5) *Effect of Noncompliance on Creditor's Right To Seek Satisfaction Against Debtor.* Until a creditor collects on a garnishment, the creditor may still seek satisfaction of the judgment against the debtor; the judgment against the debtor is reduced only by the amount actually received by the creditor. (*Shasta v. Smith (1995) 38 C.A.4th 329, 336, 45 C.R.2d 52* [obligor under child support order was liable to ex-wife for support payments despite failure of former employer to forward payments withheld in accordance with wage assignment to obligee county; garnishee was not agent of either ex-wife or county].)

SUPPLEMENT: [This section is current through the latest supplement]



140 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

F. Rights and Duties of Third Persons After Levy.

1. Duties of Garnishee.

b. Garnishee's Memorandum.

8 *Witkin Cal. Proc. Enf Judgm § 140*

[§ 140] Garnishee's Memorandum.

(1) *Duty To Provide Memorandum.* Generally, when serving a copy of the writ of execution and a notice of levy on a third person, the levying officer must request a garnishee's memorandum containing prescribed information (see *infra*, this section). Whether or not the levy is effective, the third person must mail or deliver a memorandum, executed under oath, within 10 days after the request is made. (*C.C.P. 701.030(a)*, (b); see C.E.B., 2 Debt Collection Practice 2d, §§9.33, 9.34; Rutter Group, 2 Enforcing Judgments and Debts §6:586 et seq.; 14 *Pacific L. J. 410*.) The memorandum may serve as an inexpensive alternative to an examination proceeding under *C.C.P. 708.120* (see *infra*, §279). (Law Rev. Com. Comment to *C.C.P. 701.030*.) If a memorandum is received, the levying officer must mail or deliver a copy to the judgment creditor and attach the original to the writ for return to the court. If a memorandum is not received, the levying officer must so state in the return. (*C.C.P. 701.030(c)*.)

(2) *Where Memorandum Is Not Required.* A memorandum is not required if the third person has (a) delivered all property sought to be levied on, and (b) paid the amount due on all obligations levied on, provided that no additional amount will become due. (*C.C.P. 701.030(f)*.) When the levy is made on a deposit account or safe deposit box (see *supra*, §132 et seq.), a memorandum is not required if the financial institution "fully complies with the levy." (*C.C.P. 701.030(e)*.)

(3) *Contents of Memorandum.* The memorandum must contain the following information:

(a) A description of any property of the judgment debtor sought to be levied on but not delivered to the levying officer, and the reason for nondelivery. (*C.C.P. 701.030(b)(1)*.)

(b) A description of any property of the judgment debtor not sought to be levied on that is in the possession or control of the third person at the time of levy. (*C.C.P. 701.030(b)(2)*.)

(c) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied on that is due and payable and not paid to the levying officer, and the reason for nonpayment. (*C.C.P. 701.030(b)(3)*.)

(d) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied on that is not due and payable at the time of levy. (*C.C.P. 701.030(b)(4)*.)

(e) A statement of the amount and terms of any obligation to the judgment debtor at the time of levy not sought to be levied on. (*C.C.P. 701.030(b)(5)*.)

(f) A description of claims and rights of other persons to the property or obligation levied on known to the third person, and the names and addresses of the other persons. (*C.C.P. 701.030(b)(6)*.)

If levy is made on a deposit account or safe deposit box and the financial institution is required to give a memorandum, it need only provide information about property on the records available at the office or branch where the levy is made. (*C.C.P. 701.030(e)*.)

In the case of an ineffective levy on property subject to a pending action under *C.C.P. 700.180* (see *supra*, §136), the memorandum must also include a statement that the levy is not effective because the property is subject to a pending action, and must indicate the court, cause, and number of the pending action. (*C.C.P. 700.180(c)*.)

(4) *Form*. The Judicial Council has approved a form for a garnishee's memorandum for optional use. (See Judicial Council Form No. EJ-152 [Memorandum of Garnishee].)

(5) *Liability for Noncompliance*. If a third person does not provide a timely memorandum when required to do so or fails to provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorneys' fees incurred in any proceeding to obtain the information. (*C.C.P. 701.030(d)*.)

(6) *Nonliability for Disclosure*. A person giving a memorandum is not liable to any person for disclosing any information contained in the memorandum. (*C.C.P. 701.035*.)

SUPPLEMENT: [This section is current through the latest supplement]



141 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

F. Rights and Duties of Third Persons After Levy.

2. Rights and Duties of Secured Party.

8 *Within Cal. Proc. Enf Judgm § 141*

[§ 141] Rights and Duties of Secured Party.

"[A]n execution levy should not affect the right of a prior secured party to resort to collateral and should not disrupt ongoing business relations between account debtors and secured parties in the absence of a determination or an admission that the judgment creditor's lien has priority." (Legislative Com. Comment (Senate) to *C.C.P. 701.040*.) Thus, if property not in the levying officer's custody is subject to a security interest that attached prior to the levy, the security interest may be enforced without regard to the levy, unless the court determines that the judgment creditor's lien has priority. If the execution lien has priority over the security interest, the secured party is liable to the judgment creditor for any proceeds received from the property to the extent of the execution lien. (*C.C.P. 701.040(a)*); see Rutter Group, 2 *Enforcing Judgments and Debts* §6:607 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.35.)

After satisfaction of the security interest, the secured party, unless otherwise ordered by the court or directed by the levying officer, must deliver excess property and pay excess proceeds of property to the levying officer as provided in U.C.C. 9615 (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §185 et seq.). (*C.C.P. 701.040(b)*.)

The duties and liabilities of the secured party may be enforced in an examination proceeding under *C.C.P. 708.110* et seq. (see *infra*, §279 et seq.) or by a creditor's suit under *C.C.P. 708.210* et seq. (see *infra*, §291 et seq.). (Legislative Com. Comment (Senate) to *C.C.P. 701.040*.)

SUPPLEMENT: [This section is current through the latest supplement]



142 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

F. Rights and Duties of Third Persons After Levy.

3. Duties of Account Debtor.

8 *Within Cal. Proc. Enf Judgm § 142*

[§ 142] Duties of Account Debtor.

After service of a copy of the writ of execution and a notice of levy on an account debtor obligated on an account receivable, chattel paper, or general intangible, the account debtor has the following duties:

(1) If the account debtor has been paying or is required to pay the judgment debtor, the account debtor must pay the levying officer unless otherwise directed by the court or the levying officer. Payments made to the judgment debtor after receipt of the notice of levy do not discharge the account debtor's obligation to make payments to the levying officer. (*C.C.P. 701.050(a)*.)

(2) If the account debtor has been paying or is required to pay a third person, the account debtor must continue the payments until the account debtor receives notice that the obligation to the third person is satisfied or is otherwise directed by the court or the third person. After receipt of notice that the obligation is satisfied, the account debtor must pay the levying officer unless otherwise directed by the court or the levying officer. (*C.C.P. 701.050(b)*.)

(3) If the judgment debtor has liberty under a security agreement to accept the return of goods or make repossessions, the account debtor must deliver to the levying officer property returnable to the judgment debtor unless otherwise directed by the court or the levying officer. (*C.C.P. 701.050(c)*.)

Like *C.C.P. 701.040* (see *supra*, §141), *C.C.P. 701.050* is intended to preserve the status quo between the account debtor and a third person to whom the account debtor has been making payments or is required to make payments. (Law Rev. Com. Comment to *C.C.P. 701.050*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:602 et seq.; on levy on chattel paper, see *C.C.P. 700.100*, *supra*, §129; on levy on accounts receivable and general intangibles, see *C.C.P. 700.170*, *supra*, §135.)

SUPPLEMENT: [This section is current through the latest supplement]



143 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

F. Rights and Duties of Third Persons After Levy.

4. Duties of Obligor Under Instrument.

8 Within Cal. Proc. Enf Judgm § 143

[§ 143] Duties of Obligor Under Instrument.

Where a levying officer obtains custody of an instrument levied on and serves the obligor under the instrument pursuant to the levy, the obligor must make payments to the officer. Payments made to another person after receipt of notice of the levy do not discharge the obligor's obligation. (*C.C.P. 701.060.*) (See Rutter Group, 2 Enforcing Judgments and Debts §6:606; on levy on instruments, see *C.C.P. 700.110*, supra, §130; on officer's indorsement and presentation of demand instruments, see *C.C.P. 687.020*, supra, §31.)

SUPPLEMENT: [This section is current through the latest supplement]



144 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

1. In General.

8 Witkin Cal. Proc. Enf Judgm § 144

[§ 144] In General.

The Enforcement of Judgments Law authorizes the levying officer to sell property after levy. (See *C.C.P. 701.510*; for general discussion, see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.127 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:629 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.29 et seq.; Cal. Civil Practice, 4 Procedure, §30:36 et seq.; 9A Am.Jur. P.P. Forms (2005 ed.), Executions §99 et seq.; 15A Am.Jur. P.P. Forms (2005 ed.), Judicial Sales §1 et seq.; 10A Am.Jur. Legal Forms (2001 ed.), Judicial and Execution Sales §1 et seq.; 30 *Am.Jur.2d* (2005 ed.), *Executions and Enforcement of Judgments* §383 et seq.; 47 *Am.Jur.2d* (1995 ed.), *Judicial Sales* §1 et seq.) However, this authority is subject to the following limitations:

- (1) Certain instruments are indorsed and collected under *C.C.P. 687.020* (see supra, §31). (*C.C.P. 701.510*.)
- (2) The sale of certain collectible property is restricted by *C.C.P. 701.520* (see infra, §145). (*C.C.P. 701.510*.)
- (3) Tangible personal property may not be sold until the levying officer obtains custody. (*C.C.P. 701.510(a)*.)
- (4) Cash may not be sold unless its value exceeds its face value. (*C.C.P. 701.510(b)*.)

West's Key Number Digest, Execution 213

SUPPLEMENT: [This section is current through the latest supplement]



145 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

2. Property To Be Collected Rather Than Sold.

8 *Witkin Cal. Proc. Enf Judgm § 145*

[§ 145] Property To Be Collected Rather Than Sold.

(1) *Property To Be Collected.* The Enforcement of Judgments Law restricts sale and encourages collection where the likelihood of a sacrifice sale is great. (Law Rev. Com. Comment to *C.C.P.* 701.520; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.130; Cal. Civil Practice, 4 Procedure, §30:37; 14 *Pacific L. J.* 411.) The following property levied on must be initially collected, rather than sold:

(a) Accounts receivable. (*C.C.P.* 701.520(a)(1).)

(b) Chattel paper. (*C.C.P.* 701.520(a)(2).)

(c) General intangibles. (*C.C.P.* 701.520(a)(3).)

(d) Final money judgments. (*C.C.P.* 701.520(a)(4).)

(e) Instruments not customarily transferred in an established market. (*C.C.P.* 701.520(a)(5).)

(f) Instruments that represent an obligation arising from the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property, services, or money "was used by an individual primarily for personal, family, or household purposes." (*C.C.P.* 701.520(a)(6).)

(2) *Notice of Intended Sale.* At or after the time of levy, the judgment creditor may serve a notice of intended sale of the property on the judgment debtor, personally or by mail. A copy of the notice and proof of service must be filed with the court and the levying officer. The notice must describe the property and state that it will be sold at an execution sale unless the judgment debtor applies on noticed motion for an order that the property be collected rather than sold, within the time allowed after service of the notice. (*C.C.P.* 701.520(b).)

(3) *Motion for Order That Property Be Collected.* Within 10 days after service of a notice of intended sale, the judgment debtor may apply to the court on noticed motion for an order that the property be collected rather than sold. Within the time allowed for the application, the debtor must serve a copy of the notice of motion on the judgment creditor, personally or by mail, and must file a copy of the notice of motion with the levying officer. If a copy of the

notice of motion is not timely filed with the levying officer, the officer must proceed to sell the property. If a copy of the notice is timely filed, the levying officer must continue to collect the property until otherwise ordered by the court. (*C.C.P. 701.520(c)*.)

(4) *Determination by Court.* At the hearing on the motion, the court may, in its discretion, order the property to be sold or collected, "depending on the equities and circumstances of the particular case." An order of sale may specify the terms and conditions of sale. An order for collection may be conditioned on assignment of the property by the judgment debtor to the judgment creditor under *C.C.P. 708.510* et seq. (assignment orders; see *infra*, §305 et seq.). (*C.C.P. 701.520(d)*.) The court has "broad authority to determine whether a sale should take place depending, for example, on such factors as whether the obligation is currently being paid, the probable proceeds of a sale of the obligation, the costs of collection if it is not sold, and the availability of other useful remedies. If a sale is permitted, the court may set a minimum price or require court confirmation of sale. The sale may be conducted in the same manner as other execution sales or may be conducted in some other manner, e.g., as a negotiated private sale through some commercial channel." (Law Rev. Com. Comment to *C.C.P. 701.520*.)

SUPPLEMENT: [This section is current through the latest supplement]



146 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

3. Notice of Sale.

a. Sale of Personal Property.

8 Witkin Cal. Proc. Enf Judgm § 146

[§ 146] Sale of Personal Property.

An execution sale of personal property requires a notice in writing, stating the date, time, and place of the sale, and describing the property to be sold. (*C.C.P. 701.530(a)*; see 2 Enforcing Judgments and Debts §6:646 et seq.; for form of notice of sale of personal property, see Cal. Civil Practice, 4 Procedure, §30:51; on date, time, and place of sale, see *C.C.P. 701.570*, infra, §151.) Not less than 10 days before the sale, the levying officer must serve notice of the sale on the judgment debtor, personally or by mail. (*C.C.P. 701.530(b)*.) The levying officer must also post the notice, at least 10 days before the sale, in three public places in the city in which the property is to be sold if the sale is to be conducted in a city, or in the county in which the property is to be sold if the sale is not to be conducted in a city. (*C.C.P. 701.530(b), (c)*.) However, these requirements do not apply to a sale of perishable property, the notice for which must be posted and served at a reasonable time before the sale, considering the character and condition of the property. (*C.C.P. 699.070(c)*, supra, §102.)

Personal property of an individual may not be sold until expiration of the time for making an exemption claim under *C.C.P. 703.520(a)* (see infra, §181). (*C.C.P. 701.530(d)*.) The time for making an exemption claim is 10 days after service of the notice of levy, subject to extension if service is by mail. (See Legislative Com. Comment (Assembly) to *C.C.P. 703.520*, infra, §181.)

SUPPLEMENT: [This section is current through the latest supplement]



147 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

3. Notice of Sale.

b. Sale of Real Property.

8 *Witkin Cal. Proc. Enf Judgm § 147*

[§ 147] Sale of Real Property.

(1) *Content and Form of Notice.* An execution sale of real property requires a notice in writing, stating the date, time, and place of the sale, describing the interest to be sold, and giving a legal description of the property. If the property has a street address or other common designation, that information must also be given; if not, the notice must contain directions to the location of the property or must state that directions may be obtained from the levying officer on written or oral request. Directions for locating the property may be given by reference to direction and approximate distance from the nearest crossroads, frontage road, or access road. If an accurate legal description is given, neither the validity of the notice nor the validity of the sale is affected by errors or omissions in the street address, common designation, or directions to the property's location. (*C.C.P. 701.540(a)*; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:659 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.38; for form of notice of sale of real property, see *Cal. Civil Practice*, 4 *Procedure*, §30:51.)

(2) *Service and Posting of Notice.* Not less than 20 days before the sale, notice must be served, mailed, and posted by the levying officer as follows:

(a) *Service on debtor.* Notice must be served on the judgment debtor, personally or by mail. (*C.C.P. 701.540(b)*, (c).)

(b) *Posting.* Notice must be posted in a conspicuous place on the property, and in a public place in the city in which the sale is to be held if the sale is to be held in a city, or in the county in which the property is to be sold if the sale is not to be held in a city. (*C.C.P. 701.540(b)*, (d).)

(c) *Service on occupant.* At the time notice is posted on the property, notice must also be served, or service must be attempted, on an occupant of the property. Service on the occupant is made by leaving the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found on the real property at the time service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If the levying officer is unable to serve an occupant at the time service is attempted, no further attempts are required. (*C.C.P. 701.540(b)*, (e).)

(d) *Multiple lots or parcels.* Only one service and posting is required for a continuous, unbroken tract of property, even though the tract is divided into distinct lots, parcels, or government subdivisions. (*C.C.P. 701.540(b)*, (f).)

(e) *Service on lienholders.* Not less than 20 days before the sale, the levying officer, as instructed by the judgment creditor, must mail notice to all lienholders of record on the date of levy. (*C.C.P. 701.540(h)*.)

Additional procedures for service and posting of notice are required for the sale of a dwelling. (See *C.C.P. 704.790*, *infra*, §223.)

(3) *Publication of Notice.* At least 20 days prior to the sale, notice must be published in a newspaper of general circulation pursuant to *Govt.C. 6063* (once a week for 3 successive weeks). The newspaper must be published in the city in which the property or a part of the property is located or, if no part of the property is located in a city, in the judicial district in which the property or a part of the property is located. If no newspaper of general circulation is published in the city or judicial district, notice must be published in a general circulation newspaper in the county in which the property or a part of the property is located. (*C.C.P. 701.540(g)*); on general circulation newspapers, see *Govt.C. 6000* et seq.; *In re La Opinion* (1970) 10 C.A.3d 1012, 1018, 89 C.R. 404 [foreign language newspaper may qualify as newspaper of general circulation].)

(4) *Delay After Notice of Levy for Giving Notice of Sale.* Notice of sale of an interest in real property, except a leasehold interest with an unexpired term of less than 2 years at the time of levy, may not be given until expiration of 120 days after notice of levy on the interest was served on the judgment debtor. (*C.C.P. 701.545*; for service of notice on judgment debtor, see *C.C.P. 700.010*, *supra*, §117.) The 120-day delay gives the judgment debtor an opportunity to redeem the property from the judgment creditor's lien before the sale or to seek potential purchasers. It compensates for elimination of the right of redemption from an execution sale allowed under former law (see *supra*, §20). (See Legislative Com. Comment (Assembly) to *C.C.P. 701.545*; 16 Cal. Law Rev. Com. Reports, p. 1111; 14 *Pacific L. J.* 411.)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Publication of Notice.* See *In re Establishment of the Eureka Reporter* (2008) 165 C.A.4th 891, 895, 81 C.R.3d 497 [free newspaper is not newspaper of general circulation; paid subscribers are required, and contributing cost of home delivery does make readers paid subscribers]; 24 *A.L.R.4th* 822 [what constitutes newspaper of general circulation].



148 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

3. Notice of Sale.

c. Notice to Bidders and Persons Requesting Notice.

8 Witkin Cal. Proc. Enf Judgm § 148

[§ 148] Notice to Bidders and Persons Requesting Notice.

(1) *Notice to Prospective Bidders.* A notice of sale must contain the substance of this statement: "Prospective bidders should refer to *Sections 701.510 to 701.680, inclusive, of the Code of Civil Procedure* for provisions governing the terms, conditions, and effect of the sale and the liability of defaulting bidders." (*C.C.P. 701.547*; see Rutter Group, 2 *Enforcing Judgments and Debts* §§6:646, 6:663.)

(2) *Notice to Persons Requesting Notice.* Any person may request notice of sale. A request made prior to issuance of the writ must be filed with the clerk of the court that entered the judgment; the request must be written, must specify the title of the court, the cause and number of the action, and the date of entry of the judgment, and must state the address to which notice is to be mailed. The name and address of the person requesting notice must be noted on the writ. (*C.C.P. 701.550(b)*); for form of request for special notice of sale, see *Cal. Civil Practice, 4 Procedure, §30:50*.) A person desiring notice after the property has been levied on may file a request with the levying officer who will conduct the sale; the request must contain the information specified by the officer. (*C.C.P. 701.550(c)*); see Rutter Group, 2 *Enforcing Judgments and Debts* §6:651 et seq.) The levying officer must mail the notice to the requesting person at the time notice of sale is posted under *C.C.P. 701.530* (see *supra*, §146) or *C.C.P. 701.540* (see *supra*, §147). (*C.C.P. 701.550(a)*.) This procedure applies to sales under writs of execution and under other writs. (Legislative Com. Comment (Assembly) to *C.C.P. 701.550*.)

West's Key Number Digest, Execution 222(1)

SUPPLEMENT: [This section is current through the latest supplement]



149 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

3. Notice of Sale.

d. Advertising by Creditor or Debtor.

8 Witkin Cal. Proc. Enf Judgm § 149

[§ 149] Advertising by Creditor or Debtor.

Both the judgment creditor and the judgment debtor may advertise a sale in the classified or other advertising section of a newspaper of general circulation or other publication. The creditor may recover the reasonable costs of the advertising, but advertising by the debtor is at the debtor's own expense. (*C.C.P. 701.555*; see Rutter Group, 2 Enforcing Judgments and Debts §6:677 et seq.) Advertising may be appropriate where the property levied on, such as stamps, coins, or rare books, has a specialized market. (Legislative Com. Comment (Assembly) to *C.C.P. 701.555*.)

SUPPLEMENT: [This section is current through the latest supplement]



150 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

3. Notice of Sale.

e. Effect of Sale Without Notice.

8 Witkin Cal. Proc. Enf Judgm § 150

[§ 150] Effect of Sale Without Notice.

Failure to give notice of a sale does not invalidate the sale. (*C.C.P. 701.560(a)*.) However, a levying officer who sells without giving the required notice is liable to both the judgment creditor and the judgment debtor for actual damages caused by failure to give notice. (*C.C.P. 701.560(b)*, *supra*, §33.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:673 et seq.; *14 Pacific L. J. 414*.)

SUPPLEMENT: [This section is current through the latest supplement]



151 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

4. Place, Time, and Manner of Sale.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 151*

[§ 151] In General.

(1) *Place and Time of Sale.* An execution sale must be held at the date, time, and place specified in the notice of sale, which must be in the county where the property or part of the property is located and between 9 a.m. and 5 p.m. Subject to *C.C.P. 701.570(d)* (see *infra*, this section), contiguous real property situated in two or more counties may be sold in one county as instructed by the judgment creditor. (*C.C.P. 701.570(a)*); see Rutter Group, 2 *Enforcing Judgments and Debts* §6:680 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.39.)

(2) *Manner of Sale Generally.* As much of the property as is necessary to satisfy the judgment is sold at auction to the highest bidder. (*C.C.P. 701.570(b)*, (e); on sale by auction, see 4 *Summary* (10th), *Sales*, §123; on execution sale of vessel, see *Harb. & Nav.C. 495.8*.) Under former law, personal property capable of manual delivery had to be "within view" of the persons attending the sale. (Former C.C.P. 694; see *Marsh v. Lapp* (1919) 180 C. 231, 180 P. 533 [requirement waived; debtor himself removed part of property]; *Colver v. W.B. Scarborough Co.* (1925) 73 C.A. 441, 452, 238 P. 1104 [requirement waived; debtor's attorney acquiesced in sale of furniture in locked apartments]; *Pavlovich v. Watts* (1941) 46 C.A.2d 103, 106, 115 P.2d 511 [no need to take possession of or expose to view negotiable promissory note].) The Enforcement of Judgments Law requires personal property capable of manual delivery to be "within the view of those who attend the sale" unless, on application of the judgment creditor or the judgment debtor, the court orders otherwise. (*C.C.P. 701.570(c)*.)

(3) *Sale in Lots or Separately.* Under former law, personal property had to be sold in parcels "likely to bring the highest price." Separate lots or parcels of real property had to be sold separately. (Former C.C.P. 694.) Departure from these requirements as to real property was merely an irregularity and was not a ground for setting aside the sale unless actual injury was shown, e.g., that a sale in parcels would have realized a larger sum. (*Batini v. Ivancich* (1930) 105 C.A. 391, 395, 287 P. 523; see *Anglo-Californian Bank, Ltd. v. Cerf* (1904) 142 C. 303, 305, 75 P. 902 [mortgage foreclosure]; *Bechtel v. Wier* (1907) 152 C. 443, 446, 93 P. 75 [mortgage foreclosure; proper to sell *en masse* where no bid was obtained for separate parcels]; *Mitchell v. Alpha Hardware & Supply Co.* (1935) 7 C.A.2d 52, 55, 45 P.2d 442 [execution sale held valid though three parcels of mining property sold *en masse*; property operated and known as one unit]; *Taliaferro v. Taliaferro* (1962) 203 C.A.2d 649, 650, 21 C.R. 868, citing the text.)

Under the Enforcement of Judgments Law, property must be sold separately or in groups or lots "likely to bring the highest price." At the sale or in writing prior to the sale, the judgment debtor may request that property be sold separately or together. The levying officer must honor the request if, in the officer's opinion, the manner of sale is likely to yield an amount at least equal to any other manner of sale or the amount required to satisfy the money judgment. However, the officer is not liable for a good faith decision concerning the sale in parcels. (*C.C.P. 701.570(d)*; see Law Rev. Com. Comment to *C.C.P. 701.570* [judgment debtor may make reasonable requests concerning manner of sale, "but the levying officer is empowered to accept or reject the request"].)

(4) *Order in Which Property Is Sold.* The judgment debtor may request that the property be sold in a particular order. The request is subject to the provisions governing a request that the property be sold separately or together. (*C.C.P. 701.570(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



152 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

4. Place, Time, and Manner of Sale.

b. Postponement of Sale.

8 *Witkin Cal. Proc. Enf Judgm § 152*

[§ 152] Postponement of Sale.

(1) *Joint Request by Debtor and Creditor.* A sale may be postponed to an agreed day and hour by the delivery of a joint written request by the judgment debtor and the judgment creditor to the levying officer conducting the sale. (*C.C.P. 701.580*; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:680 et seq.)

(2) *Public Declaration by Levying Officer.* At the time and place originally fixed for the sale, the levying officer must make a public declaration postponing the sale to the day and hour fixed in the request. No other notice of a postponed sale need be given, but notice of any additional postponement must be given by public declaration "at the time and place last appointed for the sale." (*C.C.P. 701.580*.)

(3) *Place of Postponed Sale.* A postponed sale must be held at the place originally fixed for the sale. (*C.C.P. 701.580*.)

West's Key Number Digest, Execution 223

SUPPLEMENT: [This section is current through the latest supplement]



153 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law
V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

5. Bid and Payment.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 153*

[§ 153] In General.

(1) *Levying Officer Cannot Purchase.* The levying officer may not purchase property sold at execution or have an interest in any purchase. (*C.C.P. 701.610.*) The statutory prohibition is designed to remove the temptation to fraudulent exercise of the officer's authority. Hence, violation of the statute renders the sale void, regardless of proof that the transaction was fair, the bidding spirited, or the price adequate. (*Johnson v. Tyrrell (1926) 77 C.A. 179, 184, 246 P. 140* [interpreting former C.C.P. 694].)

(2) *Minimum Bid.* Sale of the property is prohibited unless the amount bid exceeds the total of the following amounts:

(a) All preferred labor claims required by *C.C.P. 1206* to be satisfied from the proceeds (see 6 *Cal. Proc. (5th), Provisional Remedies*, §186). (*C.C.P. 701.620(a)(1).*)

(b) State tax liens (as defined in *Govt.C. 7162*) superior to the judgment creditor's lien. (*C.C.P. 701.620(a)(2).*)

(c) Any deposits, with interest, made by the judgment creditor (unless the judgment creditor is the purchaser) in response to third-party claims under *C.C.P. 720.260* (see *infra*, §375). (*C.C.P. 701.620(a)(3).*)

(d) Proceeds exemptions for motor vehicles (see *C.C.P. 704.010*, *infra*, §188), household furnishings and personal effects (see *C.C.P. 704.020*, *infra*, §189), and tools of a trade (see *C.C.P. 704.060*, *infra*, §193). (*C.C.P. 701.620(b).*)

If a minimum bid is not received, the levying officer must promptly release the property. (*C.C.P. 701.620(c).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:689 et seq.; 14 *Pacific L. J. 414*; on minimum bid required for sale of homestead, see *C.C.P. 704.800*, *infra*, §224.)

West's Key Number Digest, Execution 230

SUPPLEMENT: [This section is current through the latest supplement]



154 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

5. Bid and Payment.

b. Manner of Payment.

8 *Witkin Cal. Proc. Enf Judgm § 154*

[§ 154] Manner of Payment.

(1) *General Rule.* A purchaser other than the judgment creditor or a credit bidder (see *infra*, this section) must pay in cash, by certified check, or by cashier's check. (*C.C.P. 701.590(a)*; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:700 et seq.; 86 *A.L.R.2d* 292 [propriety of accepting check or promissory note in satisfaction of bid].)

(2) *Purchase by Judgment Creditor.* The judgment creditor may bid by giving the levying officer a written receipt crediting all or part of the amount required to satisfy the judgment. However, the levying officer's unsatisfied costs, the amount of preferred labor claims, exempt proceeds, and other claims required to be satisfied by statute must be paid in cash, by certified check, or by cashier's check. (*C.C.P. 701.590(b)*.) (On claims required to be satisfied by statute, see *C.C.P. 701.620*, *supra*, §153.)

(3) *Credit Bid.* When the highest bid on real property exceeds \$ 5,000, the high bidder may treat the sale as a credit transaction by depositing at least \$ 5,000 or 10% of the amount bid, whichever is greater. (*C.C.P. 701.590(c)*.) When the highest bid for personal property exceeds \$ 2,500, the high bidder may treat the sale as a credit transaction by depositing at least \$ 2,500 or 10% of the amount bid, whichever is greater. (*C.C.P. 701.590(d)*.) In each case, the balance, with costs and interest, must be paid within 10 days. (*C.C.P. 701.590(c), (d)*.) A credit bidder is not entitled to possession of the property until payment in full has been made. (*C.C.P. 701.590(e)*; see 14 *Pacific L. J.* 414.)

SUPPLEMENT: [This section is current through the latest supplement]



155 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

5. Bid and Payment.

c. Default of Bidder.

8 *Witkin Cal. Proc. Enf Judgm § 155*

[§ 155] Default of Bidder.

(1) *Resale of Property.* If the highest bidder fails to pay, the levying officer must resell the property. Where the default occurs at the sale, the property must be sold to the next highest bidder (if that bidder agrees) or to the highest bidder at an immediate new sale. Where the default occurs after a sale of real property to a credit bidder under *C.C.P. 701.590(c)* (see supra, §154), the property must be resold to the highest bidder at a new sale. (*C.C.P. 701.600(a).*) A new sale after default must satisfy the requirements for notice, place, time, and manner of sale provided by *C.C.P. 701.510* et seq. (see supra, §146 et seq.). (Legislative Com. Comment (Assembly) to *C.C.P. 701.600.*) At a resale, the levying officer has discretion to reject a bid from the defaulting bidder. (*C.C.P. 701.600(d).*) (See Rutter Group, 2 Enforcing Judgments and Debts §6:700 et seq.)

(2) *Application of Deposit.* A deposit made on a credit sale of real property under *C.C.P. 701.590(c)* (see supra, §154) must be applied in the following order:

(a) To satisfy costs accruing between the sale and the resale, including the costs of resale. (*C.C.P. 701.600(b)(1).*)

(b) To satisfy interest on the amount bid between the sale and the resale. (*C.C.P. 701.600(b)(2).*)

(c) To satisfy the judgment in the prescribed order of distribution (see *C.C.P. 701.810*, infra, §158; *C.C.P. 704.850*, infra, §227). (*C.C.P. 701.600(b)(3).*)

(3) *Action Against Defaulting Bidder.* If there is a resale, either the judgment creditor or the judgment debtor may sue the defaulting bidder, who is liable for the following:

(a) The amount bid, less the amount obtained from the resale and the amount of any deposit. (*C.C.P. 701.600(c)(1)* [distributed in manner prescribed by *C.C.P. 701.810* or *704.810*, whichever is applicable].)

(b) Costs accruing on the property between the original sale and the resale, including the costs of resale. (*C.C.P. 701.600(c)(2).*)

(c) Interest on the amount bid between the original sale and the resale. (*C.C.P. 701.600(c)(3)*) [at rate on money judgments.]

(d) Costs and attorneys' fees incurred in the action against the defaulting bidder. (*C.C.P. 701.600(c)(4)*.) (See *14 Pacific L. J. 414*.)

SUPPLEMENT: [This section is current through the latest supplement]



156 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

6. Effect of Sale.

8 *Within Cal. Proc. Enf Judgm § 156*

[§ 156] Effect of Sale.

(1) *Extinguishment of Liens.* A sale extinguishes the lien under which the property is sold, subordinate liens, and state tax liens (as defined in *Govt.C. 7162*). (*C.C.P. 701.630*; see *C.C. 2910* [extinction of lien on sale in satisfaction of secured claim]; *Mitchell v. Alpha Hardware & Supply Co. (1935) 7 C.A.2d 52, 57, 45 P.2d 442* [execution sale under superior lien freed property of inferior liens; junior lienholders were only entitled to excess proceeds]; *Little v. Community Bank (1991) 234 C.A.3d 355, 360, 286 C.R. 4* [tax liens of Internal Revenue Service are excepted from provisions of *C.C.P. 701.630*]; *C.J.E.R.*, Judges Benchbook: Civil Proceedings--After Trial §6.128; Rutter Group, 2 *Enforcing Judgments and Debts* §6:713; *C.E.B.*, 2 *Debt Collection Practice* 2d, §9.39; on interest of subordinate lienholders in share of excess proceeds, see *C.C.P. 701.810*, *infra*, §158.)

(2) *Interest Acquired by Purchaser.* The purchaser acquires the judgment debtor's entire interest in the property; i.e., the interest liable for satisfaction of the judgment on the date the judgment became a lien on the property, and any interest in the property subject to the lien acquired before the date of sale. (*C.C.P. 701.640*; see *Law Rev. Com. Comment to C.C.P. 701.640* [interest in property includes that acquired before date of sale "assuming that the lien has been maintained"]; *Noble v. Beach (1942) 21 C.2d 91, 94, 130 P.2d 426* [sheriff's sale had same force and effect as debtor's conveyance of quitclaim deed on date of sale]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:710 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §9.39.)

Except as provided by *C.C.P. 701.680(c)(1)* (irregular sale to judgment creditor; see *infra*, §164), the sale is absolute and may not be set aside for any reason. (*C.C.P. 701.680(a)*; see *Gonzalez v. Toews (2003) 111 C.A.4th 977, 981, 4 C.R.3d 434* [sale of property to third party after levy is absolute, even if it is alleged that property was judgment debtor's dwelling]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:715 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §9.49.) The right of redemption available under prior law is not continued in the Enforcement of Judgments Law. (See *supra*, §20.)

The execution purchaser takes subject to prior interests, such as deeds, mortgages, and deeds of trust, of which the purchaser has actual or constructive notice. (See *Whitney v. Sherman (1918) 178 C. 435, 439, 173 P. 931*; *Slaker v. McCormick-Saeltzer Co. (1918) 179 C. 387, 388, 177 P. 155*; *Fowler v. Lane Mortg. Co. (1922) 58 C.A. 66, 69, 207 P. 919* [unrecorded leasehold, tenant in open possession]; *Richman v. Bank of Perris (1929) 102 C.A. 71, 88, 282 P. 801*;

Sutter Inv. Co. v. Keeling (1932) 123 C.A. 323, 326, 11 P.2d 418; *Withington v. Shay* (1941) 47 C.A.2d 68, 75, 117 P.2d 415; *Carpenter v. Devitt* (1942) 49 C.A.2d 473, 475, 122 P.2d 79; *Manig v. Bachman* (1954) 127 C.A.2d 216, 221, 273 P.2d 596 [actual possession of stranger to record title]; *20th Century Plumbing Co. v. Sfregola* (1981) 126 C.A.3d 851, 853, 179 C.R. 144 [deed of trust recorded after judgment lien but before execution sale had priority].) But, at least in certain circumstances, an execution purchaser who buys for value without notice is a bona fide purchaser and takes free from prior interests. (See *Riley v. Martinelli* (1893) 97 C. 575, 580, 32 P. 579; *Widenmann v. Weniger* (1913) 164 C. 667, 672, 130 P. 421; *Pepin v. Stricklin* (1931) 114 C.A. 32, 34, 299 P. 557; *McCune v. McCune* (1937) 23 C.A.2d 295, 297, 72 P.2d 883; *20th Century Plumbing Co. v. Sfregola, supra* [noting split of authority whether judgment creditor making credit bid can be bona fide purchaser; citing cases]; 5 Miller & Starr 3d §11:119; 12 *Summary* (10th), *Real Property*, §§328, 333.)

SUPPLEMENT: [This section is current through the latest supplement]



157 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

G. Sale and Collection.

7. Delivery of Possession, Certificate, or Deed.

8 *Within Cal. Proc. Enf Judgm § 157*

[§ 157] Delivery of Possession, Certificate, or Deed.

(1) *Personal Property: Possession and Certificate of Sale.* On the sale of personal property capable of manual delivery, the levying officer must deliver the property to the purchaser and, on request, must execute and deliver a certificate of sale. (*C.C.P. 701.650(a)(1)*.) If the property is not capable of manual delivery, the levying officer must execute and deliver a certificate of sale to the purchaser. (*C.C.P. 701.650(a)(2)*.) In either case, the levying officer must also sign or indorse and deliver to the purchaser any document or instrument in the officer's possession relating to title or possession. (*C.C.P. 701.650(b)*); on acquisition of documentary evidence of title from judgment debtor, see *C.C.P. 699.040*, supra, §101; on acquisition of documentary evidence of title from third person, see *C.C.P. 701.010*, supra, §139.) The levying officer is exempt from the qualification requirements under *Corp.C. 25130* for the sale of securities in nonissuer transactions. (*Corp.C. 25104(f)*, 9 *Summary* (10th), *Corporations*, §423.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:730 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.40.)

(2) *Real Property: Deed of Sale.* On the sale of real property, the levying officer must execute and deliver to the purchaser a deed of sale and record a duplicate of the deed with the county recorder. (*C.C.P. 701.660*.)

(3) *Contents of Certificate or Deed.* A certificate or deed of sale must contain all of the following:

(a) The title of the court that entered judgment and the cause and number of the action. (*C.C.P. 701.670(a)*.)

(b) The dates of entry of the judgment and any renewals and where entered in the court's records. (*C.C.P. 701.670(b)*.)

(c) The judgment creditor's name and address and the judgment debtor's name and last known address. (*C.C.P. 701.670(c)*.)

(d) A description of the property sold. (*C.C.P. 701.670(d)*.)

(e) The date of sale. (*C.C.P. 701.670(e)*.) (For forms of certificate of sale, see 9A *Am.Jur. P.P. Forms* (2005 ed.), *Executions* §113 et seq.)

West's Key Number Digest, Execution 241-

SUPPLEMENT: [This section is current through the latest supplement]



158 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

H. Distribution of Proceeds.

1. Order of Distribution.

8 *Within Cal. Proc. Enf Judgm § 158*

[§ 158] Order of Distribution.

Except as otherwise provided by statute, proceeds from an execution sale are distributed under *C.C.P. 701.810*. (*C.C.P. 701.810*; see Legislative Com. Comment (Senate) to *C.C.P. 701.810* [noting some statutes requiring alternative distributions]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.131; on distribution of proceeds where homestead is sold, see *C.C.P. 704.850*, *infra*, §227.) Distribution must be made in the following order:

(1) To persons with preferred labor claims under *C.C.P. 1206*. (*C.C.P. 701.810(a)*); on preferred labor claims, see 6 *Cal. Proc.* (5th), *Provisional Remedies*, §186.)

(2) To the state department or agency having a superior state tax lien (as defined in *Govt.C. 7162*). (*C.C.P. 701.810(b)*.)

(3) If the judgment creditor is not the purchaser, to the creditor to repay with interest any deposit made under *C.C.P. 720.260* (see *infra*, §375) in connection with a third-party claim. (*C.C.P. 701.810(c)*.)

(4) To the judgment debtor, to the extent of any remaining proceeds exempt under *C.C.P. 704.010* (motor vehicles; see *infra*, §188), *C.C.P. 704.020* (household furnishings and personal effects; see *infra*, §189) or *C.C.P. 704.060* (tools of a trade; see *infra*, §193) after satisfaction of consensual liens and encumbrances, and labor and material liens, that are subordinate to the judgment creditor's lien, as well as certain state tax liens. (*C.C.P. 701.810(d)*.) The debtor is free to use a prospective exemption of proceeds as a fund to secure a loan or to finance improvements or repairs of the property. Consensual liens that are not satisfied under this provision may be satisfied out of any surplus remaining after the satisfaction of the judgment creditor's lien under *C.C.P. 701.810(g)* (see *infra*, this section). (Legislative Com. Comment (Senate) to *C.C.P. 701.810*.)

(5) To the levying officer for reimbursement of costs for which an advance has not been made, e.g., costs under *Lab.C. 101* (no advanced payment of costs by Division of Labor Standards Enforcement). (*C.C.P. 701.810(e)*); Legislative Com. Comment (Senate) to *C.C.P. 701.810*.) (On general requirement of prepayment of costs, see *C.C.P. 685.100*, *supra*, §30.)

(6) To the judgment creditor, first to satisfy costs and interest accruing after issuance of the writ, and then to satisfy the amount due on the judgment with costs and interest, as entered on the writ. (*C.C.P. 701.810(f)*); see Legislative Com. Comment (Senate) to *C.C.P. 701.810* [interest accruing after issuance of the writ is computed on daily basis as provided by *C.C.P. 685.050*, supra, §46]; on manner of crediting money received in satisfaction of judgment, see *C.C.P. 695.220*, supra, §54.)

(7) To any other judgment creditors who have delivered writs with instructions to levy on the same property or the proceeds of its sale or collection, or to any other persons actually known by the levying officer to have a subordinate claim, lien, or other interest that is extinguished by the sale and not otherwise satisfied, in the amount of their respective priorities. (*C.C.P. 701.810(g)*.)

(8) To the judgment debtor in the amount remaining. (*C.C.P. 701.810(h)*.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:735 et seq.; C.E.B., 2 Debt Collection Practice 2d, §§9.36, 9.39.)

West's Key Number Digest, Execution 256

SUPPLEMENT: [This section is current through the latest supplement]



159 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

H. Distribution of Proceeds.

2. Time for Distribution.

8 *Witkin Cal. Proc. Enf Judgm § 159*

[§ 159] Time for Distribution.

(1) *General Rule.* Unless proceeds derived from an execution sale or collected under the Enforcement of Judgments Law are subject to conflicting claims and deposited with the court under *C.C.P. 701.830* (see *infra*, §160), the levying officer must distribute the proceeds promptly. (*C.C.P. 701.820(a)*.) Except as otherwise provided by statute, the proceeds must be paid within 30 days after receipt by the officer. (*C.C.P. 701.820(b)*.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:746 et seq.)

(2) *Installment Payments.* If the proceeds are not received in one payment, the levying officer may accumulate those received during a 30-day period and must pay them not later than 20 days after the 30-day period expires. (*C.C.P. 701.820(c)*.)

(3) *Noncash Payments.* Proceeds received in the form of a check or other noncash payment that must be presented by the levying officer for payment are not considered received until the check or other noncash payment has been presented and honored. (*C.C.P. 701.820(d)*.)

(4) *Limited Liability of Levying Officer for Delayed Distribution.* Generally, a person entitled to money that comes into the hands of a sheriff by virtue of his or her office may recover prescribed damages and interest, along with the withheld amount, if the sheriff neglects or refuses to make payment on demand. (*Govt.C. 26680*.) This provision applies to a levying officer only if, after failing to distribute the proceeds or deposit them with the court as required, the officer also fails to make payment within 10 days after a person entitled to payment has filed a written demand for payment. (*C.C.P. 701.820(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]



160 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

V. MONEY JUDGMENTS: EXECUTION

H. Distribution of Proceeds.

3. Conflicting Claims to Proceeds.

8 *Witkin Cal. Proc. Enf Judgm § 160*

[§ 160] Conflicting Claims to Proceeds.

(1) *Deposit in Court.* If a levying officer knows of conflicting claims to all or a portion of the proceeds of sale or collection, the officer may deposit the proceeds subject to conflicting claims with the court, rather than distributing them under *C.C.P. 701.810* (see supra, §158). (*C.C.P. 701.830(a)*.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:750 et seq.; C.E.B., 2 Debt Collection Practice 2d, §§9.36, 9.39.)

(2) *Motion for Distribution.* Any interested person may apply, on noticed motion, for an order for the distribution of proceeds deposited with the court. The notice must be served in the manner and to the persons prescribed by the court. On the request of any interested person, the court must grant a reasonable continuance for filing a response, for discovery proceedings, or for other preparation for the hearing on the motion. (*C.C.P. 701.830(a)*.) (See *Peck v. Hagen* (1989) 215 C.A.3d 602, 607, 263 C.R. 198, citing the text [motion under *C.C.P. 701.830*, rather than quashing of levy (see infra, §163), is proper mechanism for resolving priority of liens].)

(3) *Determination at Hearing.* At the hearing, the court must determine the issues and make an order for the distribution of the proceeds, unless abatement of the hearing is required. (*C.C.P. 701.830(b)*.)

(4) *Abatement of Hearing.* The hearing must be abated until the issues can be determined in a civil action in the following cases:

(a) The court is not the proper court under any other provision of law for the trial of a civil action with respect to the subject matter of the motion and any interested party objects to determination by the court. (*C.C.P. 701.830(c)(1)*.)

(b) Another court has obtained jurisdiction in a pending civil action with respect to the subject matter of the motion. (*C.C.P. 701.830(c)(2)*.)

(c) The court determines that the matter should be determined in a civil action. (*C.C.P. 701.830(c)(3)*.)

SUPPLEMENT: [This section is current through the latest supplement]



161 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
V. MONEY JUDGMENTS: EXECUTION
I. Rights and Remedies of Judgment Debtor.
1. In General.

8 Witkin Cal. Proc. Enf Judgm § 161

[§ 161] In General.

In particular circumstances, a judgment debtor may pursue one or more of the following remedies:

- (1) Stay of execution (see *infra*, §162).
- (2) Motion to recall writ or quash levy (see *infra*, §163).
- (3) Claim of exemption (see *infra*, §180 et seq.).
- (4) Motion or action to set aside improper sale (see *infra*, §§164, 165).
- (5) Recovery of proceeds of sale and other restitution (see *infra*, §166).
- (6) Damages for improper sale (see *infra*, §167). (See Rutter Group, 2 Enforcing Judgments and Debts §6:611 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.42 et seq.)

The judgment debtor's former statutory right of redemption has been severely restricted by the Enforcement of Judgments Law. (See *supra*, §20.)

SUPPLEMENT: [This section is current through the latest supplement]



162 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 I. Rights and Remedies of Judgment Debtor.
 2. Stay of Execution.

8 *Witkin Cal. Proc. Enf Judgm § 162*

[§ 162] Stay of Execution.

(1) *In General.* A judgment debtor who appeals from the judgment may obtain a stay of execution pending appeal, usually by filing an undertaking. (See 9 *Cal. Proc.* (5th), *Appeal*, §221 et seq.) Whether or not an appeal will be taken or a notice of appeal has been filed, a trial court has discretion to stay the enforcement of any judgment or order. However, if enforcement will be stayed on appeal only by giving an undertaking, the court may not stay enforcement for more than 10 days beyond the last date for filing a notice of appeal, without the consent of the adverse party. (*C.C.P.* 918.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:617 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.43 et seq.; *Cal. Civil Practice*, 5 *Procedure*, §36:6, §36:57 [form of application for temporary stay], §36:58 [form of declaration in support of application]; 9A *Am.Jur. P.P. Forms* (2005 ed.), *Executions*, §169 et seq.; on mandatory 5-day stay in certain circumstances in unlawful detainer proceedings, see *C.C.P.* 1174(c), 12 *Summary* (10th), *Real Property*, §741; on extinguishment of liens on stay of enforcement, see *supra*, §67; on stay of enforcement of sister state money judgment, see *infra*, §461.)

(2) *Restrictions on Discretion.* The trial court has wide discretion in ruling on an application for a stay. (See *California Cotton Credit Corp. v. Superior Court* (1932) 127 *C.A.* 472, 475, 15 *P.2d* 1108 [denial upheld].) However, the court may not order a stay after the writ is fully executed by levy on the property, and may not order a stay on the giving of an undertaking. (*Del Riccio v. Superior Court* (1952) 115 *C.A.2d* 29, 30, 251 *P.2d* 678.)

(3) *Another Action Pending.* The trial court has discretion to stay enforcement of a judgment or order if the judgment debtor has another action pending on a disputed claim against the judgment creditor. In exercising its discretion, the court must consider the likelihood of the judgment debtor prevailing, the amount of the judgment creditor's judgment as compared to the amount of the judgment debtor's probable recovery, and the financial ability of the judgment creditor to satisfy the judgment if judgment in the pending action is rendered against the creditor. (*C.C.P.* 918.5.) This statute codifies a judicially developed rule; the rationale is based on the equitable principles that not to stay enforcement of the judgment unfairly deprives the judgment debtor not only of the right to offset but also, with an impecunious creditor, of any right to recover at all. (Law Rev. Com. Comment to *C.C.P.* 918.5, citing *Erlich v. Superior Court* (1965) 63 *C.2d* 551, 47 *C.R.* 473, 407 *P.2d* 649, 5 *Cal. Proc.* (5th), *Pleading*, §1164, and *Airfloor Co. of Calif. v. Regents of Univ. of Calif.* (1979) 97 *C.A.3d* 739, 158 *C.R.* 856.)

(4) *Action Against Military Personnel.* A court has authority to stay execution of a judgment or order against a person in military service, in an action commenced before or during that service or within 90 days after service. The court has discretion to do so on its own motion, and must do so on an application on the defendant's behalf, unless the court determines that the defendant's ability to comply with the judgment or order entered or sought is not materially affected by reason of military service. (50 U.S.C. Appx., §524.)

SUPPLEMENT: [This section is current through the latest supplement]



163 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 I. Rights and Remedies of Judgment Debtor.
 3. Motion To Recall or Quash.

8 *Witkin Cal. Proc. Enf Judgm § 163*

[§ 163] Motion To Recall or Quash.

(1) *Power of Court.* The court's inherent control over its process gives it power on motion to recall or quash a writ of execution improperly or inadvertently issued. (See *Nash v. Kreling* (1902) 136 C. 627, 628, 69 P. 418 [judgment subject to partial offset; execution for full amount was improper]; *Montgomery v. Meyerstein* (1924) 195 C. 37, 46, 231 P. 730 [decree was not money judgment, enforceable by execution]; *Adams v. Bell* (1933) 219 C. 503, 505, 27 P.2d 757 [writ issued by clerk on unauthorized determination that defendant had failed to comply with conditional judgment]; *Wilkins v. Wilkins* (1950) 95 C.A.2d 605, 610, 213 P.2d 748 [proper remedy to review execution on alimony order, so as to raise defenses of inability to pay, etc.]; *Wilkins v. Wilkins* (1950) 100 C.A.2d 730, 731, 224 P.2d 371 [same case on later appeal]; *Meyer v. Meyer* (1952) 115 C.A.2d 48, 49, 251 P.2d 335 [judgment satisfied]; *In re Marriage of Barnes* (1978) 83 C.A.3d 143, 152, 147 C.R. 710, citing the text; *In re Marriage of Peet* (1978) 84 C.A.3d 974, 980, 149 C.R. 108 [judgment for child support arrearages subject to credit for overpayments]; *Solberg v. Wenker* (1985) 163 C.A.3d 475, 478, 209 C.R. 545 [wife was estopped from collecting child support arrearages after concealing whereabouts of children from husband]; Rutter Group, 2 Enforcing Judgments and Debts §6:612 et seq.; C.E.B., 2 Debt Collection Practice 2d, §§9.46, 9.47; but see *Vickich v. Superior Court* (1930) 105 C.A. 587, 589, 288 P. 127 [superior court lacked jurisdiction to recall execution on workers' compensation award].) The court may also recall and quash a writ of execution when the judgment has been vacated. (*Stegge v. Wilkerson* (1961) 189 C.A.2d 1, 5, 10 C.R. 867; on recovery of proceeds of sale on vacation of judgment, see *infra*, §166.)

(2) *Motion and Order.* The court's power is invoked by a noticed motion to recall or quash execution. (*Montgomery v. Meyerstein*, *supra*; see 9A Am.Jur. P.P. Forms (2005 ed.), Executions §§161, 162.) If the writ is not void on its face, only a party to the action may make the motion. (*Vest v. Superior Court* (1956) 140 C.A.2d 91, 93, 294 P.2d 988 [defendant's divorced wife had no standing to move to recall execution on tort judgment against husband because she was not party to action].)

(3) *Review.* If the motion is *granted*, the creditor's remedy is an appeal from the order. A creditor who does not appeal is precluded from seeking a new writ. (*Zagoren v. Hall* (1932) 122 C.A. 460, 464, 10 P.2d 202.) Because appeal is an available remedy, certiorari is improper. (*Erickson v. Municipal Court* (1934) 219 C. 737, 740, 29 P.2d 192.)

If the motion is *denied*, the judgment debtor may appeal. At one time, it was held that appeal was not necessarily

adequate to protect the debtor's property, and that mandamus could issue to compel the lower court to recall the writ. (See *Evans v. Superior Court* (1942) 20 C.2d 186, 188, 124 P.2d 820 [attempted execution against property of building and loan association in liquidation].) However, *Evans* was implicitly overruled by *Phelan v. Superior Court* (1950) 35 C.2d 363, 371, 217 P.2d 951, holding that appeal is an adequate remedy to attack orders after final judgment. (See 8 Cal. Proc. (5th), *Extraordinary Writs*, §127 et seq.)

In *Moreno v. Mihelis* (1962) 207 C.A.2d 449, 451, 24 C.R. 582, plaintiff levied execution on his judgment. Defendant appealed, paid the judgment in full, and sought release of the levy. On plaintiff's request the judge made the order releasing the levy conditional on defendant signing an abandonment of his appeal. *Held*, the order should have been granted without the condition. The sole legitimate function of the execution was to secure payment of the judgment, and when the judgment was fully satisfied, there was no reason to continue any additional levy in effect. Defendant should not lose his right of appeal. (207 C.A.2d 451.)

(4) *Effect of Quashing Execution*. When an execution is quashed, any levy under it falls with it, and any title to the property vested in the levying officer by the levy is defeated. (*Hulse v. Davis* (1927) 200 C. 316, 317, 253 P. 136 [order quashing execution has intrinsic effect and is self-executing].)

(5) *Quashing Levy*. A motion to quash the *levy* may be made where the officer has already levied on the property. (*United Taxpayers Co. v. San Francisco* (1927) 202 C. 264, 265, 259 P. 1101 [public property not subject to execution]; *Wellborn v. Wellborn* (1942) 55 C.A.2d 516, 525, 131 P.2d 48 ["The order for issuance of the writ of execution being void, all the proceedings by the sheriff were likewise void"]; *Bryant v. Bryant* (1958) 161 C.A.2d 579, 581, 326 P.2d 898 [plaintiff falsely represented amount due from defendant].)

(6) *Alternative Remedies*. Where a motion to quash is inadequate, equitable relief may be available. (See *Salveter v. Salveter* (1936) 11 C.A.2d 335, 337, 53 P.2d 381; *Faust v. Faust* (1951) 103 C.A.2d 755, 759, 230 P.2d 408 [concurring opinion; futile to quash writ where sale or collection and payment are completed].) Also, where the levy is on exempt property, the appropriate remedy is the procedure for claiming exemptions under *C.C.P. 703.510* et seq. (See *infra*, §180 et seq.) If the levy is on personal property not owned by the judgment debtor, a third-party claim by the owner should be filed under *C.C.P. 720.010* et seq. (See *infra*, §364 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



164 of 167 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 I. Rights and Remedies of Judgment Debtor.
 4. Setting Aside Improper Sale.
 a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 164*

[§ 164] In General.

(1) *Former Law.* Under former law, if a judgment was void on its face (see *Bullard v. McArdle* (1893) 98 C. 355, 357, 33 P. 193; *Root v. Conlin* (1924) 65 C.A. 241, 245, 223 P. 1023), or had been satisfied (see *Salveter v. Salveter* (1936) 11 C.A.2d 335, 337, 53 P.2d 381), the execution sale was invalid and the purchaser had no title. However, irregularities in the execution or sale were seldom serious enough to justify a collateral attack on the purchaser's title. (See *Hunt v. Loucks* (1869) 38 C. 372, 375; *Weldon v. Rogers* (1910) 157 C. 410, 413, 108 P. 266 [title does not depend on correctness of sheriff's return]; *Shirran v. Dallas* (1913) 21 C.A. 405, 413, 415, 132 P. 454, 642 [variance between amount specified in writ and amount of judgment did not affect title]; *Morris v. Winans* (1916) 30 C.A. 575, 576, 159 P. 213 [error in date of judgment specified in writ did not affect title]; *Bateman v. Kellogg* (1922) 59 C.A. 464, 483, 211 P. 46 [minor errors of description in certificate of sale]; *Sheehan v. All Persons* (1926) 80 C.A. 393, 400, 252 P. 337 [misstatement of date of execution in sheriff's return]; *Crenshaw v. Smith* (1946) 74 C.A.2d 255, 265, 168 P.2d 752 [irregularities in sale].)

(2) *Enforcement of Judgments Law: Setting Aside Improper Sale to Judgment Creditor.* Under the Enforcement of Judgments Law generally, a sale of property levied on to satisfy a money judgment is absolute and may not be set aside for any reason. (C.C.P. 701.680(a), supra, §156.) However, if (a) the sale is improper for any reason, including irregularities in the proceedings or because the property was not subject to execution, and (b) the purchaser is the judgment creditor, the sale may be set aside in an action commenced within 90 days. (C.C.P. 701.680(c)(1); see *Gonzalez v. Toews* (2003) 111 C.A.4th 977, 981, 4 C.R.3d 434 [execution sales may not be set aside as to third-party purchasers]; Rutter Group, 2 Enforcing Judgments and Debts §6:719 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49; 10 Proof of Facts 2d 285 [circumstances of sale as justifying equitable relief from execution]; 69 A.L.R.2d 254 [misrepresentation or mistake as to acreage or boundaries of property sold]; 9A Am.Jur. P.P. Forms (2005 ed.), Executions §128 et seq.) (On debtor's recovery of damages for improper sale, see C.C.P. 701.680(c)(2), infra, §167.) The action may be brought by the judgment debtor or the debtor's successor in interest. (C.C.P. 701.680(c)(1).) However, the purchaser at the sale is not a successor in interest for this purpose. (C.C.P. 701.680(d).)

Where a sale is set aside, the judgment is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so revived as if the sale had not

been made. Further, liens extinguished by the sale of the property are revived and reattach to the property with the same priority and effect as if the sale had not been made. (*C.C.P. 701.680(c)(1)*.)

In *First Fed. Bank of Calif. v. Fegen* (2005) 131 C.A.4th 798, 31 C.R.3d 853, the trial court entered an order for the sale of a judgment debtor's residence, the sale was held and the property was sold to the creditor, and the judgment debtor appealed the order. *Held*, appeal dismissed as moot.

(a) Because the debtor failed to post an undertaking under *C.C.P. 917.4* (stay of enforcement of judgment directing sale of real property; see 9 *Cal. Proc.* (4th), *Appeal*, §243), the property was sold pursuant to the trial court's order. The appellate court cannot fashion any order with the effect of reversing the trial court's order of sale or otherwise preventing the sale, an event that has already occurred. (*131 C.A.4th 800*.)

(b) Moreover, the debtor had the right to file an action under *C.C.P. 701.680(c)(1)* within 90 days after the sale to challenge purported irregularities in the proceedings. Because he failed to do so, the sale is, under *C.C.P. 701.680(a)*, "absolute and may not be set aside for any reason." (*131 C.A.4th 800*.)

SUPPLEMENT: [This section is current through the latest supplement]



165 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 I. Rights and Remedies of Judgment Debtor.
 4. Setting Aside Improper Sale.
 b. Equitable Redemption.

8 *Witkin Cal. Proc. Enf Judgm § 165*

[§ 165] Equitable Redemption.

(1) *In General.* Elimination of the statutory right of redemption from an execution sale by the Enforcement of Judgments Law (see *supra*, §20) does "not affect the equitable right of a judgment debtor to redeem from a sale at a grossly inadequate price where the purchaser is guilty of unfairness or has taken undue advantage." (16 Cal. Law Rev. Com. Reports, p. 1119; but see *Gonzalez v. Toews* (2003) 111 C.A.4th 977, 983, 4 C.R.3d 434 [dictum noting quoted statement of Law Revision Commission but nevertheless questioning, on analysis of statute, "whether equitable redemption has survived post-EJL, at least concerning third party purchasers"].)

On a sufficient showing of inadequacy of the price and fraud, a judgment debtor, either by motion or by an independent action in equity, may have an execution sale set aside. (See *Ford v. California Pac. Inv. Co.* (1919) 180 C. 616, 182 P. 274; *Colver v. W.B. Scarborough Co.* (1925) 73 C.A. 441, 444, 238 P. 1104; *Johnson v. Tyrrell* (1926) 77 C.A. 179, 184, 246 P. 140 [purchase by officer or deputy rendered sale void]; *Haish v. Hall* (1928) 90 C.A. 547, 549, 265 P. 1030; *Smith v. Schuler-Knox Co.* (1948) 85 C.A.2d 96, 102, 192 P.2d 34 [sale set aside only on showing of fraud or mutual mistake]; *Gerry v. Northrup* (1951) 102 C.A.2d 449, 452, 227 P.2d 857 [same: no duty on part of judgment creditor to disclose facts that might lead debtor to redeem]; *Kolis v. Kolis* (1951) 107 C.A.2d 209, 210, 236 P.2d 838 [former statutory right to redeem expired pending litigation; appellate court gave judgment debtor right to redeem on remand]; *Powers v. Powers* (1963) 221 C.A.2d 746, 748, 34 C.R. 835; *Smith v. Kessler* (1974) 43 C.A.3d 26, 31, 117 C.R. 470 [inadequate price and manifest unfairness; debtor was allowed to collect rents and make tax and trust deed payments during redemption period]; *Gonzalez v. Toews, supra*, 111 C.A.4th 982 [judgment debtor claiming homestead exemption failed to establish unfairness or undue advantage elements of cause of action for equitable redemption of realty sold at execution sale where exemption did not apply]; *Rutter Group, 2 Enforcing Judgments and Debts §6:722 et seq.*)

(2) *Effect of Evidence of Inadequate Price.* Mere inadequacy of price, however gross, is not itself sufficient; there must be proof of fraud, oppression, or other unfairness. (See *Rauer v. Hertweck* (1917) 175 C. 278, 280, 165 P. 946 [land worth \$ 2,000 bought for costs judgment of \$ 46, but debtor's own neglect, not purchaser's fraud, was cause]; *Bock v. Losekamp* (1919) 179 C. 674, 676, 179 P. 516; *Sargent v. Shumaker* (1924) 193 C. 122, 129, 223 P. 464 [sale under deed of trust]; *McAlvay v. Consumers' Salt Co.* (1931) 112 C.A. 383, 392, 297 P. 135; *Sutter Inv. Co. v. Keeling* (1932)

123 C.A. 323, 327, 11 P.2d 418; *Faucher v. California* (1947) 82 C.A.2d 991, 994, 187 P.2d 918; 5 A.L.R.4th 794 [inadequacy of price as basis for setting aside execution sale].) However, inadequacy of price is an important circumstance considered in determining whether *irregularity or unfairness* in the conduct of the sale was prejudicial. (*Odell v. Cox* (1907) 151 C. 70, 74, 90 P. 194; *Baar v. Smith* (1929) 97 C.A. 398, 402, 275 P. 861; *Eccleston v. Gale* (1932) 122 C.A. 688, 10 P.2d 1032; *Darden v. Reese* (1948) 88 C.A.2d 904, 910, 200 P.2d 81.) There are even a few statements to the effect that inadequacy of price may be so gross as to furnish evidence of fraud or unfairness. (*Odell v. Cox*, *supra*; *Haish v. Hall* (1928) 90 C.A. 547, 550, 265 P. 1030; *Baar v. Smith*, *supra*, 97 C.A. 403.) And the usual strict test of conduct amounting to fraud and deceit is not applied. "Acts of oppression and unfairness which will justify vacating an execution sale need not amount to legal fraud. 'Unfairness,' as it relates to conduct in connection with execution sales, embraces all types of dishonesty, deception and oppression which operate to the prejudice of the judgment debtor or others interested in the sale." (*Darden v. Reese*, *supra*, 88 C.A.2d 909.)

In *Odell v. Cox*, *supra*, a corporation director, on execution of his judgment, bought corporation stock worth over \$ 2,000 for \$ 26.50. The proper statutory notice was posted, but no attempt was made to inform the judgment debtor, who was ignorant of the sale, though new trial proceedings had informed him of the entry of judgment. *Held*, a cause of action to set aside the sale was stated: The judgment creditor took advantage of excusable ignorance of the judgment debtor and made a palpably unfair offer. (151 C. 76.)

In *Darden v. Reese*, *supra*, the judgment creditor was a corporation secretary, with a judgment collected as trustee for the corporation. He withheld information of the levy from the judgment debtor-stockholder, and successfully prevented attendance of other bidders. This enabled him to have his agent buy stock with a market value of \$ 35,000 for \$ 1,150, which was \$ 1,133 less than the amount of the judgment. *Held*, judgment vacating sale affirmed. The creditor's conduct violated his fiduciary duty as a corporate officer. (88 C.A.2d 909, 910.)

A scheme to deprive the judgment debtor of valuable property by cleverly concealed proceedings was denounced in *Young v. Barker* (1948) 83 C.A.2d 654, 189 P.2d 521. Plaintiff purchased accounts receivable, including a claim against defendant for \$ 72. She obtained a default judgment on what the court found was a false return of service, and made no attempt to satisfy it by supplemental proceedings. Instead she secretly had execution levied on a house and lot in which defendant had a \$ 3,500 equity, and bought it at a sale with no other bidders, for the judgment debt. She made no attempt to obtain the rents (which would have soon satisfied the judgment), nor did she notify defendant, who continued to pay taxes, insurance, and installments on the encumbrance. After the redemption period had expired plaintiff sued in ejectment, seeking possession and a personal judgment for damages. The appellate court, marvelling at her effrontery, sustained a conditional decree in favor of defendant, restoring title on payment of the original judgment with interest. (83 C.A.2d 661.)

West's Key Number Digest, Execution 252

SUPPLEMENT: [This section is current through the latest supplement]



166 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 I. Rights and Remedies of Judgment Debtor.
 5. Restitution After Reversal.

8 *Within Cal. Proc. Enf Judgm § 166*

[§ 166] Restitution After Reversal.

(1) *In General.* Where property has been levied on under a judgment that is later reversed or modified, the reviewing court may order restitution on reasonable terms and conditions of all property and rights lost by the erroneous judgment or order, and may direct the entry of a money judgment sufficient to compensate for property or rights not restored. (*C.C.P. 908, 9 Cal. Proc. (5th), Appeal, §900 et seq.*; see *Di Nola v. Allison* (1904) 143 C. 106, 115, 76 P. 976 [third-party purchaser from judgment creditor was chargeable with notice of defeasible character of grantor's title through restoration to debtor on appeal]; *32 A.L.R.3d 1019* [execution sale as affected by modification of judgment].) This appellate power is rarely exercised; the normal procedure is relief in the trial court either by motion or an independent action. (See *Schubert v. Bates* (1947) 30 C.2d 785, 789, 185 P.2d 793.)

(2) *Recovery of Proceeds of Sale.* Under the Enforcement of Judgments Law, if a judgment is reversed, vacated, or otherwise set aside after the sale, the judgment debtor may recover the proceeds from the judgment creditor, with interest, to the extent the proceeds were applied to the satisfaction of the judgment. (*C.C.P. 701.680(b)*; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:729; C.E.B., 2 *Debt Collection Practice* 2d, §9.48.)

SUPPLEMENT: [This section is current through the latest supplement]



167 of 167 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 V. MONEY JUDGMENTS: EXECUTION
 I. Rights and Remedies of Judgment Debtor.
 6. Damages for Improper Sale.

8 *Witkin Cal. Proc. Enf Judgm § 167*

[§ 167] Damages for Improper Sale.

(1) *Under Enforcement of Judgments Law.* If a sale is improper for any reason, including irregularities in the proceeding or because the property was not subject to execution, the judgment debtor or the debtor's successor in interest may recover damages caused by the impropriety. (*C.C.P. 701.680(c)(2)*; see *Rutter Group, 2 Enforcing Judgments and Debts §6:721*; *C.E.B., 2 Debt Collection Practice 2d, §9.49*.) However, the purchaser at the sale is not a successor in interest for this purpose. (*C.C.P. 701.680(d)*.) Damages against the judgment creditor must be offset against the judgment to the extent the judgment is not satisfied. Damages against the levying officer must be applied to the judgment to the extent the judgment is not satisfied. (*C.C.P. 701.680(c)(2)*.)

(2) *Common Law Tort Actions.* Cases decided before the enactment of the Enforcement of Judgments Law recognized the following tort actions by the judgment debtor to recover for wrongful execution:

(a) *Action against judgment creditor for abuse of process.* (See *McPheeters v. Bateman (1936) 11 C.A.2d 106, 108, 53 P.2d 195*; *Birch Ranch & Oil Co. v. Campbell (1941) 43 C.A.2d 624, 628, 111 P.2d 445* [no cause of action stated]; *Arc Inv. Co. v. Tiffith (1958) 164 C.A.2d Supp. 853, 856, 330 P.2d 305*; on action generally, see *5 Summary (10th), Torts, §517 et seq.*; *5 Cal. Proc. (5th), Pleading, §759 et seq.*)

(b) *Action against judgment creditor for slander of title.* (See *Gudger v. Manton (1943) 21 C.2d 537, 541, 134 P.2d 217*; on action generally, see *5 Summary (10th), Torts, §640 et seq.*; *5 Cal. Proc. (5th), Pleading, §749*.)

(c) *Action against judgment creditor for conversion.* In *Lee v. Merchants Collection Assn. of Oakland (1957) 155 C.A.2d 762, 318 P.2d 701*, defendant collection agency obtained a default judgment against plaintiff, levied execution on her attached automobile, and sold it on execution. The judgment was subsequently set aside for lack of service, and plaintiff brought this action for conversion as of the date of the purported execution sale. *Held*, she was entitled to damages, but subject to deductions for the amounts of a chattel mortgage and liens against the car satisfied by defendant. "Plaintiff is not entitled to be placed in any better position than she would have been in had the conversion not taken place. Thus, the court was correct in deducting the liabilities which existed against the automobile at the time of the conversion. In other words, the value of the car to plaintiff then was its actual value less the liens upon it." (*155 C.A.2d 766*.) (On action generally, see *5 Summary (10th), Torts, §699 et seq.*; *5 Cal. Proc. (5th), Pleading, §702 et seq.*)

(d) *Action against the levying officer and sureties for damages for conversion or negligence.* But the officer receives considerable protection from *C.C.P. 262.1*: "A sheriff or other ministerial officer is justified in the execution of, and shall execute, all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued." (See *First Nat. Bank of Marysville v. McCoy* (1931) 112 C.A. 665, 670, 297 P. 571 [applying predecessor statute]; on action generally, see 5 *Summary* (10th), *Torts*, §161.)

SUPPLEMENT: [This section is current through the latest supplement]



1 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

1. Nature and Purpose of Exemption Statutes.

8 *Witkin Cal. Proc. Enf Judgm* § 168

[§ 168] Nature and Purpose of Exemption Statutes.

(1) *In General.* The *immunity* of certain property from enforcement of a money judgment (see *supra*, §60 et seq.) is based on the theory that some types of property should not be taken to satisfy a judgment. The *exemptions* available to a judgment debtor (see *infra*, §187 et seq.) are for the personal benefit of the debtor. The property itself would ordinarily be subject to enforcement, but the debtor is allowed to retain all or part of it for the protection of the debtor and his or her family. Accordingly, the debtor may waive an exemption by failure to make a proper and timely claim. (See *infra*, §171.) The exemption laws are designed to facilitate the debtor's financial rehabilitation and have the effect of shifting social welfare costs from the community to creditors. (See 16 Cal. Law Rev. Com. Reports, p. 1079.) (On exemptions generally, see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.10 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:820 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.50 et seq.)

(2) *Constitutional Requirement.* The California Constitution requires the Legislature to protect from forced sale a certain portion of the homestead and other property of all heads of families. (Cal. Const., Art. XX, §1.5; on homestead exemption, see *infra*, §215 et seq.)

(3) *Exemption as Statutory Right.* Exemptions are wholly statutory and cannot be enlarged by the courts. (*Estate of Brown* (1899) 123 C. 399, 401, 55 P. 1055; *Security-First Nat. Bank v. Pierson* (1934) 2 C.2d 63, 65, 38 P.2d 784; *Conlin v. Traeger* (1927) 84 C.A. 730, 735, 258 P. 433; *Wade v. Rathbun* (1937) 23 C.A.2d Supp. 758, 760, 67 P.2d 765; *Bertozzi v. Swisher* (1938) 27 C.A.2d 739, 744, 81 P.2d 1016; *Carter v. Carter* (1942) 55 C.A.2d 13, 14, 130 P.2d 186; *Vineyard v. Sisson* (1990) 223 C.A.3d 931, 938, 272 C.R. 914.) Thus, the highly favored family allowance, granted in probate to take care of the immediate needs of the surviving spouse and children (*Prob.C. 6540* et seq.; see 14 *Summary* (10th), *Wills and Probate*, §774 et seq.), is not expressly made exempt from attachment or execution, and thus is subject to either. (*Estate of Silverman* (1967) 249 C.A.2d 180, 183, 57 C.R. 379.)

A variety of federal funds and benefits are exempt from enforcement of a money judgment under federal statutes. (See *infra*, §214.)

(4) *Liberal Construction.* In view of their important purpose, express statutory exemptions should be liberally construed in favor of the debtor. (*Holmes v. Marshall* (1905) 145 C. 777, 779, 79 P. 534; *Estate of Millington* (1923) 63

C.A. 498, 501, 218 P. 1022; White v. Gobey (1933) 130 C.A. Supp. 789, 792, 19 P.2d 876; Medical Finance Assn. v. Rambo (1938) 33 C.A.2d Supp. 756, 757, 86 P.2d 159; Los Angeles Finance Co. v. Flores (1952) 110 C.A.2d Supp. 850, 854, 243 P.2d 139; Independence Bank v. Heller (1969) 275 C.A.2d 84, 88, 79 C.R. 868; Schwartzman v. Wilshinsky (1996) 50 C.A.4th 619, 626, 57 C.R.2d 790, infra, §204; McMullen v. Haycock (2007) 147 C.A.4th 753, 759, 54 C.R.3d 660 [quoting Schwartzman]; see Ogle v. Heim (1968) 69 C.2d 7, 9, 69 C.R. 579, 442 P.2d 659 [courts may not create implied exception to express exemption].)

(5) *Uniform Exemptions Act.* The National Conference of Commissioners on Uniform State Laws approved the Uniform Exemptions Act in 1976. (See 13 (Part I) U.L.A. (Master Ed.), p. 276.) California has not adopted the Act.

West's Key Number Digest, Exemptions 3

SUPPLEMENT: [This section is current through the latest supplement]



2 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

2. Scope and Application of Exemption Statutes.

8 *Witkin Cal. Proc. Enf Judgm* § 169

[§ 169] Scope and Application of Exemption Statutes.

(1) *Procedures Subject to Exemptions.* Except as otherwise provided by statute, the exemptions stated in *C.C.P. 703.010* et seq. (see *infra*, §187 et seq.) or any other statute apply to all procedures for the enforcement of a money judgment. (*C.C.P. 703.010(a)*.) The exemptions also apply to the enforcement of costs and damages under nonmoney judgments. (Law Rev. Com. Comment to *C.C.P. 703.010*.) (See C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.10 et seq.; Rutter Group, *2 Enforcing Judgments and Debts* §6:820 et seq.; C.E.B., *2 Debt Collection Practice* 2d, §9.50 et seq.; *14 Pacific L. J.* 425; *10A Am.Jur. P.P. Forms* (2005 ed.), Exemptions §1 et seq.; *31 Am.Jur.2d* (2002 ed.), *Exemptions* §1 et seq.)

(2) *No Exemption of Property Subject to Certain Liens.* Except as otherwise provided by statute, the exemptions stated in *C.C.P. 703.010* et seq. or any other statute do not apply where the judgment is for the foreclosure of a mortgage, deed of trust, or other lien or encumbrance on the property except an attachment lien, a judgment lien, an execution lien, or any other lien arising under the Enforcement of Judgments Law. (*C.C.P. 703.010(b)*); see *Willen v. Willen* (1932) *121 C.A.* 351, 352, *8 P.2d* 942 [alimony award created lien on insurance policies; execution on policies, as means of "foreclosure," was proper under predecessor statute].)

(3) *Time of Lien Governs.* The determination whether property is exempt, and the amount of the exemption, must be made by application of the exemption statutes in effect either (a) at the time the judgment creditor's lien on the property was created, or (b) if the creditor's lien is the latest in a series of overlapping liens, at the time the earliest lien in the series was created. (*C.C.P. 703.050(a)*); see Law Rev. Com. Comment to *C.C.P. 703.050* [noting that this provision changes former case law under which judgment debtor could take advantage only of exemptions in effect at time obligation was incurred.] However, the procedures to be followed, on a levy of execution, in claiming and determining exemptions and in paying exemption proceeds are governed by the law in effect at the time the levy is made on the property. (*C.C.P. 703.050(c)*); see *Berhanu v. Metzger* (1992) *12 C.A.4th* 445, 447, *15 C.R.2d* 191 [amount of exemption is not "procedure" governed by *C.C.P. 703.050(c)*, but is controlled by *C.C.P. 703.050(a)*].) *C.C.P. 703.050* applies to all judgments, whether based on a cause of action that arose before or after the operative date of the statute, and whether the judgment was entered before or after that date. (*C.C.P. 703.050(b)*); see *16 Cal. Law Rev. Com. Reports*, p. 1101 et seq.; *9 Pacific L. J.* 889 [constitutionality of retroactive application of exemption statutes].)

(4) *Reserved Power of State To Change Exemptions.* The Legislature reserves the right to make changes in exemptions and exemption procedures at any time and, unless otherwise provided by statute, changes are applicable on their operative date to enforcement of all money judgments, whether based on a cause of action that arose before or after the operative date, and whether the judgment was entered before or after that date. (C.C.P. 703.060(a).) All contracts are deemed to be made, and all liens are deemed to be created, in recognition of the state's power to make changes in the statutes providing for liens and exemptions from the enforcement of money judgments. (C.C.P. 703.060(b).)

(5) *Continuing Review by Law Revision Commission.* The California Law Revision Commission must review the exemption statutes and recommend changes to the Governor and the Legislature at least every 10 years, and is authorized to maintain a continuing review. (C.C.P. 703.120; see 16 Cal. Law Rev. Com. Reports, p. 1106.)

SUPPLEMENT: [This section is current through the latest supplement]



3 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

3. Persons Entitled to Exemptions.

8 *Witkin Cal. Proc. Enf Judgm § 170*

[§ 170] Persons Entitled to Exemptions.

(1) *Natural Persons*. The exemptions provided by *C.C.P. 703.010* et seq. (see *infra*, §187 et seq.) apply only to the property of a natural person. (*C.C.P. 703.020(a)*; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.40; Rutter Group, 2 Enforcing Judgments and Debts §6:823; C.E.B., 2 Debt Collection Practice 2d, §9.57; 14 *Pacific L. J.* 424.) This codifies the rule in *Canal-Randolph Anaheim v. Wilkoski (1980) 103 C.A.3d 282, 291, 292, 293, 163 C.R. 30*, quoting the text, which held that a professional law corporation, enjoying the commercial benefits of other corporate entities, was not entitled to a trade or business exemption. However, there is no requirement that *title* to the property be held by a natural person. (*Fisch, Spiegler, Ginsburg & Ladner v. Appel (1992) 10 C.A.4th 1810, 1813, 13 C.R.2d 471*, *infra*, §230 [placing title to property in revocable living trust did not deprive homeowners of homestead exemption].) Whether exemptions created by other statutes apply only to natural persons depends on the terms of those statutes. (Law Rev. Com. Comment to *C.C.P. 703.020*.)

(2) *Tax Debtors*. A tax debtor who is a natural person is entitled to the exemptions of a judgment debtor. (*C.C.P. 688.030(a)*, *supra*, §52.)

(3) *Assignors for Benefit of Creditors*. An individual who makes a general assignment for the benefit of creditors, as defined in *C.C.P. 493.010* (i.e., as an assignment for the benefit of all the defendant's creditors of all the defendant's assets that are transferable and not exempt from enforcement of a money judgment), may retain as exempt property either property that is exempt under *C.C.P. 703.010* et seq. or, alternatively, the types of property enumerated in *C.C.P. 1801*. (*C.C.P. 1801*; see 11 *Pacific L. J.* 339; on preferences in general assignment for benefit of creditors, see *infra*, §505; on effect of general assignment for benefit of creditors on attachment, see 6 *Cal. Proc. (5th), Provisional Remedies*, §§188, 189.)

(4) *Persons by Whom Claim May Be Made*. The exemptions of a judgment debtor may be claimed either by the judgment debtor or by a person acting in his or her behalf. In the case of community property, the exemption may be claimed by the debtor's spouse, whether or not the spouse is also a debtor under the judgment. (*C.C.P. 703.020(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Natural Persons*. See *California Coastal Com. v. Allen (2008) 167 C.A.4th 322, 328, 83 C.R.3d 906* [judgment

debtor was not entitled to homestead exemption once he conveyed real property to corporation of which he was sole shareholder].



4 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

4. Claim Requirement and Waiver of Exemption.

8 *Witkin Cal. Proc. Enf Judgm § 171*

[§ 171] Claim Requirement and Waiver of Exemption.

(1) *Claim Is Generally Required or Exemption Is Waived.* Unless an exemption for property is "claimed within the time and in the manner prescribed in the applicable enforcement procedure," the exemption "is waived and the property is subject to enforcement of a money judgment." (*C.C.P. 703.030(a)*); see Rutter Group, 2 *Enforcing Judgments and Debts* §6:868 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.56; on procedure for claiming exemptions, see *infra*, §180 et seq.) However, except as otherwise specifically provided by statute, property described in a statute as "exempt without making a claim" is not subject to any procedure for the enforcement of a money judgment. (*C.C.P. 703.030(b)*.)

(2) *Constitutionality of Requirement.* In *Raigoza v. Sperl* (1973) 34 *C.A.3d* 560, 110 *C.R.* 296, dealing with the exemption of wages under former C.C.P. 690.6, the contention was made that levy on exempt property without a prior judicial hearing is a denial of due process under *Sniadach v. Family Finance Corp. of Bay View* (1969) 395 *U.S.* 337, 89 *S.Ct.* 1820, 23 *L.Ed.2d* 349, which held that summary prejudgment remedies are unconstitutional (see 7 *Summary* (10th), *Constitutional Law*, §646; 6 *Cal. Proc.* (5th), *Provisional Remedies* §50). The court rejected this contention, concluding that there is no arbitrary deprivation of property in the requirement that a judgment debtor claim and prove an exemption.

This conclusion was restated and applied to other exemptions in *Phillips v. Bartolomie* (1975) 46 *C.A.3d* 346, 121 *C.R.* 56. Here, the judgment creditor levied on the entire joint checking account of the debtors. They filed a complaint against the sheriff, alleging that all of the funds were received as benefits or pensions under programs of the Veterans Administration, the Social Security Administration, and the county welfare department, and were thus exempt from execution under former C.C.P. 690.18(a). In addition to seeking declaratory relief, plaintiffs demanded an injunction preventing further levies, in order that they might maintain their checking account without further interference. The lower court sustained a demurrer and entered judgment of dismissal. *Held*, affirmed.

(a) *Sniadach* and its progeny all relate to prejudgment remedies; there is little authority on postjudgment remedies. (46 *C.A.3d* 350, footnote 3.) But the reasoning of *Raigoza* is persuasive: The debtor is in a better position than the creditor or the bank to establish the facts relating to an exemption. "For us to impose the responsibilities on depositories to determine in advance where all deposits come from, or to keep track of all checks as sources, would seem an impossible burden and the law so recognizes this by requiring the filing of the affidavits of exemption by the debtors."

(46 C.A.3d 352.)

(b) The claim requirement is burdensome in that the debtor must suffer delay during the period of its consideration; but there is a practical way to avoid this hardship. A judgment debtor could well discourage the creditor from a futile execution by filing his or her affidavit of exemption with the depository immediately after the judgment is entered, with a copy to the creditor. (46 C.A.3d 354.) (See *Imperial Bank v. Pim Elec.* (1995) 33 C.A.4th 540, 555, 39 C.R.2d 432, infra, §290, citing the text [no arbitrary deprivation of property in requirement that judgment debtor claim and prove exemption in examination proceeding].)

(3) *Relief From Waiver.* Pursuant to its authority under C.C.P. 473 to grant relief from proceedings taken against a person through mistake, inadvertence, surprise, or excusable neglect (see 8 Cal. Proc. (5th), *Attack on Judgment in Trial Court*, §161 et seq.), the court may relieve a person from failure to properly claim an exemption "upon such terms as may be just." (C.C.P. 703.030(c).)

(4) *Advance Waiver Is Invalid.* A purported contractual or other prior waiver of the exemptions provided by any statute, other than a waiver by failure to claim an exemption required to be claimed or otherwise made at the time enforcement is sought, is against public policy and void. (C.C.P. 703.040; see Law Rev. Com. Comment to C.C.P. 703.040 [statute codifies holding in *Industrial Loan & Inv. Co. of San Francisco v. Superior Court* (1922) 189 C. 546, 209 P. 360].)

West's Key Number Digest, Exemptions 89 et seq., 109

SUPPLEMENT: [This section is current through the latest supplement]



5 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

5. Application of Exemptions to Judgment for Support.

8 *Within Cal. Proc. Enf Judgm § 172*

[§ 172] Application of Exemptions to Judgment for Support.

(1) *Exemptions Generally Apply.* Except as otherwise provided by statute, an exemption stated in any statute applies to a judgment for child, family, or spousal support. (*C.C.P. 703.070(a)*.) And property that is exempt without making a claim is not subject to satisfaction of a support judgment. (*C.C.P. 703.070(b)*.) (See Law Rev. Com. Comment to *C.C.P. 703.070* [noting that these provisions codify existing case law]; *In re Marriage of Johnson-Wilkes & Wilkes (1996) 48 C.A.4th 1569, 1573, 56 C.R.2d 323* [disability insurance benefits were exempt from earnings assignment order for support under *C.C.P. 703.070(b)* and *C.C.P. 704.130(a)* (disability benefits are exempt from execution without making claim, *infra*, §206)]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:825 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.74; *52 A.L.R.5th 221* [enforcement of claim for alimony or support, or for attorneys' fees and costs incurred in connection with claim, against exemptions]; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.) However, in specific instances, property generally exempt without making a claim may nevertheless be subject to satisfaction of a support judgment. (See, e.g., *C.C.P. 704.110(c)*, *infra*, §202 [public retirement benefits].)

(2) *Limitation by Court Order.* Except as otherwise provided by statute, property that is exempt if a claim is made is nevertheless subject to enforcement of a support judgment to the extent ordered by the court on a noticed motion by the judgment creditor. In determining the extent to which the otherwise exempt property is to be applied to satisfy the judgment, the court must take into account the needs of the judgment creditor, the needs of the judgment debtor and all the persons the judgment debtor is required to support, and all other relevant circumstances. (*C.C.P. 703.070(c)*.) In specific instances, the court's authority to order satisfaction from property subject to an exemption claim may be restricted. (See, e.g., *C.C.P. 704.115(c)*, *infra*, §204 [private retirement benefits].)

SUPPLEMENT: [This section is current through the latest supplement]



6 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

6. Application of Exemptions to Marital Property.

8 *Within Cal. Proc. Enf Judgm § 173*

[§ 173] Application of Exemptions to Marital Property.

Because the community property interest of a judgment debtor's spouse may be subject to satisfaction of a money judgment against the debtor (see *C.C.P. 695.020*, supra, §58), the exemption of property of a married couple is a matter of particular concern. (16 Cal. Law Rev. Com. Reports, p. 1080; see Rutter Group, 2 Enforcing Judgments and Debts §6:854.5 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.71; on liability of community property for debts of either spouse, see 11 *Summary* (10th), *Community Property*, §§177, 178.) The Enforcement of Judgments Law establishes the following special rules for marital property:

(1) *Exemptions Apply to All Property.* All exemptions provided by law apply to all property that is subject to the enforcement of a money judgment, including the community property interest of the spouse of the debtor. The number or amount of exemptions is not increased or decreased by the fact that one or both spouses are debtors or that property sought to be applied is separate or community. (*C.C.P. 703.110(a)*.)

(2) *Amount of Exemptions.* Where property exempt under a particular exemption is limited to a specific dollar maximum, the two spouses together are entitled to one exemption in that maximum amount, whether or not both spouses are judgment debtors, and whether or not the property sought to be applied to the satisfaction of the judgment is separate or community, unless the exemption statute specifically provides otherwise. (*C.C.P. 703.110(a)*.) The following exemption statutes give a separate exemption to each spouse or provide a greater amount for a married couple:

- (a) *C.C.P. 704.030* (material for repair or improvement of dwelling). (See infra, §190.)
- (b) *C.C.P. 704.060* (personal property used in trade, business, or profession). (See infra, §193.)
- (c) *C.C.P. 704.080* (deposit account in which Social Security payments are directly deposited). (See infra, §195.)
- (d) *C.C.P. 704.090* (inmate's trust fund). (See infra, §198.)
- (e) *C.C.P. 704.100* (life insurance, endowment, and annuity policies). (See infra, §199.)

(f) *C.C.P. 704.730* (homestead exemptions). (See *infra*, §218.)

(3) *Exemptions Applicable to Property Not Before Court.* If an exemption is required to be applied first to property not before the court and then to property before the court, application to property not before the court must be made to the community property and separate property of both spouses, whether or not that property is subject to enforcement of the money judgment. (*C.C.P. 703.110(b)*.) (On application of exemption with respect to life insurance policies to property not before court, see *C.C.P. 704.100(b)*, *infra*, §199.)

(4) *Exemptions Claimed for Different Property.* If the same exemption is claimed by the judgment debtor and the debtor's spouse for different property, and the property for which the exemption is claimed by one spouse, but not both, would be exempt, the exemption must be applied as the spouses agree. If the spouses cannot agree, the court may use its discretion in applying the exemption. (*C.C.P. 703.110(c)*.) (For restriction on homestead exemptions claimed by both spouses, see *C.C.P. 704.720(c)*, *infra*, §218.)

(5) *No Exemption Is Created by Void Transfer of Community Property.* Nothing in *Family C. 1102* (see 11 *Summary* (10th), *Community Property*, §147), requiring both spouses to jointly execute an instrument transferring community real property, exempts community real property from liability for marital debts, even though the property is transferred unilaterally by one spouse in violation of the statute. *C.C.P. 695.020* (see *supra*, §58) expressly establishes the liability of community real property for the satisfaction of money judgments against either spouse, including the nondebtor spouse's one-half community interest. Thus, a trust deed beneficiary that lost its security interest due to nonjoinder of a spouse nevertheless retained the right to enforce a subsequent money judgment against that property for satisfaction of the underlying debt. (*Lezine v. Security Pac. Financial Services* (1996) 14 *C.4th* 56, 71, 58 *C.R.2d* 76, 925 *P.2d* 1002 [construing former *C.C. 5127*].)

West's Key Number Digest, Exemptions 109

SUPPLEMENT: [This section is current through the latest supplement]



7 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

7. Tracing Exempt Funds.

8 *Within Cal. Proc. Enf Judgm § 174*

[§ 174] Tracing Exempt Funds.

(1) *Tracing Is Authorized.* An exemption for money from a particular source would be illusory if the exemption were lost when the benefits are deposited or held in the form of a check or cash. (16 Cal. Law Rev. Com. Reports, p. 1105.) Hence, an exempt fund remains exempt to the extent that it can be traced to a deposit account or to cash or a cash equivalent. (*C.C.P. 703.080(a)*; see *McMullen v. Haycock* (2007) 147 C.A.4th 753, 756, 54 C.R.3d 660 [under *C.C.P. 703.080(a)*, rollover of fully exempt private retirement plan assets into individual retirement account did not eliminate full exemption, even though funds in individual retirement accounts are ordinarily subject to exemption limitation].) (For definition of "deposit account," see *C.C.P. 680.170*, supra, §21.) The burden of tracing an exempt fund is on the exemption claimant. (*C.C.P. 703.080(b)*.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:847 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.73.)

(2) *Limitations of Particular Exemptions.* The ability to trace an exempt fund is subject to any limitation provided by a particular exemption. (*C.C.P. 703.080(a)*.) For example, tracing with respect to the following property is subjected to time restrictions:

- (a) Motor vehicles: 90 days. (*C.C.P. 704.010*, infra, §188.)
- (b) Household furnishings and personal effects: 90 days. (*C.C.P. 704.020*, infra, §189.)
- (c) Trade or business property: 90 days. (*C.C.P. 704.060*, infra, §193.)
- (d) Homestead property: 6 months. (*C.C.P. 704.720, 704.960*, infra, §§218, 234.)

(3) *Application of Lowest Intermediate Balance Principle.* The tracing of exempt funds in a deposit account must be by application of the lowest intermediate balance principle, unless the claimant or judgment creditor shows that some other method of tracing would be more equitable. (*C.C.P. 703.080(c)*; see Legislative Com. Comment (Senate) to *C.C.P. 703.080* [exempt fund may not exceed lowest balance occurring at any time between deposit of exempt amount of money and time of levy].)

SUPPLEMENT: [This section is current through the latest supplement]



8 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

8. Effect of Levy on Exempt Property.

8 Within Cal. Proc. Enf Judgm § 175

[§ 175] Effect of Levy on Exempt Property.

If a judgment creditor has not filed timely opposition to a claim of exemption pursuant to *C.C.P. 703.550* (see *infra*, §183), or if property has been determined by a court to be exempt, the creditor is not entitled to recover the subsequent costs of collecting on the property unless the property is applied to satisfaction of the judgment. (*C.C.P. 703.090.*)

This provision is intended to limit repeated levies on the same property. Nothing in the provision affects any right the judgment creditor may have to recover damages for abuse of process. (Law Rev. Com. Comment to *C.C.P. 703.090*; on abuse of process, see 5 *Summary* (10th), *Torts*, §517 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



9 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

9. Time for Determining Exemptions.

8 *Within Cal. Proc. Enf Judgm § 176*

[§ 176] Time for Determining Exemptions.

(1) *In General.* Subject to the court's power to consider changed circumstances, the determination whether property is exempt must be made under the circumstances existing at the earliest of the following times:

(a) The time of the levy. (*C.C.P. 703.100(a)(1).*)

(b) The time of the commencement of court proceedings for application of the property to satisfaction of the judgment. (*C.C.P. 703.100(a)(2).*)

(c) The time a lien is created under the Enforcement of Judgments Law or the Attachment Law (*C.C.P. 481.010 et seq.*). (*C.C.P. 703.100(a)(3).*) (See Legislative Com. Comment (Senate) to *C.C.P. 703.100* [*C.C.P. 703.100(a)* adopts principle that question of exemptions does not arise until judgment creditor has sought to apply judgment debtor's property toward satisfaction of judgment]; *Imperial Bank v. Pim Elec.* (1995) 33 *C.A.4th* 540, 552, 39 *C.R.2d* 432, *infra*, §290, citing the text; C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.41; Rutter Group, 2 *Enforcing Judgments and Debts* §6:846; 6:909 *et seq.*; C.E.B., 2 *Debt Collection Practice* 2d, §9.51; 14 *Pacific L. J.* 425; on creation of attachment liens, see 6 *Cal. Proc.* (5th), *Provisional Remedies*, §184 *et seq.*)

An exception to this rule exists with respect to the application of a homestead exemption to property acquired with homestead proceeds. (See *C.C.P. 704.710(c)*, *infra*, §217.)

(2) *Changed Circumstances.* The court may take into consideration the following changes that have occurred between the time for determining the exemption and the time of the hearing:

(a) A change in the use of the property if the exemption is based on an exempt use. (*C.C.P. 703.100(b)(1).*)

(b) A change in the value of the property if the exemption is based on value. (*C.C.P. 703.100(b)(2).*)

(c) A change in the financial circumstances of the judgment debtor and the debtor's spouse and dependents if the exemption is based on their needs. (*C.C.P. 703.100(b)(3).*)

SUPPLEMENT: [This section is current through the latest supplement]



10 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

10. Determination of Exemptions Based on Need.

8 Witkin Cal. Proc. Enf Judgm § 177

[§ 177] Determination of Exemptions Based on Need.

In determining an exemption based on need, the court must take into account all property of the judgment debtor and, to the extent that the debtor has a spouse, dependents, or family, all property of those persons, including community property and a spouse's separate property, whether or not the property is subject to enforcement of a money judgment. (*C.C.P. 703.115*; see Rutter Group, 2 Enforcing Judgments and Debts §6:861 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.71.)

The following exemptions based on need are illustrative:

- (1) Home furnishings (*C.C.P. 704.020*, infra, §189).
- (2) Health aids (*C.C.P. 704.050*, infra, §192).
- (3) Insurance benefits (*C.C.P. 704.100*, infra, §199).
- (4) Damages for personal injury (*C.C.P. 704.140*, infra, §207).
- (5) Damages for wrongful death (*C.C.P. 704.150*, infra, §208).

SUPPLEMENT: [This section is current through the latest supplement]



11 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

11. Exemptions in Bankruptcy.

8 *Within Cal. Proc. Enf Judgm § 178*

[§ 178] Exemptions in Bankruptcy.

(1) *Federal Exemptions Are Not Applicable in California.* State law and federal law provide distinct exemptions for a debtor in bankruptcy. Generally, California exemptions are more favorable to homeowners, while federal exemptions are more favorable to renters. (See 16 Cal. Law Rev. Com. Reports, p. 1098.) The federal Bankruptcy Code permits each state to preclude use of the federal exemptions in bankruptcy and to require a debtor in bankruptcy to be subject to state exemptions. (11 U.S.C., §522(b)(1).) Pursuant to this authority, the federal exemptions are not authorized in California. (C.C.P. 703.130(a).) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.39; Rutter Group, 2 Enforcing Judgments and Debts §6:829 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.76; 72 Cal. L. Rev. 922; on discharge of judgment by bankruptcy of judgment debtor, see *infra*, §514 et seq.)

(2) *Regular or Special Exemptions.* Two sets of state exemptions are available in bankruptcy in California: (a) The regular exemptions provided by C.C.P. 703.010 et seq. (see *infra*, §187 et seq.), including the homestead exemption, regardless of whether a money judgment against the debtor exists or whether a money judgment is being enforced; and (b) special exemptions provided by C.C.P. 703.140(b). (C.C.P. 703.140(a).) The special exemptions exist with respect to the debtor's interest in the following property:

(a) Residential real or personal property or a burial plot, not in excess of \$ 20,725. (C.C.P. 703.140(b)(1).)

(b) One motor vehicle, not in excess of \$ 3,300. (C.C.P. 703.140(b)(2).)

(c) Household furnishings, household goods, wearing apparel, appliances, books, animals, crops, and musical instruments held primarily for personal, family, or household use, not in excess of \$ 525 for any particular item. (C.C.P. 703.140(b)(3).)

(d) Jewelry held primarily for personal, family, or household use, not in excess of \$ 1,350. (C.C.P. 703.140(b)(4).)

(e) Any property not in excess of \$ 1,100 plus any unused amount of the residential property exemption provided by C.C.P. 703.140(b)(1). (C.C.P. 703.140(b)(5).)

(f) Implements, professional books, and tools of the trade, not in excess of \$ 2,075. (C.C.P. 703.140(b)(6).)

(g) Unmatured life insurance contracts other than credit life insurance contracts. (*C.C.P. 703.140(b)(7).*)

(h) Accrued dividends or interest under, or the loan value of, unmatured life insurance contracts owned by the debtor, not in excess of \$ 11,075. (*C.C.P. 703.140(b)(8).*)

(i) Professionally prescribed health aids. (*C.C.P. 703.140(b)(9).*)

(j) The right to receive Social Security benefits; unemployment compensation; local public assistance benefits; veterans' benefits; disability, illness, or unemployment benefits; alimony, support, or separate maintenance reasonably necessary for support; and, with specified exceptions, payments under certain stock bonus, pension, profit sharing, annuity, and similar plans or contracts necessary for support. (*C.C.P. 703.140(b)(10).*)

(k) The right to receive, or property that is traceable to, awards under crime victim's reparation laws; wrongful death payments necessary for support; life insurance payments necessary for support; a personal injury award not in excess of \$ 20,725; and payments to compensate for loss of future earnings to the extent necessary for support. (*C.C.P. 703.140(b)(11).*)

The stated dollar amounts for these exemptions are those effective April 1, 2007, and are subject to triennial cost-of-living adjustments. (See *infra*, §179.)

(3) *Election of Exemptions.* The regular or special exemptions may be elected as follows:

(a) Spouses filing a bankruptcy petition jointly may jointly elect to use either the regular or special exemptions, but not both. (*C.C.P. 703.140(a)(1).*)

(b) If a bankruptcy petition is filed individually by a husband or a wife, the regular exemptions apply, except that if both spouses waive in writing the right to claim the regular exemptions, during the pendency of that proceeding, in any subsequent bankruptcy proceeding commenced by either spouse, they may elect to use the special exemptions. (*C.C.P. 703.140(a)(2).*)

(c) An unmarried person filing a bankruptcy petition may elect to use either the regular or special exemptions, but not both. (*C.C.P. 703.140(a)(3).*)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Federal Exemptions Are Not Applicable in California.* The federal authority permitting states to preclude the use of federal exemptions in bankruptcy is now *11 U.S.C., §522(b)(2)*. (See *C.C.P. 703.130*, as amended in 2009.)

(2) *Regular or Special Exemptions.*

(c) *Household furnishings:* See *46 A.L.R.6th 401* [exemption for firearms].



12 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

A. In General.

12. Periodic Adjustments.

8 *Witkin Cal. Proc. Enf Judgm § 179*

[§ 179] Periodic Adjustments.

(1) *In General.* The Judicial Council is charged with adjusting the dollar amounts of certain exemptions every 3 years to reflect changes in the cost of living. (*C.C.P. 703.150*; see Rutter Group, 2 *Enforcing Judgments and Debts* §§6:831.6, 924.1; C.E.B., 2 *Debt Collection Practice* 2d, §§9.42, 9.55A.)

(2) *Dates of Adjustments.* The bankruptcy exemptions provided in *C.C.P. 703.140(b)* (see *supra*, §178) were adjusted on April 1, 2004, and are readjusted at each 3-year interval ending on April 1 after that date. (*C.C.P. 703.150(a)*.) The exemptions provided for particular kinds of property in *C.C.P. 704.010* et seq. (see *infra*, §187 et seq.) were adjusted on April 1, 2007, and are readjusted at each 3-year interval ending on April 1 after that date. (*C.C.P. 703.150(b)*.)

(3) *Basis of Adjustments.* The Judicial Council must determine the adjusted amounts based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics, for the most recent 3-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest \$ 25. (*C.C.P. 703.150(c)*.)

(4) *Publication of List.* Beginning April 1, 2004, and triennially thereafter, the Judicial Council is directed to publish a list of the current dollar amounts of these exemptions, together with the date of the next scheduled adjustment. (*C.C.P. 703.150(d)*.) This information is posted on the judicial branch website: <http://www.courtinfo.ca.gov>. The list appears in Judicial Council Form No. EJ-155 [Exemptions from the Enforcement of Judgments] and is also included in Thomson West printed versions of the Code of Civil Procedure, preceding *C.C.P. 703.010*.

(5) *Applicability of Adjustments.* Adjustments made to exemptions provided in *C.C.P. 703.140(b)* do not apply with respect to cases commenced before the date of the adjustment, subject to any contrary rule applicable under the federal Bankruptcy Code. The applicability of adjustments made to exemptions provided in *C.C.P. 704.010* et seq. is governed by *C.C.P. 703.050* (time for determination; see *supra*, §169). (*C.C.P. 703.150(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Basis of Adjustments.* In 2009, *C.C.P. 703.150(c)* was relettered *C.C.P. 703.150(d)*. On April 1, 2010, and each

succeeding 3-year interval ending April 1, the Judicial Council must submit to the Legislature the amount by which the homestead exemption (see text, §218) may be increased under the specified indexes. (*C.C.P. 703.150(c)*, added in 2009.)

(4) *Publication of List*. In 2009, *C.C.P. 703.150(d)* was relettered *C.C.P. 703.150(e)*. In any year the Legislature increases the homestead exemptions in *C.C.P. 704.730(a)*, the Judicial Council is required to publish a list of the dollar amounts of those exemptions. (*C.C.P. 703.150(e)*, as amended in 2009.)

(5) *Applicability of Adjustments*. In 2009, *C.C.P. 703.150(e)* was relettered *C.C.P. 703.150(f)*.



13 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

B. Procedure for Claiming Exemptions.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm § 180*

[§ 180] In General.

(1) *Applicable Procedure.* An exemption for property described in any statute as exempt "may be claimed within the time and in the manner prescribed in the applicable enforcement procedure." (*C.C.P. 703.030(a)*; see Legislative Com. Comment (Assembly) to *C.C.P. 703.030* [noting applicable procedures for claiming exemptions]; on persons by whom claim may be made, see *supra*, §170; on waiver of exemptions, see *supra*, §171.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.40 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:868 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.56 et seq.; Cal. Civil Practice, 4 Procedure, §30:33 et seq.; 14 *Pacific L. J. 423.*)

The applicable procedure for claiming an exemption after levy is set forth in *C.C.P. 703.510* et seq. and is the subject of this and the immediately following sections. Property that is exempt without making a claim (property not subject to enforcement of a money judgment; see *C.C.P. 704.210*, *supra*, §60) may be released under this procedure. (*C.C.P. 695.040, 703.510(b).*) Where exempt property requires a claim of exemption, the procedure under *C.C.P. 703.510* et seq. is applicable, unless otherwise provided by statute. (*C.C.P. 703.510(a).*) For example, special provisions govern claiming an exemption in the following circumstances:

- (a) Deposit accounts containing Social Security benefits (see *C.C.P. 704.080*, *infra*, §195).
- (b) Real property homesteads (see *C.C.P. 704.710* et seq., *infra*, §216 et seq.).
- (c) Earnings (see *C.C.P. 706.010* et seq., *infra*, §241 et seq.).
- (d) Support obligations enforced by a local child support agency (see *C.C.P. 689.030*, *infra*, §405).

(2) *Extension of Time.* If the court extends the time allowed for an act required in connection with claiming an exemption after levy, written notice of the extension must be filed with the levying officer and, unless waived, must be promptly served on the opposing party, personally or by mail. (*C.C.P. 703.590.*)

(3) *Appeal.* An appeal lies from any order made in connection with claiming an exemption after levy. (*C.C.P. 703.600.*)

West's Key Number Digest, Exemptions 137

SUPPLEMENT: [This section is current through the latest supplement]



14 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

B. Procedure for Claiming Exemptions.

2. Claim of Exemption.

8 *Witkin Cal. Proc. Enf Judgm § 181*

[§ 181] Claim of Exemption.

(1) *Time of Filing.* A party claiming an exemption after levy may do so by filing a claim and a copy with the levying officer within 10 days after the notice of levy on the property is served on the judgment debtor. (*C.C.P. 703.520(a).*) The time for filing is subject to extension under *C.C.P. 684.120* (supra, §27) if service of the notice is by mail. (Legislative Com. Comment (Assembly) to *C.C.P. 703.520.*) (See C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.42; Rutter Group, *2 Enforcing Judgments and Debts* §6:878 et seq.; C.E.B., *2 Debt Collection Practice* 2d, §9.56, 9.58 et seq.)

(2) *Form and Content of Claim.* The claim must be executed under oath and must include all of the following:

(a) The claimant's name and mailing address. (*C.C.P. 703.520(b)(1).*)

(b) The name and last known address of the debtor, if the claimant is not the debtor. (*C.C.P. 703.520(b)(2).*)

(c) A description of the property claimed to be exempt. (*C.C.P. 703.520(b)(3).*) (For special requirements with respect to description of property where exemption involves motor vehicles, trade or business property, or insurance, see *C.C.P. 703.520(b)(3)*; Legislative Com. Comment (Assembly) to *C.C.P. 703.520.*)

(d) A financial statement, if one is required (see *infra*, this section). (*C.C.P. 703.520(b)(4).*)

(e) A citation of the statute on which the claim is based. (*C.C.P. 703.520(b)(5).*)

(f) A statement of facts necessary to support the claim. (*C.C.P. 703.520(b)(6).*)

The Judicial Council has approved an optional form for a claim of exemption. (See Judicial Council Form No. EJ-160 [Claim of Exemption].)

(3) *Financial Statement.* A claim of exemption must include a financial statement if property is claimed to be exempt as necessary for the support of the debtor and the debtor's spouse and dependents. (*C.C.P. 703.530(a).*) The statement must be executed under oath by the debtor and, unless the spouses are living separate and apart, by the

debtor's spouse. (*C.C.P. 703.530(c)*.) The financial statement must include all of the following:

- (a) The name of the debtor's spouse. (*C.C.P. 703.530(b)(1)*.)
- (b) The name, age, and relationship of all persons dependent on the debtor or the debtor's spouse for support. (*C.C.P. 703.530(b)(2)*.)
- (c) All sources and the amounts of earnings and other income of the debtor and the debtor's spouse and dependents. (*C.C.P. 703.530(b)(3)*.)
- (d) A list of assets of the debtor and the debtor's spouse and dependents, and the value of the assets. (*C.C.P. 703.530(b)(4)*.)
- (e) All outstanding obligations of the debtor and the debtor's spouse and dependents. (*C.C.P. 703.530(b)(5)*.) (See *Schwartzman v. Wilshinsky* (1996) 50 C.A.4th 619, 626, 57 C.R.2d 790, *infra*, §204 [declaration containing some required facts and attached unverified balance sheet were insufficient substitutes for financial statement].)

Where wages are garnished, additional information must be provided in the financial statement. (See *C.C.P. 706.124*, *infra*, §261.)

The Judicial Council has adopted a form for a financial statement for mandatory use. (See Judicial Council Form No. EJ-165 [Financial Statement].)

SUPPLEMENT: [This section is current through the latest supplement]



15 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

B. Procedure for Claiming Exemptions.

3. Notice of Claim.

8 Within Cal. Proc. Enf Judgm § 182

[§ 182] Notice of Claim.

Promptly after a claim of exemption is filed following levy, the levying officer must serve the judgment creditor, personally or by mail, with a copy of the claim and a notice of claim of exemption. The notice must state that the claim has been made and that the levying officer will release the property unless, within the time specified in the notice, both a notice of opposition to the claim (see *infra*, §183) and a notice of motion for an order determining the claim are filed with the levying officer. (*C.C.P. 703.540*; see *Lampley v. Alvares (1975) 50 C.A.3d 124, 129, 123 C.R. 181* [officer could not charge debtor fee for serving claim of exemption on creditor]; *C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.43*; *Rutter Group, 2 Enforcing Judgments and Debts §6:888*; *C.E.B., 2 Debt Collection Practice 2d, §9.62.*)

SUPPLEMENT: [This section is current through the latest supplement]



16 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

B. Procedure for Claiming Exemptions.

4. Opposition to Claim.

8 *Witkin Cal. Proc. Enf Judgm § 183*

[§ 183] Opposition to Claim.

(1) *Time for Filing.* Within 10 days after service of the notice of claim of exemption after levy (see *supra*, §182), a judgment creditor who opposes the claim must file with the court (a) a notice of opposition to the claim of exemption, and (b) a notice of motion for an order determining the claim, and must file copies of these notices with the levying officer. On the filing of these copies with the levying officer, the officer must promptly file the claim of exemption with the court. If the copies are not timely filed with the levying officer, the officer must immediately release the property to the extent that it is claimed to be exempt. (*C.C.P. 703.550.*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.44; Rutter Group, 2 *Enforcing Judgments and Debts* §6:889 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §§9.63, 9.64; for form of notice of motion for order determining claim of exemption, see *Cal. Civil Practice*, 4 *Procedure*, §30:43.)

(2) *Form and Content of Notice of Opposition.* The notice of opposition must be executed under oath, and must include (a) an allegation either that the property is not exempt or that the debtor's equity in the property exceeds the allowable exemption, and (b) a statement of facts necessary to support the allegation. (*C.C.P. 703.560.*)

The Judicial Council has approved an optional form for a notice of opposition to a claim of exemption. (See Judicial Council Form No. EJ-170 [Notice of Opposition to Claim of Exemption].)

SUPPLEMENT: [This section is current through the latest supplement]



17 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

B. Procedure for Claiming Exemptions.

5. Hearing.

8 *Witkin Cal. Proc. Enf Judgm § 184*

[§ 184] Hearing.

(1) *Time for Hearing.* A hearing on a motion to determine a claim of exemption after levy must be held not later than 20 days from the date the notice of motion is filed with the court (see *supra*, §183), unless continued for good cause. (*C.C.P. 703.570(a)*.) If the exemption is not determined within the time provided, the property claimed to be exempt must be released, unless otherwise ordered by the court. (*C.C.P. 703.580(f)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.47 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:902 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.66.)

(2) *Notice of Hearing.* Not less than 10 days prior to the hearing, the judgment creditor must serve a notice of the hearing and a copy of the notice of opposition to the claim, personally or by mail, on the claimant and, if the claimant is not the judgment debtor, on the debtor. (*C.C.P. 703.570(b)*.)

The Judicial Council has adopted a mandatory form for a notice of hearing on a claim of exemption. (See Judicial Council Form No. EJ-175 [Notice of Hearing on Claim of Exemption].)

(3) *Conduct of Hearing.* Subject to the power of the court to permit amendments in the interest of justice, the claim of exemption and the notice of opposition constitute the pleadings. (*C.C.P. 703.580(a)*.) The claim of exemption is deemed controverted by the notice of opposition and both must be received in evidence. If no other evidence is offered and the court is satisfied that sufficient facts are shown by the claim and the notice of opposition, it may make its determination. If not so satisfied, the court must order the hearing continued for the production of other evidence. (*C.C.P. 703.580(c)*.) The exemption claimant has the burden of proof. (*C.C.P. 703.580(b)*); see *Schwartzman v. Wilshinsky* (1996) 50 C.A.4th 619, 626, 57 C.R.2d 790, *infra*, §204.)

West's Key Number Digest, Exemptions 150

SUPPLEMENT: [This section is current through the latest supplement]



18 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

B. Procedure for Claiming Exemptions.

6. Order.

8 Witkin Cal. Proc. Enf Judgm § 185

[§ 185] Order.

At the conclusion of the hearing, the court must determine by order whether the property is exempt, in whole or in part. Subject to the right to appeal under *C.C.P. 703.600* (see *supra*, §180), the order is determinative of the judgment creditor's right to apply the property to satisfaction of the judgment. No findings are required in this proceeding. (*C.C.P. 703.580(d)*.) The clerk must promptly transmit a certified copy of the order to the levying officer who must then release the property or apply it to the satisfaction of the judgment, as directed by the order, subject to *C.C.P. 703.610* (see *infra*, §186), providing for disposition of property during proceedings. (*C.C.P. 703.580(e)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.52; Rutter Group, 2 Enforcing Judgments and Debts §§6:915. 6:916; C.E.B., 2 Debt Collection Practice 2d, §9.66.)

West's Key Number Digest, Exemptions 151

SUPPLEMENT: [This section is current through the latest supplement]



19 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

B. Procedure for Claiming Exemptions.

7. Disposition of Property During Proceedings.

8 *Within Cal. Proc. Enf Judgm § 186*

[§ 186] Disposition of Property During Proceedings.

(1) *Court Order.* While proceedings are pending concerning a claim of exemption after levy, the court, on motion of the judgment creditor or the exemption claimant or on its own motion, may make an appropriate disposition order. The order may be modified or vacated at any time while the proceedings are pending. (*C.C.P. 703.610(b)*.) (See Rutter Group, 2 Enforcing Judgments and Debts §§6:903, 6.917; C.E.B., 2 Debt Collection Practice 2d, §§9.66, 9.67; on orders for disposition of perishable property, see *C.C.P. 699.070*, supra, §102.)

(2) *Effect of Appeal.* If the determination of a claim of exemption is appealed, notice of the appeal must be given to the levying officer. The levying officer must hold, release, or dispose of the property in accordance with *C.C.P. 916* et seq., governing enforcement and stays of judgments pending appeal (see 9 *Cal. Proc.* (5th), *Appeal*, §221 et seq.). (*C.C.P. 703.610(c)*.)

(3) *Restrictions on Levying Officer.* Except as otherwise provided by statute or ordered by the court, the levying officer may not release, sell, or otherwise dispose of the property for which an exemption is claimed until an appeal is waived, the time to file an appeal has expired, or the exemption is finally determined. (*C.C.P. 703.610(a)*; see *Arc Inv. Co. v. Tiffith* (1958) 164 *C.A.2d Supp.* 853, 856, 330 *P.2d* 305 [restraining order issued against successive levies on exempt property].) The property may be released if the judgment creditor requests release in writing (*C.C.P. 699.060*, supra, §106), if the levying officer's costs are not paid (*C.C.P. 685.100*, supra, §30), to preserve perishable property (*C.C. 699.070*, supra, §102), or if a third person files an undertaking (*C.C.P. 720.660*, infra, §386). (See Legislative Com. Comment (Assembly) to *C.C.P. 703.610*.)

SUPPLEMENT: [This section is current through the latest supplement]

Correction: Page 222, line 3, "C.C. 699.070" should be " *C.C.P. 699.070*".



20 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

1. In General.

8 Within Cal. Proc. Enf Judgm § 187

[§ 187] In General.

Exempt property under the Enforcement of Judgments Law is set forth in *C.C.P. 704.010* et seq. and discussed in the following sections (see §188 et seq.). (See Rutter Group, 2 Enforcing Judgments and Debts §6:924 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.68 et seq.; on federal exemptions, see *infra*, §214; on bankruptcy exemptions, see *supra*, §178.)

The Judicial Council has prepared a list of exemptions under both federal and state law, citing the relevant statutes. (See Judicial Council Form No. EJ-155 [Exemptions from the Enforcement of Judgments]; Cal. Civil Practice, 4 Procedure, §30:41.)

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21 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

2. Motor Vehicles.

8 *Witkin Cal. Proc. Enf Judgm § 188*

[§ 188] Motor Vehicles.

(1) *In General.* The motor vehicle exemption is \$ 2,550. (*C.C.P. 704.010(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.12; Rutter Group, 2 Enforcing Judgments and Debts §6:926 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.68; *14 Pacific L. J. 415*.) The amount is effective April 1, 2007, and is subject to triennial cost-of-living adjustments. (See *supra*, §179.)

(2) *Scope of Exemption.* Any combination of the following is exempt in that amount:

(a) The judgment debtor's aggregate equity in motor vehicles. (*C.C.P. 704.010(a)(1)*.)

(b) Proceeds from an execution sale of a motor vehicle. (*C.C.P. 704.010(a)(2)*.)

(c) Proceeds from insurance or other indemnification for the loss, damage, or destruction of a vehicle. (*C.C.P. 704.010(a)(3)*.)

The proceeds are exempt for 90 days from the time they are actually received by the debtor. (*C.C.P. 704.010(b)*.)

(3) *Determination of Equity.* To determine the debtor's equity, the fair market value of a motor vehicle must be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in price guides. (*C.C.P. 704.010(c)*.) (For definition of "equity," see *C.C.P. 680.190*, *supra*, §21.)

(4) *Sole Vehicle of Debtor.* Where the debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the sale are exempt in the same amount (\$ 2,550) without making a claim, and the exemption provided by *C.C.P. 704.010(a)* is not available. In determining whether the debtor has only one motor vehicle, the levying officer must consult and may rely on records of the Department of Motor Vehicles. (*C.C.P. 704.010(d)*.)

West's Key Number Digest, Exemptions 44

SUPPLEMENT: [This section is current through the latest supplement]



22 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

3. Household Furnishings and Personal Effects.

8 *Within Cal. Proc. Enf Judgm § 189*

[§ 189] Household Furnishings and Personal Effects.

(1) *Scope of Exemption.* Household furnishings, appliances, provisions, wearing apparel, and other personal effects "ordinarily and reasonably necessary to, and personally used or procured for use by, the judgment debtor and members of the judgment debtor's family at the judgment debtor's principal place of residence" are exempt. Where the debtor and the debtor's spouse are living separately, the exemption also applies to that property used by the spouse and family members at the spouse's principal place of residence. (*C.C.P. 704.020(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.11; Rutter Group, 2 *Enforcing Judgments and Debts* §6:931 et seq.; *14 Pacific L. J. 415*.)

(2) *Determination of Necessity.* Cases construing a predecessor statute gave the term "necessary" a broad interpretation that took into account the debtor's customary mode of living. (See *Estate of Millington (1923) 63 C.A. 498, 501, 218 P. 1022* [wearing apparel includes more than mere clothing, so that watches and inexpensive ornaments are exempt].)

In *Independence Bank v. Heller (1969) 275 C.A.2d 84, 87, 79 C.R. 868*, where the judgment debtor lived in a luxuriously furnished home, the judgment creditor contended on appeal that it was error for the trial judge to grant an exemption to expensive furniture and to consider the manner in which the debtor had lived. *Held*, order affirmed; the trial judge properly considered evidence that the debtor, the son of wealthy parents, "had lived in an atmosphere of affluence and elegance" and had furnished his apartment in conformity with "a desire to live in the midst of the finery to which he had become accustomed." (*275 C.A.2d 87*.) The value of the property would only have been relevant had the debtor been charged with fraudulent intent to cheat his creditors, and the trial judge properly applied the exemption law in his favor. (*275 C.A.2d 88, 89, 90*.)

The Enforcement of Judgments Law now provides that, in determining necessity under *C.C.P. 704.020(a)*, the court must take into account *both* of the following:

(a) The extent to which a particular item is ordinarily found in a household. (*C.C.P. 704.020(b)(1)*.)

(b) Whether a particular item has "extraordinary value" as compared to the value of similar items in other households. (*C.C.P. 704.020(b)(2)*.)

Thus, items such as antiques, musical instruments, and art works having extraordinary value are subject to execution. (Legislative Com. Comment (Assembly) to *C.C.P. 704.020* [noting that *C.C.P. 704.020(b)* is intended to change the result in cases such as *Independence Bank*].) (See 2 Santa Clara Lawyer 155; 41 *A.L.R.3d* 607 [what is "necessary" furniture entitled to exemption from seizure for debt].)

(3) *Partial Exemption of Proceeds From Property of Extraordinary Value.* Where property of a type ordinarily found in a household is determined not to be exempt because of its extraordinary value, the proceeds from the execution sale of the property are exempt for 90 days after actual receipt in the amount determined by the court to be a reasonable amount sufficient to purchase a replacement of ordinary value if the court determines that a replacement is reasonably necessary. (*C.C.P. 704.020(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Scope of Exemption.* See 44 *A.L.R.6th* 481 [jewelry and clothing as within debtor's exemptions].



23 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

4. Materials for Repair or Improvement of Dwelling.

8 Witkin Cal. Proc. Enf Judgm § 190

[§ 190] Materials for Repair or Improvement of Dwelling.

Materials purchased in good faith for the repair or improvement of the judgment debtor's principal residence (or the spouse's principal residence if the debtor and the debtor's spouse are living separately) are exempt if the debtor's equity in the material does not exceed \$ 2,700. (*C.C.P. 704.030.*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.33; Rutter Group, 2 Enforcing Judgments and Debts §6:989; for definition of "equity," see *C.C.P. 680.190*, *supra*, §21.)

The amount of the exemption is effective April 1, 2007, and is subject to triennial cost-of-living adjustments. (See *supra*, §179.)

SUPPLEMENT: [This section is current through the latest supplement]



24 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

5. Jewelry, Heirlooms, and Works of Art.

8 Within Cal. Proc. Enf Judgm § 191

[§ 191] Jewelry, Heirlooms, and Works of Art.

Jewelry, heirlooms, and works of art are exempt to the extent of aggregate equity up to \$ 6,750. (*C.C.P. 704.040.*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.13; Rutter Group, 2 Enforcing Judgments and Debts §6:940 et seq.; for definition of "equity," see *C.C.P. 680.190*, supra, §21.)

The amount of the exemption is effective April 1, 2007, and is subject to triennial cost-of-living adjustments. (See supra, §179.)

SUPPLEMENT: [This section is current through the latest supplement]
See *44 A.L.R.6th 481* [jewelry and clothing as within debtor's exemptions].



25 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

6. Health Aids.

8 Within Cal. Proc. Enf Judgm § 192

[§ 192] Health Aids.

Prosthetic and orthopedic appliances and health aids reasonably necessary to enable a judgment debtor and the debtor's spouse and dependents to work or sustain health are exempt. (*C.C.P. 704.050.*) While the requirement that health aids be reasonably necessary to enable the individual to work or sustain health permits the exemption of such items as a wheelchair for a person unable to walk to work or an air conditioner for a person afflicted with asthma, it does not permit the exemption of a swimming pool, sauna, bicycle, or golf clubs merely because their use is necessary to sustain good health. (Law Rev. Com. Comment to *C.C.P. 704.050.*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.14; Rutter Group, 2 Enforcing Judgments and Debts §§6:981, 6:982.)

SUPPLEMENT: [This section is current through the latest supplement]



26 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

7. Personal Property Used in Trade, Business, or Profession.

8 *Within Cal. Proc. Enf Judgm § 193*

[§ 193] Personal Property Used in Trade, Business, or Profession.

(1) *Scope of Exemption.* A judgment debtor and the debtor's spouse are each entitled to an exemption of specified property "reasonably necessary to and actually used" in the exercise of a trade, business, or profession by which the debtor or the spouse earns a living, to the extent that the aggregate equity in the property does not exceed \$ 6,750. The amount of the exemption is effective April 1, 2007, and subject to triennial cost-of-living adjustments. (See *supra*, §179.) Alternatively, a debtor and spouse are entitled to an exemption of twice this amount (\$ 13,475) for property "reasonably necessary to and actually used" by the judgment debtor and by the spouse of the judgment debtor "in the exercise of the same trade, business, or profession by which both earn a livelihood." The exemption applies to tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property. (*C.C.P. 704.060(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.17; Rutter Group, 2 Enforcing Judgments and Debts §6:942 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.69; 14 *Pacific L. J.* 916.)

(2) *Illustrations.* The following cases interpreting these provisions, or similar language in the prior statute, may be useful in determining the scope of the exemption:

In re McManus (1890) 87 C. 292, 293, 25 P. 413 [jeweler's safe].

In re Mitchell (1894) 102 C. 534, 535, 36 P. 840 [printing plant was not wholly exempt].

Peebler v. Danziger (1951) 104 C.A.2d 490, 492, 231 P.2d 894 [term "tools and implements" included any implement needed and used for purpose of carrying on one's trade or business].

Twining v. Taylor (1959) 170 C.A.2d Supp. 842, 844, 339 P.2d 646 [review of cases defining "mechanic or artisan," "tool or implement," and "necessary to carry on his trade"; tractor with bucket "dozer attachment" used in occupation of spreading gypsum and fertilizer for farmers was exempt].

Sun, Ltd. v. Casey (1979) 96 C.A.3d 38, 42, 157 C.R. 576 [personal automobile used to transport crippled real estate agent and prospective purchasers to and from listed properties was exempt as "tool" or "implement" of business even

though business use was not exclusive].

Canal-Randolph Anaheim v. Wilkoski (1980) 103 C.A.3d 282, 291, 292, 163 C.R. 30 [exemption is personal to natural person and cannot be claimed by professional corporation].

C.F. Nielsen v. Stern (1992) 11 C.A.4th Supp. 22, 25, 15 C.R.2d 676 [attorney's business bank account was not exempt under C.C.P. 704.060(a)].

(3) *Exemption of Proceeds*. The proceeds from an execution sale of trade or business property or from insurance or other indemnification due to the loss, damage, or destruction of the property are exempt for 90 days after the proceeds are actually received by the debtor or the spouse. The proceeds are exempt to the extent of the applicable exemption amount, less the aggregate equity of any other property to which the exemption has been applied. (C.C.P. 704.060(b).)

(4) *Restriction on Exemption of Motor Vehicles*. A motor vehicle is not exempt under C.C.P. 704.060(a) if a motor vehicle that is reasonably adequate for use in the trade, business, or profession is exempt under C.C.P. 704.010 (see supra, §188). (C.C.P. 704.060(c).) Also, notwithstanding C.C.P. 704.060(a), (b), the amount of the exemption for a commercial motor vehicle is limited, in the case of the debtor or the debtor's spouse, to \$ 4,850. The amount is effective April 1, 2007, and is subject to triennial cost-of-living adjustments. (See supra, §179.) In the case of a debtor and spouse who are in the same trade, business, or profession, the exemption is limited to twice that amount (\$ 9,700). (C.C.P. 704.060(d).) This limitation is generally consistent with the motor vehicle exemption under C.C.P. 704.010. (Law Rev. Com. Comment to 1995 Amendment to C.C.P. 704.060.)

SUPPLEMENT: [This section is current through the latest supplement]



27 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

8. Paid Earnings.

8 *Witkin Cal. Proc. Enf Judgm* § 194

[§ 194] Paid Earnings.

(1) *"Paid Earnings" Defined.* "Paid earnings" are earnings as defined in *C.C.P. 706.011* (employee's compensation for personal services performed; see *infra*, §243) paid to an employee during the 30-day period (a) prior to the levy, if the earnings are levied on, or (b) prior to the date the earnings are subjected to enforcement of a money judgment, if the earnings are subjected to enforcement other than by levy. (*C.C.P. 704.070(a)(2)*; see *Fay Sec. Co. v. Bowering* (1929) 106 C.A. Supp. 771, 773, 288 P. 41 [only that portion of income from business attributable to earnings for personal services was exempt]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.15; Rutter Group, 2 Enforcing Judgments and Debts §6:951 et seq.)

(2) *Scope of Exemption.* Paid earnings that can be traced to cash, a cash equivalent, or a deposit account under *C.C.P. 703.080* (see *supra*, §174) are exempt. (*C.C.P. 704.070(b)*; see *Carter v. Carter* (1942) 55 C.A.2d 13, 14, 130 P.2d 186 [debtor had burden of proving that funds in bank account were earnings].)

(3) *Amount.* The amount of the exemption depends on the existence of an earnings withholding order or an earnings assignment order for support under the Wage Garnishment Law (see *infra*, §241 et seq.). If the earnings were subject to such an order or assignment prior to payment to the employee, all of the earnings are exempt. If the earnings were not subject to such an order or assignment, 75% are exempt. (*C.C.P. 704.070(b)*.) (For definition of "earnings withholding order," see *C.C.P. 704.070(a)(1)*; for definition of "earnings assignment order for support," see *C.C.P. 704.070(a)(3)*.)

West's Key Number Digest, Exemptions 187

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Amount.* See *Ford Motor Credit Co. v. Waters* (2008) 166 C.A.4th Supp. 1, *Supp. 9*, 83 C.R.3d 826 [on judgment creditor's levy on bank account containing debtor's directly deposited wages, debtor is entitled to exemption for 75% of paid earnings that remain in account on date of levy].



28 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

9. Deposit Account Containing Social Security or Public Benefit Payments.

a. Nature and Amount of Exemption.

8 *Witkin Cal. Proc. Enf Judgm § 195*

[§ 195] Nature and Amount of Exemption.

(1) *Nature of Account.* Funds in a deposit account in which public benefits or Social Security benefits are directly deposited are subject to exemption. "Public benefits" include aid payments authorized by Welf.C. 11450(a), payments for supportive services as described in Welf.C. 11323.2, and general assistance payments made pursuant to Welf.C. 17000.5. "Social Security benefits" include regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits. (*C.C.P. 704.080(a)*; see *42 U.S.C., §407* [Social Security benefits, paid or payable, are not subject to execution]; *Washington Dept. of Social & Health Services v. Guardianship Estate of Keffeler* (2003) *537 U.S. 371, 123 S.Ct. 1017, 1024, 154 L.Ed.2d 972, 983* [42 U.S.C., §407(a), protecting stated benefits from "execution, levy, attachment, garnishment, or other legal process," did not bar reimbursement of state agency, as representative payee of children in foster care, for expenditures in providing that care]; *C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §§6.24, 6.25*; *Rutter Group, 2 Enforcing Judgments and Debts §§6:955 et seq., 6:993, 6:994; 8 Pacific L. J. 228.*)

(2) *Prescribed Exemption Amounts.* The deposit account is exempt, without making a claim, in the following amounts:

(a) \$ 1,350 where one depositor is the designated payee of directly deposited public benefits payments. (*C.C.P. 704.080(b)(1).*)

(b) \$ 2,700 where one depositor is the designated payee of directly deposited Social Security payments. (*C.C.P. 704.080(b)(2).*)

(c) \$ 2,025 where two or more depositors are the designated payees of directly deposited public benefits payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exemption under *C.C.P. 704.080(b)(1)* applies. (*C.C.P. 704.080(b)(3).*)

(d) \$ 4,050 where two or more depositors are the designated payees of directly deposited Social Security payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the

depositors, in which case the exemption under *C.C.P. 704.080(b)(2)* applies. (*C.C.P. 704.080(b)(4)*.)

These exemption amounts are effective April 1, 2007, and are subject to triennial cost-of-living adjustments. (See *supra*, §179.)

(3) *Additional Exemption for Balance Consisting of Benefits.* The amount of a deposit account that exceeds the exemption provided in *C.C.P. 704.080(b)* is exempt to the extent that it consists of payments of public benefits or Social Security benefits. (*C.C.P. 704.080(c)*); on limitation on withdrawal of excess, see *infra*, §196; on determination of exemption respecting excess, see *infra*, §197.)

SUPPLEMENT: [This section is current through the latest supplement]



29 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

9. Deposit Account Containing Social Security or Public Benefit Payments.

b. Limitation on Withdrawal of Balance.

8 Witkin Cal. Proc. Enf Judgm § 196

[§ 196] Limitation on Withdrawal of Balance.

(1) *In General.* Notwithstanding *C.C.P. 701.010* et seq., governing the duties and liabilities of third persons after levy (see supra, §139 et seq.), when a deposit account into which Social Security or public benefits are directly deposited is levied on, the financial institution holding the account must prohibit the withdrawal of funds exceeding the specific exemption prescribed in *C.C.P. 704.080(b)* (see supra, §195) pending (a) notification of the failure of the judgment creditor to file an affidavit challenging the exempt status of the excess funds (see infra, §197), or (b) judicial determination of their exempt status. (*C.C.P. 704.080(d)*.)

(2) *Notices to Levying Officer and Judgment Creditor.* Within 10 business days after the levy, the financial institution must give the levying officer written notice (a) stating that Social Security or public benefits are directly deposited into the account, and (b) setting out the balance of the account that exceeds the exemption provided by *C.C.P. 704.080(b)*. The levying officer must promptly serve the notice on the judgment creditor, personally or by mail. (*C.C.P. 704.080(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



30 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

9. Deposit Account Containing Social Security or Public Benefit Payments.

c. Determination of Exempt Balance.

8 *Witkin Cal. Proc. Enf Judgm § 197*

[§ 197] Determination of Exempt Balance.

(1) *Applicable Procedure.* The general procedure for claiming an exemption (*C.C.P. 703.510* et seq., supra, §180 et seq.) is not applicable in determining whether funds in a deposit account into which Social Security or public benefits are deposited include benefit payments in excess of the amount specifically exempt under *C.C.P. 704.080(b)*, which are exempt under *C.C.P. 704.080(c)* (see supra, §195). (*C.C.P. 704.080(e)*.) The general procedure does apply where the judgment debtor claims that part of the account is exempt for some reason not related to Social Security or public benefits. If the debtor also opposes the judgment creditor's affidavit with regard to an amount exempt under *C.C.P. 704.080(c)*, both exemptions must be determined at the same hearing, provided that the debtor has complied with *C.C.P. 703.510* et seq. (*C.C.P. 704.080(f)*.)

(2) *Affidavit.* Within 5 days after service of the notice on the judgment creditor under *C.C.P. 704.080(d)* (see supra, §196), a creditor desiring to claim that the balance in a deposit account is not exempt must file an affidavit with the court and the levying officer alleging that the amount is not exempt. (*C.C.P. 704.080(e)(1)*) [specifying form of affidavit.] The creditor must also give notice of a hearing on the affidavit. (*C.C.P. 704.080(e)(1)*) [specifying form of notice.] If the creditor fails to file the affidavit or give timely notice, the levying officer must release the deposit account and notify the financial institution. (*C.C.P. 704.080(e)(2)*.)

(3) *Hearing and Determination.* A hearing on the affidavit is held at which the affidavit constitutes the pleading of the judgment creditor; it is deemed controverted and no counteraffidavit is required. The judgment debtor has the burden of proving that the excess amount in the account is exempt. (*C.C.P. 704.080(e)(3)*, (e)(4).) The court must determine the extent to which the account is exempt by reason of excess Social Security or public benefits, make an appropriate order, and transmit a certified copy of the order to the financial institution and the levying officer. As to any portion of the account that is exempt, the financial institution must release any restrictions on its withdrawal by the debtor within 3 business days. (*C.C.P. 704.080(e)(5)*, (e)(6).)

SUPPLEMENT: [This section is current through the latest supplement]



31 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

10. Inmate's Trust Account.

8 *Witkin Cal. Proc. Enf Judgm § 198*

[§ 198] Inmate's Trust Account.

(1) *General Exemption.* The funds of a judgment debtor held in an inmate's trust account or a similar account by the state, a county, a city, or any agency of one of those entities, are exempt in the amount of \$ 1,350 without making a claim. The exemption applies to a debtor confined in a prison, a facility under the jurisdiction of the Division of Adult Operations or the Division of Juvenile Facilities of the Department of Corrections and Rehabilitation, or a local correctional facility. A debtor's spouse is entitled to a separate exemption, or the spouses may combine their exemptions. (*C.C.P. 704.090(a)*.) The exemption amount is effective April 1, 2007, and is subject to triennial cost-of-living adjustments. (See *supra*, §179.)

(2) *Limitation of Exemption Where Judgment for Restitution Fine or Order Exists.* The general exemption stated in *C.C.P. 704.090(a)* is limited to \$ 300 without making a claim where the judgment is for a restitution fine or order imposed under P.C. 1202.4 or other specified (formerly operative) provisions. This exemption is not subject to cost-of-living adjustment. (*C.C.P. 704.090(b)*.) (See *In re Betts (1998) 62 C.A.4th 821, 823, 73 C.R.2d 254* [restitution fine was properly collected from inmate's trust account deposits and wages; *C.C.P. 704.090* exempts funds *in* trust account but does not apply to trust account deposits or give inmate unfettered right to deposit or build account to exemption amount]; *People v. Willie (2005) 133 C.A.4th 43, 52, 34 C.R.3d 532* [defendant's funds seized on arrest and held in inmate trust account were subject to levy, as to excess over \$ 300 exemption, to satisfy restitution fine imposed on conviction]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.36; Rutter Group, 2 Enforcing Judgments and Debts §§6:1011, 6:1011.1.)

West's Key Number Digest, Exemptions 49

SUPPLEMENT: [This section is current through the latest supplement]



32 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

11. Life Insurance Policies.

8 *Witkin Cal. Proc. Enf Judgm § 199*

[§ 199] Life Insurance Policies.

(1) *Unmatured Policies.* Unmatured life insurance policies (including endowment and annuity policies) are exempt without making a claim, except that the aggregate loan value of unmaturred policies is exempt only to the extent of \$ 10,775. (*C.C.P. 704.100(a)*, (b); see Rutter Group, 2 Enforcing Judgments and Debts §6:966.5 et seq.; C.E.B., 2 Debt Collection Practice 2d, §8.35; *14 Pacific L. J. 417.*) The judgment debtor and the debtor's spouse are entitled to separate loan value exemptions that may be combined regardless of whether the policies belong to either or both spouses and regardless of whether the debtor's spouse is also a judgment debtor under the judgment. The exemption must be applied first against policies not before the court and then to policies before the court. (*C.C.P. 704.100(b)*.) The loan value is not subject to execution (*C.C.P. 699.720(a)(6)*, supra, §116), but may be subject to satisfaction of a money judgment (beyond the exemption limitation) by other appropriate procedures, e.g., by an order under *C.C.P. 708.205* (order in examination proceedings; infra, §290) or *C.C.P. 708.510* (assignment order; infra, §305). (See Legislative Com. Comment (Assembly) to *C.C.P. 704.100*.)

The amount of the exemption is effective April 1, 2007, and is subject to triennial cost-of-living adjustments. (See supra, §179.)

(2) *Matured Policies.* Benefits from matured life insurance policies (including endowment and annuity policies) are exempt to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the debtor. (*C.C.P. 704.100(c)*.) The exemption is available to the judgment debtor regardless of whether the debtor was the insured or the beneficiary, and the exemption may be asserted against creditors of the insured, the insured's spouse, or the insured's dependents. (Legislative Com. Comment (Assembly) to *C.C.P. 704.100* [noting that this provision is consistent with prior case law]; see *Holmes v. Marshall* (1905) 145 C. 777, 778, 79 P. 534 [exemption is available whether debtor is insured or beneficiary]; *Jackson v. Fisher* (1961) 56 C.2d 196, 199, 14 C.R. 439, 363 P.2d 479 [exemption applied to business creditor in whose favor policy was taken out to insure payment of money due; beneficiary was protected against his own creditor as well as those of insured]; *Prudential Ins. Co. of America v. Beck* (1940) 39 C.A.2d 355, 360, 103 P.2d 241 [insolvent insured's change of beneficiary was not fraudulent conveyance]; *Bowman v. Wilkinson* (1957) 153 C.A.2d 391, 395, 314 P.2d 574 [widow of insured]; but see *Estate of Crosby* (1935) 2 C.2d 470, 474, 41 P.2d 928 [exempt proceeds paid to surviving wife did not retain immunity after wife's death, in favor of second surviving husband]; 29 *Cal. L. Rev.* 231; 22 *So. Cal. L. Rev.* 54.)

The exemption is not lost by a change of form. (See *Bowman v. Wilkinson, supra* [exemption applied to proceeds changed into cashier's checks and later deposited; decided under prior law]; *24 Cal. L. Rev. 227*; *9 So. Cal. L. Rev. 66*.) (On computation of exemption for multiple beneficiaries, see *Jackson v. Fisher, supra, 56 C.2d 201*; *13 Hastings L. J. 282*; *14 Stanf. L. Rev. 599*.)

SUPPLEMENT: [This section is current through the latest supplement]



33 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

12. Retirement Benefits.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 200

[§ 200] In General.

Statutes commonly exempt money received as pension or retirement benefits and money held in pension funds. (See generally *Estate of Ferarazza* (1934) 219 C. 668, 669, 28 P.2d 670 [disability allowance of World War I veteran was exempt even from claims for support, prior to appointment of guardian]; *Ogle v. Heim* (1968) 69 C.2d 7, 9, footnote 1, 69 C.R. 579, 442 P.2d 659 [noting illustrative legislation exempting public pensions]; *Estate of Schwall* (1932) 123 C.A. 106, 108, 10 P.2d 1013 [veteran's death benefit under war risk insurance policy was set aside to widow as property exempt from execution]; 28 *Cal. L. Rev.* 393; 65 *Harv. L. Rev.* 1447 [retirement annuity under group insurance plan]; but see *Hammond v. Hoskins* (1938) 30 C.A.2d Supp. 779, 781, 79 P.2d 1116 [wages of Works Progress Administration worker was not pension money]; on federal exemption of veteran's bonus, see *Culp v. Webster* (1937) 25 C.A.2d Supp. 759, 760, 70 P.2d 273; *Gaskins v. Security-First Nat. Bank of Los Angeles* (1939) 30 C.A.2d 409, 416, 86 P.2d 681; 23 *Cal. L. Rev.* 415.)

SUPPLEMENT: [This section is current through the latest supplement]



34 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

12. Retirement Benefits.

b. Public Retirement Benefits.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm § 201*

[§ 201] In General.

(1) *Definitions.* The following definitions apply with respect to the exemption of public retirement and related benefits:

(a) "Public entity" means the state, a local political subdivision, or a public trust, corporation, or board, but does not include the United States except where expressly provided. (*C.C.P. 704.110(a)(1).*)

(b) "Public retirement benefit" means a pension, an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public retirement system. (*C.C.P. 704.110(a)(2).*)

(c) "Public retirement system" means a system established by a public entity by statute for retirement, annuity, or pension purposes, or for payment of disability or death benefits. (*C.C.P. 704.110(a)(3).*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.21; Rutter Group, 2 *Enforcing Judgments and Debts* §§6:997, 6:998.)

(2) *Unpaid Benefits: Exempt Without Claim.* Subject to *C.C.P. 704.110(c)* (see *infra*, §202), governing the applicability to support judgments of the exemption for public retirement benefits, rights and benefits under a public retirement system and funds held by a public entity for public retirement benefit purposes are exempt without making a claim. (*C.C.P. 704.110(b)*); see *93 A.L.R.3d 711* [employee retirement pension benefits as exempt from execution].) (On offset of state claim against amounts owed by state, see *Govt.C. 12419.5*.)

(3) *Paid Benefits: Exempt on Making Claim.* Amounts received by a California resident as a public retirement benefit, or as a return of contributions and interest, from a public entity, a public retirement system, or the United States are exempt. (*C.C.P. 704.110(d).*) The exemption applies whether the benefits are in the actual possession of the benefit recipient or have been deposited. Also, where benefits have been paid, the general rule of *C.C.P. 703.070* (see *supra*, §172) governing support exemptions is applicable. (Legislative Com. Comment to *C.C.P. 704.110*.)

(4) *Scope of Exemption.* Retirement rights and benefits of the following public employees are generally not subject

to execution except to the extent permitted by *C.C.P. 704.110*:

(a) Participants in the State Teachers' Retirement System. (*Educ.C. 22006.*)

(b) Participants in the Legislators' Retirement Fund. (*Govt.C. 9359.3.*)

(c) Participants in the Public Employees' Retirement System. (*Govt.C. 21255*; see *Family C. 17528*, infra, §202 [authorizing withholding of overdue support payments from Public Employees' Retirement System benefits].)

(d) Participants in county employee retirement plans. (*Govt.C. 31452* [rights and benefits are not subject to execution except to extent permitted by *C.C.P. 704.110* or *Govt.C. 31603* (authorizing loans secured by plan's assets in prescribed circumstances where emergency affects national banking system or financial markets)].) (See *Parsons Brinckerhoff Quade & Douglas v. Kern County Employees Retirement Assn.* (1992) 5 C.A.4th 1264, 1269, 7 C.R.2d 456 [*Govt.C. 31452* is unconstitutional to extent it would deprive person of rights under Cal. Const., Art. XIV, §3, to mechanic's lien]; *Board of Retirement of the Los Angeles County Employees Retirement Assn. v. Superior Court* (2002) 101 C.A.4th 1062, 1067, 124 C.R.2d 850 [crime victim's constitutional and statutory right to restitution does not override *Govt.C. 31452* exemption].)

(e) Participants in county police officer retirement plans. (*Govt.C. 31913.*)

(f) Participants in county fire service personnel retirement plans. (*Govt.C. 32210.*)

(g) Participants in transit and utility district retirement systems. (*Pub.Util.C. 12337, 25337, 28896.*)

West's Key Number Digest, Exemptions 49

SUPPLEMENT: [This section is current through the latest supplement]



35 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

12. Retirement Benefits.

b. Public Retirement Benefits.

2. Effect of Support Judgment.

8 *Witkin Cal. Proc. Enf Judgm* § 202

[§ 202] Effect of Support Judgment.

(1) *Exemption Is Limited.* Where an amount held by a public entity for retirement benefit purposes becomes payable and is sought to be applied to a judgment for child, family, or spousal support, the amount is exempt only to the extent determined by the court under *C.C.P. 703.070(c)* (see *supra*, §172). (*C.C.P. 704.110(c)(1)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:999 et seq., 6:1078; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

(2) *Earnings Assignment Order for Support.* If the amount is payable periodically, the amount is subject to an earnings assignment order for support, as defined in *C.C.P. 706.011* (see *infra*, §268), or any other enforcement procedure to the extent of the amount permitted to be withheld on an earnings withholding order for support under *C.C.P. 706.052* (see *infra*, §251). A public entity may deduct the administrative costs of an assignment order from each payment to the judgment debtor, up to \$ 2. (*C.C.P. 704.110(c)(2)*.) (See *In re Marriage of Williams* (1985) 163 *C.A.3d* 753, 767, 209 *C.R. 827* [under *C.C.P. 706.052(c)*], incorporating maximum percentage provided by 15 *U.S.C.*, §1673(b)(2), maximum amount of periodic pension benefit that may be applied to support judgment is 65%].)

(3) *Intercept Procedure for Enforcement of Support.* In prescribed circumstances, the Public Employees' Retirement System is required to withhold overdue support payments certified by the Department of Child Support Services from benefits owed and to forward the amounts withheld to the department for distribution to the appropriate county. (*Family C. 17528, 11 Summary* (10th), *Husband and Wife*, §334.) Where the amount of a retirement benefit sought to be applied to the satisfaction of a support judgment is payable as a lump-sum distribution, the amount payable is subject to this "intercept procedure" or any other applicable enforcement procedure. (*C.C.P. 704.110(c)(4)*) [referring to intercept procedure under former *Welf.C. 11357*].) Where the intercept procedure is used for benefits payable periodically, the amount withheld may not exceed the amount permitted to be withheld on an earnings withholding order for support under *C.C.P. 706.052*. (*C.C.P. 704.110(c)(3)*.)

(4) *Lien on Contributions.* Service of an earnings assignment order for support, or of an order or notice to withhold income for child support, on a public entity other than the United States creates a lien on all employee contributions in

the amount necessary to satisfy a support judgment to the extent it is enforceable. (*C.C.P. 704.114(a)*.) On a request for return of employee contributions by an employee named in the order or notice to withhold, the public entity must deliver the contributions to the clerk of the court in which the support order was awarded or last registered, unless the entity has received a certified copy of an order or administrative notice terminating the earnings assignment order. (*C.C.P. 704.114(b)*.) The clerk must send written notice of the receipt of the deposit within 10 days to the parties and to the local child support agency enforcing any order pursuant to *Family C. 17400* (see 11 *Summary* (10th), *Husband and Wife*, §310). (*C.C.P. 704.114(c)*.)

Funds so received are subject to any procedure to enforce a support order. However, if no enforcement procedure is commenced after 30 days have elapsed from the date the notice of receipt is sent, the clerk must, on request, return the funds to the public entity unless the entity has informed the court in writing that they are to be released to the employee. (*C.C.P. 704.114(d)*.) A court may not condition the issuance, modification, termination, or terms or conditions of any support order on the making of a request for the return of employee contributions by an employee. (*C.C.P. 704.114(e)*.)

SUPPLEMENT: [This section is current through the latest supplement]



36 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

12. Retirement Benefits.

c. Public Employee Vacation Credits.

8 *Witkin Cal. Proc. Enf Judgm* § 203

[§ 203] Public Employee Vacation Credits.

Vacation credits accumulated by a state employee under *Govt.C. 18050* or by any other public employee under applicable law are exempt without making a claim. (*C.C.P. 704.113(a), (b).*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.28; Rutter Group, 2 Enforcing Judgments and Debts §6:1001.)

Amounts representing vacation credits that are paid periodically or as a lump sum are exempt to the same extent as earnings (see *supra*, §194). These amounts are subject to an earnings withholding order or an earnings assignment order for support (see *C.C.P. 706.010 et seq., infra*, §241 *et seq.*) (*C.C.P. 704.113(c).*)

SUPPLEMENT: [This section is current through the latest supplement]



37 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

12. Retirement Benefits.

d. Private Retirement Benefits.

8 *Witkin Cal. Proc. Enf Judgm § 204*

[§ 204] Private Retirement Benefits.

(1) "*Private Retirement Plan*" Defined. The term "private retirement plan" means private retirement plans, including, but not limited to, union retirement plans; profit-sharing plans used for retirement purposes; and self-employment retirement plans and individual retirement annuities and accounts provided for in the Internal Revenue Code, including individual retirement accounts qualified under 26 U.S.C., §408 or §408A. (*C.C.P. 704.115(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §§6.22, 6.23; Rutter Group, 2 Enforcing Judgments and Debts §6:973 et seq.)

(2) *Exempt Benefits*. Subject to *C.C.P. 704.115(c)*, (e) (see *infra*, this section), retirement, disability, and death benefits held by a private retirement plan or paid to a plan member, and contributions and interest returned to a plan member, are exempt. (*C.C.P. 704.115(b)*, (d).) (See *Yaesu Electronics Corp. v. Tamura (1994) 28 C.A.4th 8, 14, 33 C.R.2d 283* [proceeds of retirement plan were not exempt, where debtor admitted that plan was not intended for retirement but to take advantage of tax laws and to save money for his children, and gifts of proceeds were made shortly after return of verdicts against debtor]; *93 A.L.R.3d 711* [employee retirement pension benefits as exempt from execution]; *113 A.L.R.5th 487* [individual retirement accounts as exempt from money judgments in state courts].)

The exemption for paid benefits applies whether the benefits are in the actual possession of the benefit recipient or have been deposited. Where benefits have been paid, the general rule of *C.C.P. 703.070* (see *supra*, §172) governing support exemptions is applicable. (Legislative Com. Comment (Assembly) to *C.C.P. 704.115*.)

In *Schwartzman v. Wilshinsky (1996) 50 C.A.4th 619, 57 C.R.2d 790*, the trial court, after judgment, denied the judgment debtor's claim of exemption as to all employee contributions and matching employer contributions held in a 401(k) profit-sharing account established by the judgment debtor's employer. *Held*, reversed.

(a) The dispositive inquiry under *C.C.P. 704.115* is whether the 401(k) plan was designed and used for retirement purposes. (*50 C.A.4th 628*.) To show a nonretirement purpose, it would be necessary to show that the debtor had substantially all control over contributions, management, administration, and use of funds. Here, however, he took no loans or disbursements; he did not contribute more than he was entitled; and he had no part in administering the plan.

(50 C.A.4th 628.)

(b) The very purpose of the exemption is to permit a judgment debtor to place funds beyond the reach of creditors, so long as they qualify for the exemption under the law, and there was no evidence the debtor used the account to hide assets. (50 C.A.4th 629.)

(c) Nothing in the statute permits the denial of a claim of exemption as to a *portion* of the funds in a private retirement plan or profit-sharing plan designed and used for retirement purposes, other than the limitation in C.C.P. 704.115 pertaining to self-employed retirement plans and individual retirement annuities or accounts. However, the debtor was an employee, and the plan was administered by his employer, so it was not a self-employment plan. Also, the plan was created for its employees, not just the debtor as an individual, and the funds were invested in stocks and bonds, not in an annuity. (50 C.A.4th 629.)

(3) *Effect of Support Judgment.* Benefits held by a private retirement plan that become payable are generally exempt from satisfaction of a judgment for child, family, or spousal support only to the extent determined by the court under C.C.P. 703.070(c) (see supra, §172). However, if the amount is payable periodically, it is subject to an earnings assignment order for support, as defined in C.C.P. 706.011 (see infra, §268), or other applicable enforcement procedures to the extent of the amount permitted to be withheld on an earnings withholding order for support under C.C.P. 706.052 (see infra, §251). (C.C.P. 704.115(c).) (On enforcement of judgments in family law cases generally, see infra, §403 et seq.)

(4) *Self-Employed and Individual Retirement Benefits.* Where self-employed and individual retirement benefits are payable periodically, the periodic payment may be applied to the satisfaction of a money judgment as if the payment were wages under the Wage Garnishment Law (C.C.P. 706.010 et seq., infra, §241 et seq.). To the extent a lump-sum distribution from an individual retirement account is treated differently from a periodic distribution under this provision, a lump-sum distribution from an account qualified under 26 U.S.C., §408A must be treated the same as a lump-sum distribution from an account qualified under 26 U.S.C., §408 for purposes of determining whether any of that payment may be applied to the satisfaction of a money judgment. (C.C.P. 704.115(f).)

Otherwise, self-employed and individual retirement benefits are exempt only to the extent necessary for the support of the judgment debtor on retirement and for the support of the debtor's spouse and dependents, considering all resources available to the debtor on retirement and taking into account an additional amount necessary to pay income taxes payable as a result of applying the benefits to the satisfaction of the judgment. (C.C.P. 704.115(e); see *McMullen v. Haycock* (2007) 147 C.A.4th 753, 755, 54 C.R.3d 660 [C.C.P. 704.115(e) limitation did not apply to assets rolled over into individual retirement account from private retirement plan that were fully exempt under C.C.P. 704.115(b), (d); transaction is governed by C.C.P. 703.080(a) (supra, §174), permitting tracing of exempt funds].)

SUPPLEMENT: [This section is current through the latest supplement]



38 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

13. Unemployment and Strike Benefits.

8 *Witkin Cal. Proc. Enf Judgm* § 205

[§ 205] Unemployment and Strike Benefits.

(1) *Contributions.* Employee contributions to the Unemployment Compensation Disability Fund and employer contributions to the Unemployment Fund are exempt without making a claim. (*C.C.P. 704.120(a)*); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.26; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1003 et seq.; on unemployment compensation, see 3 *Summary* (10th), *Agency and Employment*, §452 et seq.)

(2) *Benefits.* Before payment, amounts held for payment of specified unemployment benefits are exempt without making a claim. (*C.C.P. 704.120(b)*.) After payment, these benefits are exempt by making a claim. (*C.C.P. 704.120(c)*.) These provisions apply to the following benefits:

(a) Unemployment compensation benefits payable under *Unemp.Ins.C. 100* et seq. (*C.C.P. 704.120(b)(1)*.)

(b) Incentives payable under *Unemp.Ins.C. 5000* et seq. (*C.C.P. 704.120(b)(2)*.)

(c) Benefits payable under an employer's plan or system to supplement unemployment compensation benefits of employees generally or for a class or group of employees. (*C.C.P. 704.120(b)(3)*.)

(d) Unemployment benefits payable by a fraternal organization to its bona fide members. (*C.C.P. 704.120(b)(4)*.)

(e) Benefits payable by a union due to a labor dispute. (*C.C.P. 704.120(b)(5)*.) (See 14 *Pacific L. J.* 417.)

(3) *Effect of Support Judgment.* While unemployment compensation benefits are being paid to a judgment debtor under a support judgment, the judgment creditor may, "through the appropriate local child support agency," seek to apply the payments to satisfy the judgment under *Family C. 17518* (see 11 *Summary* (10th), *Husband and Wife*, §334). (*C.C.P. 704.120(d)*.) (On enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

While incentives, supplemental unemployment benefits, fraternal benefits, and union benefits are being paid, the judgment creditor may, either "directly or through the appropriate local child support agency," seek to apply the payments to satisfy the judgment by an earnings assignment order for support, as defined in *C.C.P. 706.011* (see *infra*, §268), or other applicable enforcement procedure. If the benefit is payable periodically, the amount withheld pursuant to

the assignment order must be 25% of each payment or a lower amount specified in writing by the creditor or a court order. Otherwise, the amount withheld must be determined by the court under *C.C.P. 703.070(c)* (see supra, §172). A paying entity may deduct the actual cost of administering an assignment order up to \$ 2 per payment. (*C.C.P. 704.120(e).*)

West's Key Number Digest, Exemptions 37

SUPPLEMENT: [This section is current through the latest supplement]



39 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

14. Disability and Health Benefits.

8 *Witkin Cal. Proc. Enf Judgm* § 206

[§ 206] Disability and Health Benefits.

(1) *General Rule.* Before payment, benefits from a disability or health insurance policy or program are generally exempt without making a claim. After payment, the benefits are generally exempt by making a claim. (*C.C.P. 704.130(a).*) (See *C.J.E.R.*, Judges Benchbook: Civil Proceedings--After Trial §6.27; Rutter Group, 2 Enforcing Judgments and Debts §6:1006 et seq.)

(2) *Effect of Judgment for Health Care Provider.* The exemption does not apply to health care benefits if the judgment creditor is a provider of health care whose claim is the basis on which the benefits are paid or payable. (*C.C.P. 704.130(b).*)

(3) *Effect of Support Judgment.* During the payment of disability benefits to a support judgment debtor, the judgment creditor or local child support agency may seek to apply the benefit payments to satisfy the support judgment by an earnings assignment order for support as defined by *C.C.P. 706.011* (see *infra*, §268), or another applicable enforcement procedure. However, the amount to be withheld under the assignment order or other procedure may not exceed the amount permitted to be withheld on an earnings assignment order for support under *C.C.P. 706.052* (see *infra*, §251). (*C.C.P. 704.130(c).*) (On enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



40 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

15. Damages for Personal Injury.

8 *Witkin Cal. Proc. Enf Judgm* § 207

[§ 207] Damages for Personal Injury.

(1) *Exemption of Cause of Action.* An award or settlement resulting from a cause of action that is the subject of a pending action may be reached under the lien procedure provided by *C.C.P. 708.410* et seq. (see *infra*, §297 et seq.). Except to that extent, a cause of action for personal injury is exempt without making a claim. (*C.C.P. 704.140(a)*.) (See *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §6.29; *Rutter Group*, 2 *Enforcing Judgments and Debts* §§6:983 et seq., 6:1008, 6:1009.)

(2) *Exemption of Damages Award or Settlement.* Generally, an award of damages or a settlement arising out of personal injury is exempt to the extent necessary to support the judgment debtor and the debtor's spouse and dependents. (*C.C.P. 704.140(b)*.) This exemption does not apply where the judgment creditor is a health care provider whose claim is based on providing care for the injury for which the award or settlement was made. (*C.C.P. 704.140(c)*.) Also, if the award or settlement is payable periodically, the periodic payment is treated like earnings under the Wage Garnishment Law (*C.C.P. 706.010* et seq., *infra*, §241 et seq.) in determining the amount subject to satisfaction of the judgment. (*C.C.P. 704.140(d)*.)

West's Key Number Digest, Exemptions 37

SUPPLEMENT: [This section is current through the latest supplement]



41 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

16. Damages for Wrongful Death.

8 *Witkin Cal. Proc. Enf Judgm* § 208

[§ 208] Damages for Wrongful Death.

(1) *Exemption of Cause of Action.* An award or settlement resulting from a cause of action that is the subject of a pending action may be reached under the lien procedure provided by *C.C.P. 708.410* et seq. (see *infra*, §297 et seq.). Except to that extent, a cause of action for wrongful death is exempt without making a claim. (*C.C.P. 704.150(a)*.) (See *C.J.E.R.*, Judges Benchbook: Civil Proceedings--After Trial §6.30; Rutter Group, 2 *Enforcing Judgments and Debts* §§6:987, 6:988, 6:1008, 6:1009.)

(2) *Exemption of Damages Award or Settlement.* An award of damages or a settlement arising out of the wrongful death of the judgment debtor's spouse or a person on whom the debtor or the debtor's spouse was dependent is exempt to the extent reasonably necessary for the support of the debtor and the debtor's spouse and dependents. (*C.C.P. 704.150(b)*.) However, if the award or settlement is payable periodically, the periodic payment is treated like earnings under the Wage Garnishment Law (*C.C.P. 706.010* et seq., *infra*, §241 et seq.) in determining the amount subject to satisfaction of the judgment. (*C.C.P. 704.150(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]



42 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

17. Workers' Compensation.

8 *Within Cal. Proc. Enf Judgm § 209*

[§ 209] Workers' Compensation.

(1) *General Rule.* Except as otherwise specified in the Labor Code provisions governing workers' compensation claims (*Lab.C. 4900* et seq.; see 2 *Summary* (10th), *Workers' Compensation*, §345 et seq.), a workers' compensation claim or award is exempt before payment without making a claim. After payment, except with respect to temporary disability benefits subject to enforcement of a support judgment, the award is exempt on making a claim. (*C.C.P. 704.160(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.31; Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1010, 6:1010.1; 48 *A.L.R.5th* 473 [statutory exemptions of proceeds of workers' compensation awards].)

(2) *Effect of Support Judgment.* While workers' compensation temporary disability benefits are being paid to a support judgment debtor, the support judgment creditor may, "through the appropriate child support agency," seek to apply the payments to satisfy the judgment under *Family C. 17404* (see 11 *Summary* (10th), *Husband and Wife*, §317). (*C.C.P. 704.160(b)*.) (See *C.C.P. 704.160(d)* [defining "judgment debtor," "support judgment debtor," "judgment creditor," "support judgment creditor," and "support"]; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

While temporary disability benefits are being paid, the judgment creditor, including the state where there is a judgment for reimbursement of public assistance, may, either "directly or through the appropriate child support agency," seek to apply the payments to satisfy the judgment by an earnings assignment order for support, as defined in *Family C. 5208* (see 11 *Summary* (10th), *Husband and Wife*, §250), or other applicable enforcement procedure. If the benefit is payable periodically, the amount withheld pursuant to the assignment order must be 25% of each payment or a lower amount specified in writing by the creditor or a court order. Otherwise, the amount withheld must be determined by the court under *C.C.P. 703.070(c)* (see *supra*, §172). A paying entity may deduct the actual cost of administering an assignment order up to \$ 2 per payment. (*C.C.P. 704.160(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]



43 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

18. Aid to Needy Persons.

8 Witkin Cal. Proc. Enf Judgm § 210

[§ 210] Aid to Needy Persons.

Social services aid provided under Welf.C. 10000 et seq., or similar aid provided by a charitable organization or a fraternal benefit society, is exempt before payment without making a claim. After payment, these benefits are exempt on making a claim. (*C.C.P. 704.170.*) (See Welf.C. 11002 ["All aid given under a public assistance program shall be absolutely inalienable"]; Welf.C. 14115.5 [basic health care benefits under Welf.C. 14000 et seq. are subject to state and federal claims, but otherwise not subject to enforcement of money judgment]; Welf.C. 17409 [listing property exempt from execution on county claim for reimbursement of support]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.37; Rutter Group, 2 Enforcing Judgments and Debts §§6:1010, 6:1010.2.)

West's Key Number Digest, Exemptions 39

SUPPLEMENT: [This section is current through the latest supplement]



44 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

19. Relocation Benefits.

8 Within Cal. Proc. Enf Judgm § 211

[§ 211] Relocation Benefits.

Relocation benefits for displacement from a dwelling under *Govt.C. 7260* et seq. or *42 U.S.C., §4601* et seq. are exempt before payment without making a claim. After payment, these benefits are exempt on making a claim. (*C.C.P. 704.180.*) (See *C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.38*; *Rutter Group, 2 Enforcing Judgments and Debts §§6:1010, 6:1010.3*; on relocation assistance, see *8 Summary (10th), Constitutional Law, §1271* et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



45 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

20. Financial Aid to Students.

8 Within Cal. Proc. Enf Judgm § 212

[§ 212] Financial Aid to Students.

Financial aid for expenses while attending school provided to a student by an institution of higher education is exempt before payment without making a claim. After payment, financial aid is exempt on making a claim. (*C.C.P. 704.190* [incorporating definition of "institution of higher education" in *20 U.S.C., §1141(a)*].) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.35; Rutter Group, 2 Enforcing Judgments and Debts §§6:1010, 6:1010.4.)

SUPPLEMENT: [This section is current through the latest supplement]



46 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

21. Cemetery Plots.

8 *Witkin Cal. Proc. Enf Judgm* § 213

[§ 213] Cemetery Plots.

Land held for "sale or disposition as cemetery plots or otherwise" is not exempt from satisfaction of a money judgment. (*C.C.P. 704.200(d)*.) However, a cemetery plot for the judgment debtor and the debtor's spouse is exempt on making a claim (*C.C.P. 704.200(c)*), and a family plot is exempt without making a claim. (*C.C.P. 704.200(b)*). "Cemetery," "family plot" and "plot" are defined with reference to the Health and Safety Code. (See *C.C.P. 704.200(a)*.) The portion of land containing graves of human beings is not subject to enforcement of a money judgment. (Law Rev. Com. Comment to *C.C.P. 704.200* [citing *Peebler v. Danziger (1951) 104 C.A.2d 491, 493, 231 P.2d 895*, decided under prior law].) (See *Health & Saf.C. 7925* [money payable for sale of unused cemetery land is not subject to enforcement of money judgment, provided it is used for prescribed purposes]; *Health & Saf.C. 8561* [property dedicated to private cemetery is exempt from enforcement of money judgment against individual owner of interment plot to extent provided by *C.C.P. 704.200*]; C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.34; Rutter Group, *2 Enforcing Judgments and Debts* §§6:990, 6:1012.)

West's Key Number Digest, Exemptions 37

SUPPLEMENT: [This section is current through the latest supplement]



47 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

C. Exempt Property.

22. Federal Exemptions.

8 Witkin Cal. Proc. Enf Judgm § 214

[§ 214] Federal Exemptions.

A variety of federal funds and benefits are exempt from enforcement of money judgments under federal statutes. The following are illustrative:

- (1) Civil service retirement benefits. (*5 U.S.C., §8346.*)
- (2) Savings of military personnel. (*10 U.S.C., §1035(d).*)
- (3) Military retirement benefits. (*10 U.S.C., §1440.*)
- (4) Military survivors benefits. (*10 U.S.C., §1450(i).*)
- (5) Certain disposable earnings of individuals. (*15 U.S.C., §1673.*)
- (6) Judges' survivors benefits. (*28 U.S.C., §376(n).*)
- (7) Lighthouse keepers' survivors benefits. (*33 U.S.C., §775.*)
- (8) Longshore and harbor workers' compensation and benefits. (*33 U.S.C., §916.*)
- (9) Medal of honor benefits. (*38 U.S.C., §1562(c).*)
- (10) Veterans' benefits. (*38 U.S.C., §5301.*)
- (11) Social security benefits. (*42 U.S.C., §407.*)
- (12) Railroad retirement benefits. (*45 U.S.C., §231m.*)
- (13) Railroad unemployment insurance. (*45 U.S.C., §352(e).*)
- (14) Property of military personnel (stay of enforcement). (*50 U.S.C. Appx., §524, supra, §162.*)

SUPPLEMENT: [This section is current through the latest supplement]



48 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

1. In General.

8 Witkin Cal. Proc. Enf Judgm § 215

[§ 215] In General.

(1) *Constitutional Requirement.* Some form of homestead exemption is constitutionally required. Thus, the Legislature must protect from forced sale a certain portion of the homestead of all heads of families. (Cal. Const., Art. XX, §1.5; on homesteads generally, see 76 Proof of Facts 3d 1 [qualification of property for homestead exemption]; 13A Am.Jur. P.P. Forms (1999 ed.), Homestead §1 et seq.; 40 Am.Jur.2d (1999 ed.), Homestead §1 et seq.)

(2) *Automatic and Declared Exemptions.* The Enforcement of Judgments Law provides for two homestead exemptions:

(a) An automatic homestead exemption. (See *C.C.P. 704.710* et seq., *infra*, §216 et seq.; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.54 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1013 et seq.; C.E.B., 2 Debt Collection Practice 2d, §§9.82, 9.87 et seq.)

(b) A declared homestead exemption. (See *C.C.P. 704.910* et seq., *infra*, §229 et seq.; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.69 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1036 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.83 et seq.)

Recording a homestead declaration provides the judgment debtor with certain benefits in addition to those provided by the automatic exemption: (1) declared homesteads are not subject to the law of fraudulent conveyances; (2) under specified conditions, a judgment lien on real property does not attach to a declared homestead; and (3) the proceeds of a voluntary sale of a declared homestead are exempt in the amount of the automatic exemption for 6 months after the date of sale. (See *infra*, §234.) (See *Amin v. Khazindar* (2003) 112 C.A.4th 582, 589, 5 C.R.3d 224 [commenting on greater benefits of declared homestead]; Rutter Group, 2 Enforcing Judgments and Debts §6:1047 et seq.) (On distinction between automatic and declared homestead exemptions, see *infra*, §232.)

(3) *Development of Law.* Under former provisions of the Civil Code, a dwelling could be declared to be a homestead. (See *infra*, §229.) However, because many debtors failed to declare a homestead on their residences, the purpose of the declared homestead--to prevent debtors from becoming homeless--was largely unrealized. (See *Webb v. Trippet* (1991) 235 C.A.3d 647, 650, 286 C.R. 742, *infra*, §232, citing the text.) Thereafter, former provisions of the

Code of Civil Procedure extended to debtors an automatic homestead exemption substantially equivalent to that of a declared homestead. (See 6 *Pacific L. J.* 213.) The exemption is continued in the Enforcement of Judgments Law. (See *infra*, §216 et seq.)

(4) *Probate Homestead*. A probate homestead may be set aside by the probate court for the benefit of a decedent's surviving spouse and minor children. The homestead amount is not subject to a statutory maximum and the homestead property is generally free from the claims of creditors of the decedent and the beneficiaries, to the extent of the homestead exemption. The duration and modification of the probate homestead are subject to court order. (See *Prob. C.* 6520 et seq.; 14 *Summary* (10th), *Wills and Probate*, §767 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Constitutional Requirement*. See 40 *Am.Jur.2d* (2008 ed.), *Homestead* §1 et seq.; 13A *Am.Jur.* P.P. Forms (2009 ed.), *Homestead* §1 et seq.



49 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

a. Definitions.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm § 216*

[§ 216] In General.

For purposes of the automatic homestead exemption under the Enforcement of Judgments Law, the following definitions apply:

- (1) *Dwelling*. A "dwelling" is a place where a person resides, including but not limited to:
 - (a) A house, together with the outbuildings and the land on which they are situated. (*C.C.P. 704.710(a)(1)*.)
 - (b) A mobilehome, together with the outbuildings and the land on which they are situated. (*C.C.P. 704.710(a)(2)*.)
 - (c) A boat or other waterborne vessel. (*C.C.P. 704.710(a)(3)*.)
 - (d) A condominium, as defined in C.C. 783. (*C.C.P. 704.710(a)(4)*.)
 - (e) A planned development, as defined in *B. & P.C. 11003*. (*C.C.P. 704.710(a)(5)*.)
 - (f) A stock cooperative, as defined in *B. & P.C. 11003.2*. (*C.C.P. 704.710(a)(6)*.)
 - (g) A community apartment project, as defined in *B. & P.C. 11004*. (*C.C.P. 704.710(a)(7)*.)

This provision is intended to include all forms of property for which an exemption could have been claimed under former law and any other property in which a judgment debtor or the debtor's spouse actually resides. (Legislative Com. Comment (Senate) to *C.C.P. 704.710*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1018 et seq.; *10 Pacific L. J. 356* [mobilehome as dwelling]; *74 A.L.R.2d 1355* [estate or interest in real property to which a homestead claim may attach].)

(2) *Family Unit*. A "family unit" means the judgment debtor and the debtor's spouse residing together in the homestead or the debtor or the debtor's spouse and at least one of the following persons whom the debtor or the debtor's

spouse cares for or maintains in the homestead: (a) a minor child or grandchild of the debtor, the debtor's spouse, a deceased spouse, or a former spouse; (b) a minor sibling of the debtor or the debtor's spouse or a minor child of a deceased sibling of either spouse; (c) a parent or grandparent of the debtor, the debtor's spouse, or a deceased spouse; or (d) an unmarried adult relative described above who is unable to care for or support himself or herself. (*C.C.P. 704.710(b)*.) (See Rutter Group, 2 Enforcing Judgments and Debts §§6:1025, 6:1025a; C.E.B., 2 Debt Collection Practice 2d, §9.82.)

(3) *Spouse*. The term "spouse" generally does not include a married person following entry of a judgment of legal separation, unless the spouses reside together in the same dwelling. (*C.C.P. 704.710(d)*.) The effect of this provision is to permit each spouse to claim a separate homestead after a judgment of legal separation. (Legislative Com. Comment (Senate) to *C.C.P. 704.710*.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:1029.) (On construction of terms referring to spouses to include domestic partners where necessary to implement statutory rights of registered domestic partners, see *Family C. 297.5(l)*, 11 *Summary* (10th), *Husband and Wife*, §30.) However, notwithstanding *C.C.P. 704.710(d)*, "spouse" may include a separated or former spouse consistent with *C.C.P. 704.720(d)*, which entitles a judgment debtor not currently residing in the homestead to the exemption until the division of community property or later time specified by court order, where the separated or former spouse resides in or exercises control over the homestead. (*C.C.P. 704.720(d)*, *infra*, §218.)

SUPPLEMENT: [This section is current through the latest supplement]



50 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

a. Definitions.

2. Homestead.

8 *Witkin Cal. Proc. Enf Judgm* § 217

[§ 217] Homestead.

A "homestead," for purposes of the automatic homestead exemption, is the principal dwelling in which the judgment debtor or the debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling and in which the debtor or the debtor's spouse resided continuously thereafter until the date on which the court determined that the dwelling was a homestead. (*C.C.P. 704.710(c)*); on distinction between residence requirements for declared and automatic homestead exemptions, see *Webb v. Trippet (1991) 235 C.A.3d 647, 651, 286 C.R. 742*, *infra*, §232.) This provision is intended to preclude a judgment debtor from moving into a dwelling after creation of a judgment lien or after levy in order to create an exemption. (Legislative Com. Comment (Senate) to *C.C.P. 704.710*.)

Where exempt proceeds from the sale, damage, or destruction of a homestead are used to acquire a new dwelling within the 6-month period provided by *C.C.P. 704.720* (see *infra*, §218), that dwelling is a homestead if it is the principal dwelling in which the debtor or the debtor's spouse resided continuously from the date of acquisition until the date the court determined that the dwelling was a homestead, whether or not a judgment lien was created by recording an abstract or certified copy of the judgment before the dwelling was acquired. (*C.C.P. 704.710(c)*.) This provision is an exception to the general rule of *C.C.P. 703.100* (see *supra*, §176) on the time for determining an exemption. (Legislative Com. Comment (Senate) to *C.C.P. 704.710*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1020 et seq., 6:1033 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]

After-acquired property: *SBAM Partners, LLC v. Wang (2008) 164 C.A.4th 903, 79 C.R.3d 752*, held that a judgment debtor is not entitled to a homestead exemption for a condominium acquired with nonexempt proceeds after the creditor's judgment lien was recorded. The legislative history of *C.C.P. 704.710(c)* indicates that the statute allows a homestead exemption on the debtor's after-acquired property only if that property is purchased with exempt proceeds from the sale, damage, or destruction of a homestead within the 6-month safe harbor period. (*164 C.A.4th 912*.)

Residency requirement: See *California Coastal Com. v. Allen (2008) 167 C.A.4th 322, 329, 83 C.R.3d 906* [judgment debtor did not meet residency requirement for homestead exemption; he leased property to tenant and

retained access to part of property where he stayed when visiting area, but resided elsewhere].



51 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

b. Nature and Scope of Exemption.

8 *Witkin Cal. Proc. Enf Judgm* § 218

[§ 218] Nature and Scope of Exemption.

(1) *Exemption From Sale.* A homestead is exempt from sale to satisfy a money judgment to the extent provided by *C.C.P. 704.800* (specifying that a homestead may not be sold in the absence of a minimum bid that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property; see *infra*, §224). (*C.C.P. 704.720(a)*); see C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.54 et seq.; Rutter Group, *2 Enforcing Judgments and Debts* §6:1013 et seq.; C.E.B., *2 Debt Collection Practice* 2d, §9.82 et seq.; *14 Pacific L. J. 418.*) The exemption does not apply where a lien on the property other than an enforcement lien is being foreclosed (*C.C.P. 703.010*, *supra*, §169), but protects any other interest in the homestead sought to be reached by a judgment creditor (Legislative Com. Comment (Senate) to *C.C.P. 704.720*). (On attachment of judgment lien to dwelling even though it is potentially subject to automatic homestead exemption, see *supra*, §74.)

(2) *Exemption of Proceeds.* If a homestead is sold to satisfy a money judgment, taken for public use, or damaged or destroyed, the proceeds of sale, compensation for public use, or insurance or other indemnification are exempt for 6 months from the time they are actually received by the judgment debtor in the amount of the homestead exemption. However, if the exemption is applied to other property of the debtor or the debtor's spouse during that period, the proceeds cease to be exempt. (*C.C.P. 704.720(b)*.) Proceeds from the voluntary sale of a homestead are not exempt under this provision. (Legislative Com. Comment (Senate) to *C.C.P. 704.720*.) (On exemption of proceeds of voluntary sale of declared homestead, see *C.C.P. 704.960*, *infra*, §234.)

C.C.P. 704.720(b) deals with execution sales; the section does not apply to a foreclosure sale. Hence, the proceeds of a sale pursuant to a power of sale in a deed of trust are not exempt from execution to satisfy a money judgment. (*Spencer v. Lowery* (1991) 235 C.A.3d 1636, 1638, 1639, 1 C.R.2d 795.)

(3) *Effect of Spouses Residing Separately.* If a judgment debtor and the debtor's spouse reside in separate homesteads, only one homestead is exempt and only the proceeds of the exempt homestead are exempt. (*C.C.P. 704.720(c)*.) (On application of exemptions to marital property, see *C.C.P. 703.110*, *supra*, §173.)

Where spouses are legally separated and living apart, each is generally entitled to a homestead exemption. (*C.C.P.*

704.710(d), supra, §216.)

A judgment debtor who is not currently residing in the homestead is entitled to the exemption while a separated or former spouse resides in or exercises control over the possession of the homestead until entry of judgment or other legally enforceable agreement dividing the community property, or until a later time as specified by court order. However, nothing in this provision entitles the judgment debtor to more than one exempt homestead. (C.C.P. 704.720(d).)

(4) *Amount of Exemption.* The homestead exemption is in one of the following three amounts:

(a) *Debtor in family unit with member owning no interest.* The exemption is \$ 75,000 if the judgment debtor or the debtor's spouse residing in the homestead at the time of the attempted sale is a member of a family unit in which at least one member owns no interest in the homestead other than a community property interest with the debtor. (C.C.P. 704.730(a)(2).)

(b) *Elderly, disabled, or low-income debtor.* The exemption is \$ 150,000 if the debtor or the debtor's spouse residing in the homestead at the time of the attempted sale meets any of the following qualifications:

(1) The debtor or spouse is 65 years of age or older. (C.C.P. 704.730(a)(3)(A).)

(2) The debtor or spouse, by reason of physical or mental disability, is unable to engage in substantial gainful employment. It is rebuttably presumed that a person receiving federal disability insurance benefits or supplemental security income satisfies the requirements of this provision. (C.C.P. 704.730(a)(3)(B); see *Cal-Western Reconveyance Corp. v. Reed* (2007) 152 C.A.4th 1308, 1323, 62 C.R.3d 244 [trial court properly denied claim for homestead disability exemption in absence of satisfactory evidence that claimant was unable to engage in substantial gainful employment].)

(3) The debtor is 55 years of age or older and has a maximum gross annual income of \$ 15,000 or, if married, of \$ 20,000, including the spouse's income, and the sale is involuntary. (C.C.P. 704.730(a)(3)(C).)

(c) *All other cases.* In all other cases, the exemption is \$ 50,000. (C.C.P. 704.730(a)(1).) (See 14 *Pacific L. J.* 418.)

(4) *Amount of Combined Exemption of Spouses.* The combined homestead exemptions of spouses on the same judgment may not exceed the applicable amount specified in C.C.P. 704.730(a)(2) or (a)(3), regardless of whether they are jointly obligated on the judgment and regardless of whether the homestead consists of community or separate property or both. If both spouses are entitled to the exemption, the exemption of proceeds of the homestead must be apportioned between them on the basis of their proportionate interests in the homestead. (C.C.P. 704.730(b).)

West's Key Number Digest, Homestead 12, 76 et seq.

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Amount of Exemption.*

(a) *Debtor in family unit with member owning no interest.* In 2009, C.C.P. 704.730(a)(2) was amended to increase this exemption to \$ 100,000.(b) *Elderly, disabled, or low-income debtor.* In 2009, C.C.P. 704.730(a)(3) was amended to increase this exemption to \$ 175,000.

(c) *All other cases.* In 2009, C.C.P. 704.730(a)(1) was amended to increase the basic exemption to \$ 75,000.



52 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

c. Court Order for Sale.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 219

[§ 219] In General.

(1) *When Order Is Not Required.* If a dwelling is personal property or real property in which the judgment debtor has a leasehold estate with an unexpired term of less than 2 years at the time of levy, a court order for sale is not required. In these cases, the general procedure governing exemption claims (see *C.C.P. 703.510* et seq., supra, §180 et seq.) is applicable. (*C.C.P. 704.740(b)*.)

(2) *When Order Is Required.* In all other cases, a court order for sale obtained under *C.C.P. 704.710* et seq. (the automatic homestead provisions), is required before the interest of a natural person in a dwelling may be sold to enforce a money judgment. (*C.C.P. 704.740(a)*; *In re Marriage of Schenck* (1991) 228 *C.A.3d* 1474, 1480, 279 *C.R.* 651, citing the text.) *C.C.P. 704.710* et seq. provide the exclusive procedure for determining real property dwelling exemptions other than leaseholds of less than 2 years' duration. The general procedures for claiming exemptions from execution (see supra, §180 et seq.) are not applicable, except as otherwise provided. (See Law Rev. Com. Comment to *C.C.P. 704.740*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:758 et seq.)

(3) *Effect of Failure To Obtain Order.* Sale of a judgment debtor's dwelling to a third party after levy is absolute under *C.C.P. 701.680* (supra, §156), regardless of failure to obtain a court order under *C.C.P. 704.140*. (*Gonzalez v. Toews* (2003) 111 *C.A.4th* 977, 981, 4 *C.R.3d* 434.)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Effect of Failure To Obtain Order.* See *Wells Fargo Financial Leasing v. D & M Cabinets* (2009) 177 *C.A.4th* 59, 66, 99 *C.R.3d* 97 [trial court could not circumvent requirements of *C.C.P. 704.740* by granting debtor homestead exemption on property, appointing receiver, and authorizing receiver to sell property; statute is not limited to sales by sheriff; distinguishing *Gonzalez v. Toews* (2003) 111 *C.A.4th* 977, 4 *C.R.3d* 434, text, p. 249].



53 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

c. Court Order for Sale.

2. Application.

8 *Witkin Cal. Proc. Enf Judgm § 220*

[§ 220] Application.

(1) *In General.* Promptly after the dwelling is levied on, the levying officer must serve notice, either personally or by mail, on the judgment creditor, to the effect that the levy has been made and the property will be released unless the creditor applies to the court for an order for sale and files a copy of the application with the levying officer within 20 days after service of the notice. If the copy of the application is not timely filed, the levying officer must release the dwelling. (*C.C.P. 704.750(a)*; see *In re Marriage of Schenck (1991) 228 C.A.3d 1474, 1481, 279 C.R. 651*, citing the text; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.60; Rutter Group, 2 *Enforcing Judgments and Debts* §6:762 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §§9.88, 9.90; 14 *Pacific L. J.* 419.)

(2) *Dwelling Outside County of Judgment.* If the dwelling is located outside the county in which the judgment was entered, the creditor must apply to the superior court of the county in which the dwelling is located. The creditor must file with the application an abstract of judgment as prescribed by *C.C.P. 674* (see 7 *Cal. Proc. (5th), Judgment*, §64) or, where there is an installment judgment for support or health care under *C.C.P. 697.320* (see *supra*, §71), a certified copy of the judgment, and must pay the filing fee for a motion as provided in *Govt.C. 70617* (§ 40). (*C.C.P. 704.750(b)*.)

(3) *Contents of Application.* The creditor's application for an order for sale must be made under oath and must describe the dwelling. (*C.C.P. 704.760*.) Further, the application must include all of the following:

(a) A statement whether or not the records of the county tax assessor indicate a current homeowner's exemption or disabled veteran's exemption for the dwelling and the person or persons claiming the exemption. (*C.C.P. 704.760(a)*.)

(b) A statement, which may be based on information and belief, whether the dwelling is the homestead and the amount of any homestead exemption, and a statement whether or not the records of the county recorder indicate that the judgment debtor or the debtor's spouse has recorded a homestead declaration under *C.C.P. 704.910* et seq. (see *infra*, §229 et seq.). (*C.C.P. 704.760(b)*.)

(c) A statement of the amount of any liens or encumbrances on the dwelling and the names and addresses of

persons holding those liens or encumbrances. (*C.C.P. 704.760(c)*.) (See *Little v. Community Bank (1991) 234 C.A.3d 355, 359, 286 C.R. 4* [creditor's failure to disclose IRS tax liens on application for sale in violation of *C.C.P. 704.760(c)* was negligence per se].)

SUPPLEMENT: [This section is current through the latest supplement]



54 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

c. Court Order for Sale.

3. Time and Notice of Hearing.

8 *Witkin Cal. Proc. Enf Judgm § 221*

[§ 221] Time and Notice of Hearing.

(1) *Time for Hearing.* After a judgment creditor files an application for an order for sale of a dwelling (see supra, §220), the court must set a time and place for hearing and order the judgment debtor to show cause why an order for sale should not be made. The hearing must be scheduled no later than 45 days after the application is filed, unless the time is extended for good cause. (*C.C.P. 704.770(a)*); see *In re Marriage of Schenck (1991) 228 C.A.3d 1474, 1481, 279 C.R. 651*, citing the text; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.61; Rutter Group, 2 Enforcing Judgments and Debts §6:770 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.91.)

(2) *Service of Documents.* Not later than 30 days before the hearing date, the judgment creditor must serve the debtor, personally or by mail, with a copy of the show cause order, a copy of the application, and a copy of the notice of hearing in the form prescribed by the Judicial Council, and must personally serve an occupant of the dwelling with a copy of each of those documents. If there is no occupant present at the time service is attempted, the creditor must post a copy of each of the documents in a conspicuous place at the dwelling. (*C.C.P. 704.770(b)*.) (See Judicial Council Form No. EJ-180 [Notice of Hearing on Right to Homestead Exemption].)

SUPPLEMENT: [This section is current through the latest supplement]



55 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

c. Court Order for Sale.

4. Determination and Order.

8 *Witkin Cal. Proc. Enf Judgm* § 222

[§ 222] Determination and Order.

(1) *Burden of Proof.* If the county tax assessor's records indicate the existence of a current homeowner's exemption or disabled veteran's exemption on the dwelling claimed by the judgment debtor or the debtor's spouse, the judgment creditor has the burden of proof that the dwelling is not a homestead. If the records indicate that there is not a current homeowner's exemption or a disabled veteran's exemption, the burden of proof that the dwelling is a homestead is on the person claiming a homestead. Where the application states the amount of the homestead exemption, the person claiming the exemption has the burden of proving that the amount of the exemption is other than the amount stated in the application. (*C.C.P. 704.780(a).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:777 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.93.)

(2) *Determination of Exemption.* The court must determine if the dwelling is exempt and, if so, the amount of the exemption and the fair market value of the dwelling. (*C.C.P. 704.780(b).*) To assist in determining the fair market value of the dwelling, the court may appoint a qualified appraiser. Where an appraiser is appointed, the court must determine reasonable compensation for the appraisal. (*C.C.P. 704.780(d).*)

(3) *Order for Sale.* As originally enacted, *C.C.P. 704.780(b)* simply provided that the court must make an order for sale of the dwelling. In *Abbett Elec. Corp. v. Storek* (1994) 22 *C.A.4th* 1460, 1470, 27 *C.R.2d* 845, the court held that this provision imposed a mandatory duty on the trial court to issue an order for sale on the determination that a dwelling was exempt, regardless of the court's determination of the dwelling's value. In response to *Abbett*, the statute was amended to provide that an order for sale must be made unless the court determines that the sale would not be likely to produce a bid sufficient to satisfy any part of the amount due on the judgment under the minimum bid requirements of *C.C.P. 704.800* (see *infra*, §224). (*C.C.P. 704.780(b)*); C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.63.)

The order must specify the amount of the proceeds of the sale to be distributed to each person having a lien or encumbrance on the dwelling, and the names and addresses of those persons. Except as otherwise provided by *C.C.P. 704.710* et seq., the sale is governed by the general procedure governing execution sales (*C.C.P. 701.510* et seq., *supra*,

§144 et seq.). (*C.C.P. 704.780(b)*); see *Bratcher v. Buckner* (2001) 90 C.A.4th 1177, 1190, 109 C.R.2d 534 [failure of trial court's sale order to specify amount of proceeds to be distributed to persons with liens, with their names and addresses, was mere technical defect not requiring reversal and could be remedied by remand with instructions to modify order].)

If the court determines that the dwelling is not exempt, it must order a sale in the manner provided by *C.C.P. 701.510* et seq. (*C.C.P. 704.780(b)*.) However, despite this mandatory language, the court may refuse to issue an order of sale for a nonexempt dwelling if to do so will interfere with the family law department's continuing jurisdiction over the division of community property interests in the dwelling. (See *In re Marriage of Schenck* (1991) 228 C.A.3d 1474, 1482, 279 C.R. 651, 11 Summary (10th), *Husband and Wife*, §69.)

The fee for issuing an order of sale is \$ 20. (*Govt.C. 70626(b)(1)*.)

(4) *Transmittal of Order*. The court clerk must transmit a certified copy of the order to the levying officer and, if the court making the order is not the court in which the judgment was entered, to the clerk of the court in which the judgment was entered. (*C.C.P. 704.780(c)*.)

West's Key Number Digest, Homestead 217

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Order for Sale*. *Govt.C. 70626* was amended in 2009. The fee for issuing an order of sale is \$ 30 until July 1, 2017. (*Govt.C. 70626(b)(1)*, (e).)



56 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

d. Procedure After Order of Sale.

1. Where Debtor Defaults.

8 *Witkin Cal. Proc. Enf Judgm* § 223

[§ 223] Where Debtor Defaults.

(1) *Service and Posting.* Not later than 10 days after an order for sale made at a hearing at which neither the judgment debtor, nor the debtor's spouse, nor their attorneys appear, the judgment creditor must serve a copy of the order and a notice of the order in the form prescribed by the Judicial Council, personally or by mail, on the debtor and the debtor's spouse and personally on an occupant of the dwelling. If there is no occupant present at the time service is attempted, the creditor must post a copy of the order and notice in a conspicuous place at the dwelling. (*C.C.P. 704.790(a)*, (b).) The creditor must file proof of service and posting with the court and with the levying officer. The dwelling may not be sold if the creditor fails to file proof of service and posting or fails to serve or post the order and notice as required. (*C.C.P. 704.790(c)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:789 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §§9.94, 9.95.)

(2) *Debtor's Response.* Within 10 days after service of the order, the debtor or debtor's spouse may file with the levying officer a declaration that default was due to mistake, inadvertence, surprise, or excusable neglect and that the debtor or the debtor's spouse wishes to assert the homestead exemption. The levying officer must transmit the declaration to the court, which, on receipt, must set a time and place for hearing within 20 days to determine if the determinations of the court should be modified. The court clerk must cause notice of the hearing to be given to the parties. (*C.C.P. 704.790(d)*.)

(3) *Judicial Council Form.* The Judicial Council has approved an optional form for the notice and declaration in response. (See Judicial Council Form No. EJ-182 [Declaration for Rehearing on Homestead Exemption].)

SUPPLEMENT: [This section is current through the latest supplement]



57 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

d. Procedure After Order of Sale.

2. Minimum Bid.

8 *Witkin Cal. Proc. Enf Judgm* § 224

[§ 224] Minimum Bid.

(1) *Bid Must Exceed Exemption, Liens, and Encumbrances.* A homestead may not be sold and must be released in the absence of a minimum bid that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property, including any attachment or judgment lien. If a homestead is released, it is not subject to a court ordered sale on a subsequent application by the same judgment creditor for 1 year. (*C.C.P. 704.800(a)*.) (See *Mehrtash v. Mehrtash* (2001) 93 *C.A.4th* 75, 81, 112 *C.R.2d* 802, *infra*, §497 [debtor's sale of homestead could not be set aside as fraudulent where creditor failed to prove that value of property exceeded encumbrances and senior liens and, therefore, that creditor was injured by transfer]; *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §6.65; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:797 *et seq.*; 14 *Pacific L. J.* 421.) The term "all liens and encumbrances" does *not* include the lien of the judgment creditor requesting the sale; the purpose of this provision is to ensure the payment of liens and encumbrances senior to the lien of the executing creditor. (*Rourke v. Troy* (1993) 17 *C.A.4th* 880, 885, 21 *C.R.2d* 660; *Bratcher v. Buckner* (2001) 90 *C.A.4th* 1177, 1189, 109 *C.R.2d* 534.)

(2) *Bid Must Equal at Least 90% of Fair Market Value.* If there is no bid equal to at least 90% of the fair market value determined pursuant to *C.C.P. 704.780* (see *supra*, §222), the homestead may not be sold unless the court, on motion of the creditor, grants permission to accept the highest bid exceeding the minimum bid or makes a new order for sale. (*C.C.P. 704.800(b)*.)

West's Key Number Digest, Homestead 203

SUPPLEMENT: [This section is current through the latest supplement]



58 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

d. Procedure After Order of Sale.

3. Acceleration Clauses and Prepayment Penalties.

8 *Witkin Cal. Proc. Enf Judgm* § 225

[§ 225] Acceleration Clauses and Prepayment Penalties.

(1) *No Acceleration of Secured Obligations.* Levy on a homestead that is subject to a lien or encumbrance is not, by itself, grounds for accelerating the obligation secured by the lien or encumbrance, notwithstanding any provision of the obligation, lien, or encumbrance. (*C.C.P. 704.810*; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:1017.)

(2) *No Prepayment Penalties.* If a homestead is sold pursuant to a court order under *C.C.P. 704.710 et seq.*, the amount payable to satisfy a lien or encumbrance may not include any penalty for prepayment. (*C.C.P. 704.810*; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:805.)

SUPPLEMENT: [This section is current through the latest supplement]



59 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

d. Procedure After Order of Sale.

4. Where Debtor Is Partial Owner.

8 *Witkin Cal. Proc. Enf Judgm* § 226

[§ 226] Where Debtor Is Partial Owner.

If a judgment debtor's interest in a dwelling is a leasehold or other interest less than a fee interest, or the dwelling is owned by the debtor in joint tenancy or tenancy in common, the interest of the debtor, but not the dwelling itself, may be sold at execution. If there are multiple judgment debtors of the same creditor having interests in the same dwelling, their interests must be sold together, and each is entitled to a homestead exemption applicable to his or her interest. (*C.C.P. 704.820(a)*.) For purposes of this provision, references in *C.C.P. 704.710* et seq. to "dwelling" or "homestead" are deemed to be references to the judgment debtor's interest in the dwelling or homestead. (*C.C.P. 704.820(b)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:794 et seq., 6:1031; C.E.B., 2 *Debt Collection Practice* 2d, §9.37.)

This provision implements the intent of the homestead exemption statutes not to restrict the interest of the judgment debtor for which an exemption is available. An exemption is available regardless of whether the debtor's interest is a fee, leasehold, or lesser interest. (See Law Rev. Com. Comment to *C.C.P. 704.820*.)

SUPPLEMENT: [This section is current through the latest supplement]



60 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

d. Procedure After Order of Sale.

5. Distribution of Proceeds.

8 *Witkin Cal. Proc. Enf Judgm* § 227

[§ 227] Distribution of Proceeds.

The levying officer must distribute the proceeds from the sale of a homestead in the following order:

- (1) To discharge liens and encumbrances on the property. (*C.C.P. 704.850(a)(1).*)
- (2) To the judgment debtor in the amount of the homestead exemption. (*C.C.P. 704.850(a)(2).*)
- (3) To the levying officer to reimburse costs that have not been advanced. (*C.C.P. 704.850(a)(3).*)
- (4) To the judgment creditor to satisfy costs and interest accruing after issuance of the writ of execution, and then to satisfy the amount due on the judgment with costs and interest entered on the writ. (*C.C.P. 704.850(a)(4).*)
- (5) To the judgment debtor in the amount remaining. (*C.C.P. 704.850(a)(5).*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.67; Rutter Group, 2 *Enforcing Judgments and Debts* §6:804 et seq.)

This provision is an exception to the general rule governing the distribution of proceeds (*C.C.P. 701.810*, supra, §158). (Legislative Com. Comment (Senate) to *C.C.P. 704.850*.) The general rules governing the time for distributing proceeds (*C.C.P. 701.820*, supra, §159) and the resolution of conflicting claims to proceeds (*C.C.P. 701.830*, supra, §160) apply to the distribution of proceeds from the sale of a homestead. (*C.C.P. 704.850(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



61 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

2. Automatic Exemption.

d. Procedure After Order of Sale.

6. Costs, Extensions, and Appeal.

8 *Witkin Cal. Proc. Enf Judgm* § 228

[§ 228] Costs, Extensions, and Appeal.

(1) *Costs*. Ordinarily, a judgment creditor is entitled to recover reasonable costs incurred in a proceeding for the sale of a homestead. However, if the minimum bid required by *C.C.P. 704.800* (see supra, §224) is not received, the judgment creditor may not recover costs. (*C.C.P. 704.840*; see *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §6.68; *Rutter Group, 2 Enforcing Judgments and Debts* §§6:802, 6:803.)

(2) *Extension of Time*. *C.C.P. 703.590*, governing extensions of time for exemptions claims generally (see supra, §180), is applicable to the homestead exemption. (*C.C.P. 704.830*.)

(3) *Appeal*. *C.C.P. 703.600*, governing appeal from exemption orders generally (see supra, §180), is applicable to the homestead exemption. (*C.C.P. 704.830*.)

West's Key Number Digest, Homestead 203

SUPPLEMENT: [This section is current through the latest supplement]



62 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

a. Development of Law.

8 *Witkin Cal. Proc. Enf Judgm* § 229

[§ 229] Development of Law.

(1) *Former Law.* Under former C.C. 1237 et seq., a dwelling could be declared to be a homestead. (On policy of declared homestead law, see *Katsivalis v. Serrano Reconveyance Co.* (1977) 70 C.A.3d 200, 212, 138 C.R. 620.) The declaration had the effect of giving an exemption from execution or forced sale up to a statutory limit. (See *Southern Pac. Milling Co. v. Milligan* (1940) 15 C.2d 729, 730, 104 P.2d 654.) Within the statutory scope and subject to the statutory limitations, the courts were extremely liberal in upholding the exemption of a properly declared homestead. (See *Lucci v. United Credit & Collection Co.* (1934) 220 C. 492, 496, 31 P.2d 369 [no objection that conveyance was made for sole purpose of enabling grantees to declare homestead on property]; *Oppenheim v. Goodley* (1957) 148 C.A.2d 325, 329, 306 P.2d 944 [where homestead was valid, creditor was not injured by fraudulent conveyance and was not entitled to execution after having fraudulent conveyance set aside]; *Viotti v. Giomi* (1964) 230 C.A.2d 730, 737, 738, 41 C.R. 345 [exemption was upheld despite claimant's inequitable conduct in allowing execution sale, knowing that creditor was unaware of homestead, and then seeking quiet title].)

The exemption applied to the dwelling house in which the claimant resided and outbuildings, and the land on which they were located. (Former C.C. 1238.) Hence, a homestead could be declared on a building occupied as a residence, even though part of it was used for business or rental purposes. (See *Vincenzini v. Fiorentini* (1934) 2 C.A.2d 739, 741, 38 P.2d 876 [living quarters with portion rented]; *Coca Cola Bottling Co. v. Feliciano* (1941) 45 C.A.2d 680, 114 P.2d 604 [building with stores and living quarters].) An unmarried claimant could select a homestead from any property. (Former C.C. 1238.) A married claimant could declare a homestead from the separate property of either spouse. (Former C.C. 1239.) In addition, a declaration could be made as to community or quasi-community property or property held by one or both spouses in joint tenancy or by tenants in common. (Former C.C. 1238; see *Watson v. Peyton* (1937) 10 C.2d 156, 158, 73 P.2d 906 [declaration by husband on property held in joint tenancy with wife]; *Estate of Kachigian* (1942) 20 C.2d 787, 788, 128 P.2d 865 [probate homestead; property held in tenancy in common by husband and third person].)

A homestead was created by execution, acknowledgment, and recordation of a declaration of homestead. (Former C.C. 1262 et seq., 1266 et seq., 1300 et seq.; see *Taylor v. Madigan* (1975) 53 C.A.3d 943, 950, 126 C.R. 376 [upholding constitutionality of declaration requirement].) The declaration was liberally construed and formal defects

were disregarded. (See *Favello v. Bank of America* (1938) 24 C.A.2d 342, 345, 74 P.2d 1057 [defective acknowledgment upheld]; *Thomas v. Speck* (1941) 47 C.A.2d 512, 518, 118 P.2d 365 [same]; *Johnson v. Brauner* (1955) 131 C.A.2d 713, 716, 281 P.2d 50 [exhaustive review of cases].) The exemption was effective when a declaration was recorded in the county in which the homestead was located (former C.C. 1265, 1269, 1303), but it defeated an existing attachment lien (see *Jacobson v. Pope & Talbot* (1932) 214 C. 758, 760, 7 P.2d 1017; *Becker v. Lindsay* (1976) 16 C.3d 188, 191, 127 C.R. 348, 545 P.2d 260) and also a levy of execution, except to the extent of excess value, in the absence of a preexisting judgment lien (see *Yager v. Yager* (1936) 7 C.2d 213, 217, 60 P.2d 422). Proceeds from the voluntary sale of a homestead, to the extent of the exemption, were exempt for 6 months. (Former C.C. 1265.) A new declaration on property purchased with the proceeds recorded within 6 months related back to the date of the earlier declaration. (Former C.C. 1265a.)

An execution sale of a homestead was authorized after a judgment based on a secured debt (a) where a judgment lien or other encumbrance was recorded before the homestead declaration was recorded, (b) where an encumbrance was created by the homestead claimant, or (c) where the judgment was based on a debt secured by a mechanic's lien, contractor's lien, materialmen's lien, or similar enumerated liens. (Former C.C. 1241(2).) A judicially created exception allowed execution against homesteaded property where the property was acquired with money obtained from the creditor by fraud. (See *Duhart v. O'Rourke* (1950) 99 C.A.2d 277, 280, 221 P.2d 767; *Stoner v. Walsh* (1972) 24 C.A.3d 938, 942, 101 C.R. 485.)

A homestead could be abandoned by a conveyance or a written declaration of abandonment. (Former C.C. 1243.) However, there was no abandonment if the conveyance was not intended to transfer the claimant's beneficial interest in the property or if the claimant retained an interest sufficient to support a homestead exemption. (See *Palen v. Palen* (1938) 28 C.A.2d 602, 605, 83 P.2d 36 [conveyance to third party in trust for claimant]; *Vieth v. Klett* (1948) 88 C.A.2d 23, 28, 198 P.2d 314 [conveyance to third party for purpose of effecting reconveyance to claimants as joint tenants].) The declaration was effective only from the time it was recorded in the office where the homestead was recorded. (Former C.C. 1244.)

(2) *Enforcement of Judgments Law*. The Enforcement of Judgments Law continues the former law providing for a declared homestead, but makes some changes in the scope and procedure. (See Legislative Com. Comment (Senate) to C.C.P. 704.910; 16 Cal. Law Rev. Com. Reports, p. 1092 et seq.; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.69 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1036 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.83 et seq.) C.C.P. 704.910 et seq. apply to homestead declarations recorded under either former law or the Enforcement of Judgments Law (C.C.P. 704.910(d)), and a homestead declaration made under prior law is effective only to the extent provided by C.C.P. 704.910 et seq. (C.C.P. 694.090, supra, §18).

SUPPLEMENT: [This section is current through the latest supplement]



63 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

b. Definitions.

8 *Witkin Cal. Proc. Enf Judgm* § 230

[§ 230] Definitions.

For purposes of the declared homestead exemption under the Enforcement of Judgments Law, the following definitions apply:

(1) *Declared homestead.* The "declared homestead" is the dwelling described in the declaration. (*C.C.P. 704.910(a).*)

(2) *Declared homestead owner.* The "declared homestead owner" is the owner of an interest in the declared homestead who is named in the declaration recorded under the Enforcement of Judgments Law or the person named in the declaration recorded under former law. (*C.C.P. 704.910(b).*) Although both spouses holding an interest in a homestead may be named as declared homestead owners in the same declaration (see *C.C.P. 704.930(a)(1)*, *infra*, §231), unmarried persons holding interests in and residing in the same dwelling must record separate declarations. (Legislative Com. Comment (Senate) to *C.C.P. 704.910.*)

(3) *Dwelling.* A "dwelling" is any interest in real property (whether present or future, vested or contingent, legal or equitable) that is a "dwelling" for purposes of the automatic homestead exemption (see *C.C.P. 704.710(a)*, *supra*, §216), but does not include a leasehold estate with an unexpired term of less than 2 years or the interest of the beneficiary of a trust. (*C.C.P. 704.910(c).*) The definition excludes a dwelling that is personal property. Thus, a boat or other waterborne vessel or a mobilehome not sufficiently affixed to land to be considered real property is not a dwelling for purposes of a declared homestead. (Legislative Com. Comment (Senate) to *C.C.P. 704.910.*)

In *Fisch, Spiegler, Ginsburg & Ladner v. Appel* (1992) 10 C.A.4th 1810, 13 C.R.2d 471, the trial judge ruled that defendant homeowners, who had placed title to their residence in a revocable living trust and then recorded a declared homestead on the property, had a valid homestead exemption. *Held*, affirmed. The exclusion of the interest of trust beneficiaries from the definition of a "dwelling" under *C.C.P. 704.910(c)* did not disqualify defendants from a homestead exemption. Defendants' interests in the property as trustors and as holders of life estates in the trust assets, which were not disputed by plaintiff, amounted to interests in real property included by *C.C.P. 704.910(c)*. And while the homestead exemption applies only to property of natural persons (*C.C.P. 703.020(a)*, *supra*, §170), there is no

requirement that title be held by a natural person. Homestead statutes are construed liberally on behalf of the homesteader. (*10 C.A.4th 1813.*)

(4) *Spouse*. "Spouse" has the same meaning for purposes of a declared homestead as it does for purposes of the automatic homestead exemption (see *C.C.P. 704.710(d)*, supra, §216). (*C.C.P. 704.910(e).*)

SUPPLEMENT: [This section is current through the latest supplement]



64 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

c. Creation.

1. Recording Declaration.

8 *Witkin Cal. Proc. Enf Judgm* § 231

[§ 231] Recording Declaration.

(1) *Selection of Homestead.* A dwelling in which an owner or the owner's spouse resides may be selected by recording a homestead declaration in the office of the county recorder for the county in which the dwelling is located. The dwelling is the declared homestead from the time of recording. (*C.C.P.* 704.920; see Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1039 et seq., 6:1042 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.85; *14 Pacific L. J.* 422.) (For definition of "dwelling," see *C.C.P.* 704.910(c), supra, §230.)

(2) *Execution of Declaration.* The declaration must be executed and acknowledged in the manner of an acknowledgment for a conveyance of real property (see 12 *Summary* (10th), *Real Property*, §283 et seq.). (*C.C.P.* 704.930(b).) It must be executed by at least one of the following:

(a) The declared homestead owner. (*C.C.P.* 704.930(b)(1).)

(b) The owner's spouse. (*C.C.P.* 704.930(b)(2).)

(c) A guardian or conservator of the person or the estate of either the owner or the owner's spouse. A guardian or conservator may execute, acknowledge, and record a declaration without court authorization. (*C.C.P.* 704.930(b)(3).)

(d) An attorney in fact or other person authorized to act on behalf of the owner or the owner's spouse. (*C.C.P.* 704.930(b)(4).) (On statutory regulation of nonlawyers participating in preparation of homestead declarations for compensation, see *infra*, §240.)

(3) *Contents of Declaration.* The declaration must contain all of the following:

(a) The name of the owner. The declaration may contain the name of a husband and wife if each owns an interest in a dwelling selected as a declared homestead. (*C.C.P.* 704.930(a)(1).)

(b) A description of the declared homestead. (*C.C.P.* 704.930(a)(2).)

(c) A statement that the homestead is the principal dwelling of the owner or the owner's spouse and that the owner or the spouse resides in the homestead on the date the declaration is recorded. (*C.C.P. 704.930(a)(3).*)

(d) A statement that the facts in the declaration are known to be true on the personal knowledge of the declarant. If the declaration is executed by a person other than the owner or the owner's spouse, it must state that the declarant has authority to act on behalf of the owner or the owner's spouse and must state the source of the declarant's authority. (*C.C.P. 704.930(c).*)

(4) *Evidentiary Effect of Declaration.* A properly recorded homestead declaration is prima facie evidence of the facts stated in the declaration and conclusive evidence of these facts in favor of a purchaser or encumbrancer in good faith for a valuable consideration. (*C.C.P. 704.940.*)

West's Key Number Digest, Homestead 38

SUPPLEMENT: [This section is current through the latest supplement]



65 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

c. Creation.

2. Residence Requirement.

8 *Witkin Cal. Proc. Enf Judgm* § 232

[§ 232] Residence Requirement.

The residence on the property that is required for a declaration of homestead differs from that required for an automatic homestead. In *Webb v. Trippet* (1991) 235 C.A.3d 647, 286 C.R. 742, the trial judge ordered the sale of a debtor's declared homestead property, finding that the debtor was not entitled to a homestead exemption because he had not resided continuously on the property. *Held*, reversed; the judge's finding ignored the distinction between declared and automatic homestead exemptions.

(a) Under *C.C.P. 704.710(c)* (see *supra*, §217), an automatic residential exemption applies when a party has continuously resided in a dwelling from the time that a creditor's lien attaches until a court's determination that the exemption applies. (235 C.A.3d 651.) By contrast, under *C.C.P. 704.920, 704.930(a)(3)* (see *supra*, §231), the declared homestead exemption requires that a party record a declaration stating that the residence is the "principal dwelling" of the declarant or the declarant's spouse. (235 C.A.3d 651.) Although the declared homestead provisions contain numerous references to the automatic exemption provisions, and the provision setting forth the amount of the automatic exemption (*C.C.P. 704.730(a)*, *supra*, §218) makes reference to the debtor "who resides in the homestead," this does not mandate actual or continuous residence for a declared homestead. When a declaration of homestead has been filed, under *C.C.P. 704.940* it is *prima facie* evidence of the validity of the facts stated in the declaration. (235 C.A.3d 651.)

(b) "The declared homestead provisions and the automatic exemption law each confer different rights on the homesteader, and there is no overlap between these rights. One may have rights under the declared homestead law, or rights under the automatic exemption law, or both, or neither." (235 C.A.3d 651.)

SUPPLEMENT: [This section is current through the latest supplement]



66 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

c. Creation.

3. Fraudulently Conveyed Interest.

8 *Witkin Cal. Proc. Enf Judgm* § 233

[§ 233] Fraudulently Conveyed Interest.

Nicolos v. Grover (1986) 186 C.A.3d 858, 231 C.R. 79, discusses the consequences of fraudulent conveyance of property sought to be homesteaded. Plaintiff brought an action seeking a determination that her declared homestead had priority over the claim of her ex-husband's trustee in bankruptcy. At the time of their divorce, the husband had transferred to plaintiff his interest in their house. Then he filed a bankruptcy proceeding, in which the court ruled that the transfer was fraudulent (see *infra*, §479 et seq.) and awarded the trustee half the equity in the house. Before the abstract of the bankruptcy judgment was recorded, plaintiff filed a homestead declaration. In the wife's action against the trustee, the trial judge concluded that the conveyance of the husband's interest was void as to his creditors, and therefore the homestead declaration was ineffectual as against the trustee. *Held*, affirmed.

(a) As against a grantor's creditors, a fraudulent conveyance is void and leaves title in the grantor; hence, the husband's interest was never conveyed to plaintiff and was not affected by her homestead claim. (186 C.A.3d 861.)

(b) Cases broadly stating that the rules governing fraudulent conveyances are inapplicable to homesteads (e.g., *Oppenheim v. Goodley* (1957) 148 C.A.2d 325, 306 P.2d 944) are distinguishable; they deal with fraudulent conveyances of property "already validly homesteaded. In context they refer to the rule that a homestead may be validly created or conveyed notwithstanding a desire to hinder or delay creditors. ... Thus a homestead claim *by or on behalf of the grantor* is effective notwithstanding an attempt by him to fraudulently convey the homesteaded property to another. ... This flows from the very fact that the fraudulent conveyance effects no transfer and leaves the property in the grantor. ... That same fact precludes a rule permitting the grantee, who acquires no interest, to homestead the property." (186 C.A.3d 862.) (On effect of fraudulent conveyance laws on right to convey declared homestead, see *infra*, §234.)

SUPPLEMENT: [This section is current through the latest supplement]



67 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

d. Effect of Creation.

1. Sale or Other Disposition of Property.

8 *Witkin Cal. Proc. Enf Judgm* § 234

[§ 234] Sale or Other Disposition of Property.

(1) *Right To Convey or Encumber Property.* A homestead declaration does not restrict or limit any right to convey or encumber the declared homestead. (*C.C.P. 704.940*; see Legislative Com. Comment (Senate) to *C.C.P. 704.940* [noting that former law restricted right to convey or encumber property].) Further, conveyances or encumbrances of declared homesteads are not subject to the law of fraudulent conveyances, because the property is exempt from execution by creditors up to the value of the homestead. (*Tassone v. Tovar* (1994) 28 *C.A.4th* 765, 768, 33 *C.R.2d* 786 [creditor was not defrauded by conveyance of homestead as gift to son and his subsequent sale of property, where proceeds of sale were less than exemption].) (On transfer of exempt property as not in fraud of creditors, see *infra*, §480; on effect of fraudulent conveyance of property to person declaring homestead, see *supra*, §233.)

(2) *Exemption of Proceeds and Effect of Reinvestment.* The proceeds of a voluntary sale of a declared homestead are exempt in the amount of the homestead exemption under *C.C.P. 704.730* (see *supra*, §218) for 6 months after the date of sale. (*C.C.P. 704.960(a)*.)

If the proceeds of a declared homestead are invested in a new dwelling within 6 months after either the date of a voluntary sale or the receipt of proceeds from an execution sale or of insurance or other indemnification for damage or destruction, the new dwelling may be selected as a declared homestead by recording a homestead declaration within the applicable 6-month period. That homestead declaration has the same effect as if it had been recorded at the time the prior declaration was recorded. (*C.C.P. 704.960(b)*.) (See *Amin v. Khazindar* (2003) 112 *C.A.4th* 582, 589, 5 *C.R.3d* 224 [in contrast to automatic homestead, which "only entitles the debtor to protection from a forced execution sale," proceeds from voluntary sale of declared homestead "may be reinvested within six months, thus allowing the debtor to invest in another residence"]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.71; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1048 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §§9.82, 9.84.)

(3) *Effect of Statutory Amendment Increasing Amount of Exemption.* If a homestead declaration is recorded prior to the operative date of an amendment to *C.C.P. 704.730* (see *supra*, §218) that increases the amount of the exemption, the amount of the exemption for purposes of *C.C.P. 704.960* is the increased amount. However, if the judgment creditor

obtained a lien on the homestead prior to the operative date of the amendment, the exemption under *C.C.P. 704.960* must be determined as if the amendment had not been enacted. (*C.C.P. 704.965.*)

SUPPLEMENT: [This section is current through the latest supplement]



68 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

d. Effect of Creation.

2. Attachment of Judgment Lien.

8 *Witkin Cal. Proc. Enf Judgm* § 235

[§ 235] Attachment of Judgment Lien.

(1) *Statutory Formula.* A judgment lien on real property created under *C.C.P. 697.310* et seq. (see supra, §69 et seq.) does not ordinarily attach to a declared homestead if the homestead declaration names the judgment debtor or the debtor's spouse as the declared homestead owner and was recorded before the abstract or certified copy of the judgment was recorded to create the lien. (*C.C.P. 704.950(a)*.) There are two exceptions:

(a) *Support judgments.* The general rule does not apply to a judgment lien created by recording a certified copy of a judgment for child, family, or spousal support under *C.C.P. 697.320* (see supra, §71). (*C.C.P. 704.950(b)*.)

(b) *Surplus equity.* A judgment lien attaches to a declared homestead to the extent of any surplus beyond the total of (1) all liens and encumbrances on the homestead at the time the abstract of judgment or certified copy of the judgment is recorded to create the judgment lien, and (2) the homestead exemption set forth in *C.C.P. 704.730* (see supra, §218). (*C.C.P. 704.950(c)*.) (See *Title Trust Deed Service Co. v. Pearson* (2005) 132 *C.A.4th* 168, 178, 33 *C.R.3d* 311 [where declared homestead is recorded before judgment lien attaches, *C.C.P. 704.950(c)* incorporates homestead exemption as part of formula for determining amount of that lien]; *Behniwal v. Mix* (2007) 147 *C.A.4th* 621, 635, 54 *C.R.3d* 427, 13 *Summary* (10th), *Equity*, Supp., §27A [judgment in favor of buyers for specific performance of contract to sell residential property subject to declared homestead could not provide for offset against purchase price of attorneys' fee award; allowance of offset created "super-lien" in circumvention of *C.C.P. 704.950*]; *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §6.72; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:1052 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §§9.82, 9.84; 41 *A.L.R.4th* 292 [judgment lien on excess value of homestead].)

(2) *Surplus Equity Acquired After Recordation of Lien.* In *Teaman v. Wilkinson* (1997) 59 *C.A.4th* 1259, 69 *C.R.2d* 705, defendants' judgment lien failed to attach to plaintiffs' residential property due to a lack of surplus equity. Thereafter, plaintiffs sold the property to third parties and defendants obtained an order for the sale of the property in satisfaction of their lien. The third parties petitioned for a hearing on the validity of a third-party claim (see infra, §364 et seq.). Defendants asserted that a sale was proper because the property had gained surplus equity inasmuch as the third parties had taken out a much smaller loan than had plaintiffs to finance the purchase. The trial court ruled that

defendants were not entitled to a judicial sale, because their judgment lien had failed to attach to the property upon recordation, and it could not attach at any time thereafter. *Held*, affirmed.

(a) *Creditors' rights to surplus equity that accrues while homestead is owned by debtor.* The trial court erred in determining that the judgment lien, which could not attach at the time of recordation, could never attach in the future even if surplus equity existed.

(1) The Enforcement of Judgments Law does not address the potential enforceability of a judgment lien that has failed to attach because of lack of surplus equity, nor has any California case addressed the issue. However, an interpretation that would forever prevent a judgment creditor from executing on a judgment debtor's homestead property if there were no surplus equity in the property at the time the creditor recorded an abstract of judgment would lead to an absurd result. A second creditor could execute on the debtor's property because it had surplus equity when that creditor's abstract of judgment was recorded, but, despite the existence of sufficient surplus equity to cover the first creditor's judgment as well, its lien would be worthless because there had been no surplus equity to which it could attach when its abstract was recorded. (59 C.A.4th 1265.) In order to avoid this anomaly, the first creditor would have to continually rerecord its abstract of judgment in the hope that one of them might bear fruit by being recorded at a time when surplus equity had accrued in the judgment debtor's property. This interpretation of the statute would cripple the doctrine of priority of liens, because the creditor that recorded an abstract of judgment second in time would be able to execute on the property but the creditor that recorded first would not. The adverse practical consequences of such a construction demonstrate that it should be avoided. (59 C.A.4th 1266.)

(2) *C.C.P. 697.340 and 704.800* strengthen the conclusion that a judgment creditor may reap the benefit of after-acquired surplus equity. Under *C.C.P. 697.340(a)* (supra, §74), "[a] judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor ... at the time the lien was created." Although *C.C.P. 697.340* contains an exception for *C.C.P. 704.950*, none of the provisions of *C.C.P. 704.950* can be reasonably read to prevent *C.C.P. 697.340* from applying to an increase in equity in homestead property. (59 C.A.4th 1266.) "A fortiori, when an increase in value of the property creates or increases surplus equity, the judgment creditor is entitled to reach this appreciation in satisfaction of its judgment." (59 C.A.4th 1267.) *C.C.P. 704.800(a)* (supra, §224) provides that if a homestead is not sold because of the lack of surplus equity, it is not thereafter subject to a sale on a subsequent application by the same judgment creditor for a year. This can be read only as meaning that a judgment creditor whose lien did not initially attach because there was no surplus equity when its abstract of judgment was recorded should be given additional opportunities to execute on the lien if surplus equity does develop. The creditor merely has to wait at least a year between each attempt to levy execution. (59 C.A.4th 1267.)

(b) *Creditors' rights on transfer of property with no surplus equity.* However, the voluntary transfer of plaintiffs' property to the third parties did not allow defendants to execute on the "surplus equity" created by the sale.

(1) Defendants wrongly argue that their judgment lien was transferred to the third parties' residence under *C.C.P. 697.390(a)* (supra, §78). That statute provides that if an interest in real property subject to a judgment lien is transferred or encumbered without satisfying or extinguishing the lien, the interest transferred or encumbered remains subject to the lien in the same amount as if the interest had not been transferred or encumbered. However, if at the time of transfer the judgment lien created by recording an abstract of judgment had no value because there was no surplus equity to which it could attach, there would be nothing of value to which the transferred interest remained subject. Consequently, even if the third parties are considered to have taken "subject to" the defendants' lien, defendants could not execute on the lien because it would be worthless. (59 C.A.4th 1267.)

(2) Pursuant to *C.C.P. 704.960* (supra, §234), when a declared homestead is voluntarily sold, the exempt proceeds of the sale under the homestead law remain exempt for up to 6 months if they are reinvested in a new homestead within that time. Once reinvested, the new homestead declaration has the same effect as if it had been recorded at the time the prior homestead declaration was recorded. The purpose of this statute is to facilitate the preservation of the homestead

exemption by allowing a homestead owner to substitute one family home for another without losing the exemption. The statutory interpretation urged by defendants would render the statute a nullity. Lacking some extraordinary circumstance, a buyer would agree to purchase property with a judgment lien in its chain of title only if that lien were satisfied as a condition of the sale. (59 C.A.4th 1268.)

(3) California title insurance companies appear to have anticipated the result in this case. The third parties' title insurer did not include the abstract of judgment in its title report. A title company would choose to ignore a recorded abstract and issue a new buyer a "clean" title insurance policy (that is, one not containing the creditor's lien) if it determines that (a) a homestead declaration was recorded before the creditor's lien was recorded; and (b) no C.C.P. 704.950(c) surplus equity exists that can be used to satisfy the creditor's lien. The third parties' title insurer correctly interpreted the law when it determined that defendants' abstract of judgment did not constitute a lien on the property once it had been purchased by the third parties. (59 C.A.4th 1269.) (See 33 U.S.F. L. Rev. 285 [analysis of C.C.P. 704.950(c)].)

Related issues were involved in *Smith v. James A. Merrill* (1998) 64 C.A.4th 94, 75 C.R.2d 108. Plaintiffs, a foreclosed property owner and a junior lienholder, filed a declaratory relief action against defendants, the holder of a judgment lien against the property and two other junior lienholders, including the holder of the deed of trust under which the power of sale was exercised. The action was brought to determine distribution of the remaining proceeds of the sale after payment of the costs of the sale and payment of the note secured by the deed of trust that was the subject of the sale. The trial court entered judgment awarding the remaining proceeds to the judgment creditor. *Held*, reversed.

(a) Under C.C. 2924k(a)(3) (see 4 *Summary* (10th), *Security Transactions in Real Property*, §162), the remaining proceeds must be paid to satisfy obligations secured by any junior liens in order of their priority. The trial court concluded that the holder of the judgment lien was entitled to the proceeds because his lien was the next lien on the property following the deed of trust that was the subject of the foreclosure sale. Plaintiffs contend that the judgment lien never attached due to the prior filing of a homestead declaration. Although that contention is erroneous, the trial court erred in holding that the holder of the judgment lien was entitled to the remaining proceeds as a matter of law, because the amount of the lien, i.e., the surplus equity, remains to be determined. (64 C.A.4th 98.)

(b) Although *Teaman, supra*, held that a judgment creditor is entitled to reach surplus equity accruing after the abstract of judgment is recorded, it likewise suggested that the judgment lien does not attach to the declared homestead until surplus equity develops. However, C.C.P. 704.950(c) does not govern *when* a judgment lien attaches to a declared homestead, but rather governs only the *amount* of the lien. Construing the statute to mean that a judgment lien does not attach to a declared homestead unless and until surplus equity exists would be impractical, but those difficulties are avoided by construing it as governing only the amount of the lien. Thus, although the lien attaches to the homestead when the abstract of judgment is recorded, the amount of the lien will vary over time pursuant to the formula in the statute. (64 C.A.4th 100.)

(c) The judgment lien attached to the property when the abstract of judgment was recorded. The amount of that lien, however, remains to be determined pursuant to C.C.P. 704.950(c). Because the amount of the lien will necessarily be reduced by the amount of the homestead exemption, it follows that the lienholder was not entitled to the remaining proceeds of the trustee's sale as a matter of law, because issues of fact remain regarding the amount of the lien. (64 C.A.4th 102.)

(d) This result is proper even though it means that the junior consensual lienholders will, in effect, have partial priority over the lienholder because they will be entitled, pursuant to C.C. 2924k(a)(3), to the remaining proceeds of the trustee's sale not paid to the lienholder. The purpose of the homestead statutes is to protect the value of the homestead from judgment creditors, and the owner of a declared homestead has the right, under C.C.P. 704.940 (*supra*, §234), to encumber the homestead. (64 C.A.4th 102.)

(3) *Effect of Statutory Amendment Increasing Amount of Exemption.* If a homestead declaration is recorded prior to

the operative date of an amendment to *C.C.P. 704.730* (see *supra*, §218) that increases the amount of the exemption, the amount of the exemption for purposes of *C.C.P. 704.950(c)* is the increased amount. However, if the judgment creditor obtained a lien on the homestead prior to the operative date of the amendment, the exemption under *C.C.P. 704.950(c)* must be determined as if the amendment had not been enacted. (*C.C.P. 704.965.*) (See *Berhanu v. Metzger* (1992) 12 *C.A.4th* 445, 447, 15 *C.R.2d* 191 [amount of exemption is controlled by date of lien under *C.C.P. 704.965*; although *C.C.P. 703.050(c)* provides that procedures in levying on property are governed by law in effect at time of levy of execution, amount of exemption is not one of those procedures].)

SUPPLEMENT: [This section is current through the latest supplement]



69 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

d. Effect of Creation.

3. Levy of Execution.

8 *Witkin Cal. Proc. Enf Judgm* § 236

[§ 236] Levy of Execution.

Whether or not a homestead declaration has been recorded, the declared homestead statutes do not affect the judgment creditor's right to levy on the property under a writ of execution. (*C.C.P. 704.970(a)*.) And *C.C.P. 704.710* et seq., governing the automatic homestead exemption (see *supra*, §216 et seq.), apply to the levy on and sale of a declared homestead, and the related rights and benefits of the parties. (*C.C.P. 704.970(b)*.) (See *Kahn v. Berman (1988) 198 C.A.3d 1499, 1509, 244 C.R. 575* [noting, in dicta, that execution lien had priority over subsequently recorded declaration of homestead]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1047; C.E.B., 2 *Debt Collection Practice* 2d, §9.84.)

SUPPLEMENT: [This section is current through the latest supplement]



70 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

d. Effect of Creation.

4. Priority of Tax Liens.

8 *Witkin Cal. Proc. Enf Judgm* § 237

[§ 237] Priority of Tax Liens.

Tax liens generally have priority over a declared homestead. (Rev.C. 2192.1.) The rule is otherwise, however, for personal property tax liens. (Rev.C. 2191.4 [lien for personal property taxes has priority of judgment lien]; see *Curtis v. Kern* (1974) 37 C.A.3d 704, 706, 113 C.R. 41 [personal property tax lien is subject to prior recorded declaration of homestead]; Rutter Group, 2 Enforcing Judgments and Debts §6:312.1.)

SUPPLEMENT: [This section is current through the latest supplement]



71 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

e. Effect of Death of Owner.

8 *Witkin Cal. Proc. Enf Judgm* § 238

[§ 238] Effect of Death of Owner.

(1) *Continuation of Homestead for Surviving Spouse or Family Member.* The protection of a declared homestead from a creditor having an attachment lien, execution lien, or judgment lien continues after the death of the declared homestead owner if the dwelling was the principal dwelling of the decedent's surviving spouse or a member of the decedent's family at the time of the decedent's death, and all or part of the decedent's interest in the dwelling passes to the spouse or family member. (*C.C.P. 704.995(a)*; see *Amin v. Khazindar* (2003) 112 *C.A.4th* 582, 589, 5 *C.R.3d* 224 [protections of declared homestead, unlike those of automatic homestead, survive death of homestead owner]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1064 et seq.; 16 *Pacific L. J.* 523.)

The protection continues whether or not the decedent was the sole owner of the declared homestead or owned the homestead with the surviving spouse or a family member, and whether or not the surviving spouse or family member was a declared homestead owner at the time of the decedent's death. (*C.C.P. 704.995(b)*.)

(2) *Amount of Exemption.* The amount of the homestead exemption is determined under *C.C.P. 704.730* (see *supra*, §218), depending on the circumstances of the case at the time the amount is required to be determined. (*C.C.P. 704.995(c)*.) For example, if the surviving spouse is not 65 years of age or older and does not have another family member living in the dwelling, the dollar amount of the declared homestead that is protected from creditors will likely be reduced. (See Law Rev. Com. Comment to *C.C.P. 704.995*.)

West's Key Number Digest, Homestead 15

SUPPLEMENT: [This section is current through the latest supplement]



72 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

f. Abandonment.

8 *Witkin Cal. Proc. Enf Judgm § 239*

[§ 239] Abandonment.

(1) *Declaration of Abandonment.* A declared homestead, whether recorded under former law or under the Enforcement of Judgments Law, may be abandoned by a declaration of abandonment. (*C.C.P. 704.980(a).*)

The declaration must be executed and acknowledged in the same way as an acknowledgment of a conveyance of real property (see 12 *Summary* (10th), *Real Property*, §283 et seq.) by the declared homestead owner or a person authorized to act on the owner's behalf. A declaration by a person other than the declared homestead owner must state that person's authority to act on behalf of the owner and the source of that authority. (*C.C.P. 704.980(b).*)

A declaration of abandonment affects only the declared homestead of the owner named in the declaration. (*C.C.P. 704.980(c).*) Thus, where a marriage is dissolved and one of the parties continues to reside in a declared homestead, the other may abandon that declared homestead and establish a second declared homestead. The abandonment does not affect the homestead right of the party continuing to reside in the first declared homestead. (Legislative Com. Comment (Senate) to *C.C.P. 704.980.*)

(2) *Recording Homestead for Different Property.* If a declared homestead owner or a person authorized to act on the owner's behalf executes, acknowledges, and records a new homestead declaration on different property, the former declared homestead is abandoned by operation of law. However, the abandonment does not affect a declared homestead of any person not named in the new homestead declaration. (*C.C.P. 704.990(a).*) Also, if a homestead declaration including property described in a previously recorded declaration is recorded, the new declaration is not an abandonment of the prior declared homestead to the extent that it is still valid. (*C.C.P. 704.990(b).*)

(3) *Disappearance of Homestead Owner.* In *Webb v. Trippet* (1991) 235 C.A.3d 647, 286 C.R. 742, supra, §232, a judgment creditor seeking a court order for the sale of declared homestead property contended that the debtor had abandoned the exemption by virtue of his prolonged absence (he had been missing for over 21/2 years at the time of the hearing in the trial court). *Held*, the exemption was effective for 5 years from the date on which the debtor left the premises. "A creditor's interest in receiving payment on an unsatisfied judgment must, at some point, overtake an absent declarant's interest in maintaining a declared homestead exemption." (235 C.A.3d 652.) A balance between these

competing interests can be struck by looking to the Probate Code, under which a missing person is presumed dead after 5 years. (See *Prob.C. 12401*, 14 *Summary* (10th), *Wills and Probate*, §369.) "[T]his period of time gives ample protection to the interests of the disappeared homestead declarant without imposing an inordinate burden on the judgment creditor." (235 *C.A.3d* 652.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1059 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.86.)

West's Key Number Digest, Homestead 15

SUPPLEMENT: [This section is current through the latest supplement]



73 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VI. MONEY JUDGMENTS: EXEMPTIONS

D. Homestead Exemption.

3. Declared Homestead.

g. Regulation of Homestead Filing Services.

8 *Within Cal. Proc. Enf Judgm § 240*

[§ 240] Regulation of Homestead Filing Services.

Persons preparing or assisting in the preparation of homestead declarations for compensation are subject to statutory regulation. (*B. & P.C. 17537.6*; see *19 Pacific L. J. 533*.)

(1) *Untrue or Misleading Statements*. A person may not make untrue or misleading statements in connection with a homestead filing service. (*B. & P.C. 17537.6(a)*.) This includes a representation that any of the following is true:

(a) The preparation or recordation of a homestead declaration will prevent the forced sale of a judgment debtor's dwelling. (*B. & P.C. 17537.6(a)(1)*.)

(b) The preparation or recordation of a homestead declaration will prevent the foreclosure of a mortgage, deed of trust, or mechanic's lien. (*B. & P.C. 17537.6(a)(2)*.)

(c) Any of the provisions relating to the homestead exemption set forth in *C.C.P. 704.710* et seq. (see *supra*, §216 et seq.) are available only to persons who prepare or record a homestead declaration. (*B. & P.C. 17537.6(a)(3)*.)

(d) A homestead declaration is related to obtaining a homeowner's exemption to real property taxes. (*B. & P.C. 17537.6(a)(4)*.)

(e) The preparation or recordation of a homestead declaration is required by law. (*B. & P.C. 17537.6(a)(5)*.)

(f) The homestead filing service has a file or record covering a person to whom a solicitation is made. (*B. & P.C. 17537.6(a)(6)*.)

(g) The homestead filing service is, or is affiliated with, a charitable or public service entity, unless the service is, or is affiliated with, a charitable organization that has qualified for a federal tax exemption. (*B. & P.C. 17537.6(a)(7)*.)

(h) The homestead filing service is, or is affiliated with, a governmental entity. (*B. & P.C. 17537.6(a)(8)*.)

(2) *Required Disclosure Statement.* *B. & P.C. 17537.6* sets forth a disclosure statement that must appear in boldface type in a homestead filing service's advertisements and promotional material. It provides, in substance, for the following statements: the service is not associated with any government agency; the recipient of the service does not have to record a declaration; recording a declaration does not protect a home against forced sale by a creditor; and the recipient of the service can fill out a declaration by himself. (*B. & P.C. 17537.6(b).*)

(3) *Time Limits for Recordation.* An offeror of a homestead filing service must deliver each notarized homestead declaration to the county recorder for recordation as soon as needed or required by a homestead declarant, but no later than 10 days after the declaration is notarized. (*B. & P.C. 17537.6(c).*)

(4) *Restriction on Fees.* A homestead filing service must pay all fees charged for the notarization and recordation of the homestead declaration. (*B. & P.C. 17537.6(c).*) No money may be charged until after the declaration is recorded, and the total amount charged may not exceed \$ 25. (*B. & P.C. 17537.6(d).*)

(5) *Attorneys Excluded.* "Homestead filing service" does not include any service performed by an attorney authorized to practice in California for a client who has retained that attorney. (*B. & P.C. 17537.6(e)(1).*)

(6) *Disciplinary Proceeding Against Attorney.* *In re Morse (1995) 11 C.4th 184, 44 C.R.2d 620, 900 P.2d 1170*, involved disciplinary proceedings against an attorney who had mailed to the public approximately 4 million copies of a solicitation, entitled a "homestead information sheet," which offered assistance in filing homestead declarations. The Review Department of the State Bar Court found that the attorney had engaged in a mass mailing of misleading advertisements that were unlawful under *B. & P.C. 17537.6*. *Held*, affirmed. (On holding that statute does not violate right to commercial free speech under First Amendment, see 1 *Cal. Proc.* (5th), *Attorneys*, §518.)

(a) The advertisements were misleading in several respects:

(1) They failed to explain that, under *C.C.P. 704.710* et seq. (supra, §216 et seq.), homeowners automatically receive a homestead exemption even if they do not record a homestead declaration. (*11 C.4th 201.*)

(2) They erroneously suggested that recording a homestead declaration necessarily prevents the forced sale of a home. Even if a homestead declaration has been recorded, a creditor may force the sale of a home through a levy pursuant to a writ of execution under *C.C.P. 704.740* et seq. (see supra, §219 et seq.) and *704.970* (see supra, §236). Whether or not misleading, the statements regarding a forced sale were unlawful under *B. & P.C. 17537.6(a)(1)*. (*11 C.4th 201.*)

(3) They erroneously suggested that, lacking a recorded homestead declaration, the homeowner bears the burden of proving the applicability of the homestead exemption. Under *C.C.P. 704.780(a)(1)* (supra, §222), there is a presumption in favor of exempt status if the debtor has claimed an exemption and, even without a recorded homestead declaration, the creditor has the burden of proof. (*11 C.4th 201.*)

(b) The attorney, relying on *Webb v. Trippet (1991) 235 C.A.3d 647, 286 C.R. 742*, supra, §232, contended that *B. & P.C. 17537.6* required false legal advice by making it unlawful to represent that recording a homestead declaration can prevent a forced sale and mandating an affirmative disclosure that a declaration does not protect against a forced sale. This is incorrect. *Webb* merely shows that a declared homestead may, depending on the circumstances, offer an advantage over the automatic homestead exemption. As clearly stated in *C.C.P. 704.970*, whether or not a homestead declaration has been recorded, nothing in the code provisions relating to declared homesteads affects the right of levy pursuant to a writ of execution. "Section 17537.6 does not ... misstate the law. To the contrary, it is the law." (*11 C.4th 204.*)

(c) Although the attorney contended that he had never received a complaint from anyone about the service he provided, he participated in false advertising as prohibited by *B. & P.C. 17537.6*, because his advertisements were misleading in multiple respects. Moreover, the assertion that he was performing a free service was specious, because he

was clearly engaged in the homestead business for profit. Although advertising is, by its nature, generally free to the recipient, this does not mean that there is no such thing as deceptive advertising. The Legislature intended to prohibit attorneys from doing precisely what the attorney did in this case. (*11 C.4th 204.*)

SUPPLEMENT: [This section is current through the latest supplement]



74 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

A. In General.

1. Statutory Development.

8 *Witkin Cal. Proc. Enf Judgm § 241*

[§ 241] Statutory Development.

(1) *Original Wage Garnishment Procedure.* Prior law authorized several methods of garnishment of an employee's earnings by a judgment creditor: (a) levy of execution on the employer of a private employee; (b) filing of an abstract or transcript of judgment with a public entity employer of a public employee; and (c) mailing of withholding orders to secure payment of a delinquent state tax liability. (See 13 Cal. Law Rev. Com. Reports, p. 611 et seq.; 17 *Santa Clara L. Rev.* 631.)

(2) *Law Revision Commission Recommendation.* After a series of studies and drafts, the Commission made its final proposal for a comprehensive statute establishing an exclusive procedure to "significantly reduce the cost of wage garnishments, greatly alleviate the hardship such garnishments cause employers, and make numerous other improvements in wage garnishment procedure." (13 Cal. Law Rev. Com. Reports, p. 617.)

(3) *Enactment of Employees' Earnings Protection Law.* The 1978 Legislature followed the Commission's recommendation by adopting Chapter 2.5 of the Code of Civil Procedure, entitled "Employees' Earnings Protection Law," effective January 1, 1980. (Former C.C.P. 723.010 et seq.; see 14 Cal. Law Rev. Com. Reports, p. 261 et seq.; 10 *Pacific L. J.* 327.)

(4) *Enforcement of Judgments Law.* Chapter 5 of the Enforcement of Judgments Law (*C.C.P. 706.010* et seq.) is known as the "Wage Garnishment Law." (*C.C.P. 706.010*.) It continues the provisions of the "Employees' Earnings Protection Law," with only technical changes. (See 16 Cal. Law Rev. Com. Reports, p. 1123; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.136 et seq.; Cal. Civil Practice, 4 Procedure, §30:52 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1070 et seq.; C.E.B., 2 Debt Collection Practice 2d, §10.1 et seq.; 10 Am.Jur. P.P. Forms (2005 ed.), Executions §249 et seq.; 2B Am.Jur. P.P. Forms (2000 ed.), Attachment and Garnishment §196 et seq.; 2C Am.Jur. P.P. Forms (2000 ed.), Attachment and Garnishment §240 et seq.; 6 *Am.Jur.2d* (1999 ed.), Attachment and Garnishment §1 et seq.)

(5) *Nature of Procedure.* The Wage Garnishment Law authorizes the enforcement of a judgment by an order to the judgment debtor's employer to withhold a portion of the debtor's earnings and pay it to the levying officer, who in turn pays the money to the judgment creditor. Special provisions apply to support orders (see *infra*, §266 et seq.) and orders

for the payment of taxes (see *infra*, §269 et seq.). A specified amount of the debtor's earnings is exempt from garnishment in any case, and in certain circumstances, the debtor is entitled to an additional exemption. (See *infra*, §§251, 261 et seq.)

West's Key Number Digest, Garnishment 2

SUPPLEMENT: [This section is current through the latest supplement]

(4) *Enforcement of Judgments Law. See 6 Am.Jur.2d (2008 ed.), Attachment and Garnishment §1 et seq.*



75 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

A. In General.

2. Exclusive Procedure.

8 *Witkin Cal. Proc. Enf Judgm* § 242

[§ 242] Exclusive Procedure.

Except for an earnings assignment order for support (see *infra*, §268), the Wage Garnishment Law is the exclusive judicial procedure to compel an employer to withhold an employee's earnings for payment of a debt. (*C.C.P. 706.020.*) A levy of execution on an employee's earnings must be made by service of an earnings withholding order on the employer (see *infra*, §254) under the Wage Garnishment Law, rather than under the general execution procedure governed by *C.C.P. 699.010* et seq. (see *supra*, §99 et seq.). (*C.C.P. 706.021*; Law Rev. Com. Comment to *C.C.P. 706.021.*) (See *California State Employees' Assn. v. California (1988) 198 C.A.3d 374, 378, 243 C.R. 602* [wage garnishment laws took precedence over *Govt.C. 17051* (setting forth procedure for payment of warrant drawn against state where validity or amount is in question), to extent it permitted state to make deductions from employees' salaries to recoup overpayments]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1073 et seq.)

The Wage Garnishment Law has no effect on (1) matters preempted by federal law, such as bankruptcy proceedings and federal tax collection procedures; (2) an employer's deductions for insurance premiums and payments to health, welfare, or pension plans; and (3) procedures for the examination of a debtor of the judgment debtor (see *C.C.P. 708.110* et seq., *infra*, §279 et seq.). (Law Rev. Com. Comment to *C.C.P. 706.020.*)

SUPPLEMENT: [This section is current through the latest supplement]



76 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

A. In General.

3. Definitions.

8 *Witkin Cal. Proc. Enf Judgm* § 243

[§ 243] Definitions.

The following definitions apply for purposes of the Wage Garnishment Law:

(1) "Earnings" means compensation payable by an employer to an employee for personal services performed by the employee, whether denominated wages, salary, commission, bonus, or otherwise. (*C.C.P. 706.011(a)*; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:1082 et seq.; on exemption of paid earnings, see *C.C.P. 704.070*, supra, §194.) The compensation of a self-employed individual is not "earnings." (*Moses v. DeVersecy (1984) 157 C.A.3d 1071, 1074, 203 C.R. 906.*)

(2) "Earnings assignment order for support" is an order under *Family C. 5200* et seq. or *Prob.C. 3088*, requiring an employer to withhold earnings for support. (*C.C.P. 706.011(b)*, infra, §268.)

(3) "Employee" is a public officer or any individual who performs services subject to the right of the employer to control both what shall be done and how it will be done. (*C.C.P. 706.011(c)*.)

(4) "Employer" is a person for whom an individual performs services as an employee. (*C.C.P. 706.011(d)*.)

(5) "Judgment creditor," as applied to the state, means the state agency seeking to collect a judgment or tax liability. (*C.C.P. 706.011(e)*.)

(6) "Judgment debtor" includes a person from whom the state is seeking to collect a tax liability under *C.C.P. 706.070* et seq. (see infra, §269 et seq.), whether or not a judgment on the liability has been obtained. (*C.C.P. 706.011(f)*.)

(7) "Person" includes an individual, a corporation, a partnership or other unincorporated association, a limited liability company, and a public entity. (*C.C.P. 706.011(g)*.)

SUPPLEMENT: [This section is current through the latest supplement]



77 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

A. In General.

4. Withholding Period.

8 *Within Cal. Proc. Enf Judgm § 244*

[§ 244] Withholding Period.

(1) *Commencement and Duration of Period.* The withholding period commences on the 10th day after an earnings withholding order is served on the employer (see *C.C.P. 706.101*, *infra*, §254) and continues until the earliest of the following dates:

(a) The date the employer has withheld the full amount required to satisfy the order. (*C.C.P. 706.022(a)(1)*.)

(b) The date of termination specified in a court order served on the employer. (*C.C.P. 706.022(a)(2)*.)

(c) The date of termination specified in a notice of termination served on the employer by the levying officer. (*C.C.P. 706.022(a)(3)*.)

(d) The date a dormant or suspended earnings withholding order terminates pursuant to *C.C.P. 706.032* (see *infra*, §248). (*C.C.P. 706.022(a)(4)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.139; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1092 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §10.11; on termination of withholding order for support, see *infra*, §266.)

The delay in the commencement of the withholding period after service of the earnings withholding order is for 10 *calendar* days. It is intended to give employers time to process the order; thereafter, the employer's duty to withhold continues throughout the withholding period. (Legislative Com. Comment (Senate) to *C.C.P. 706.022*; on employer's duty to withhold, see *infra*, §258.)

(2) *Repeal of Specific Termination Date.* *C.C.P. 706.022(a)* formerly provided for termination of the withholding period on the 100th day after the earnings withholding order was served, but this provision was deleted in 1989. Hence, an earnings withholding order may continue in effect as long as the underlying judgment is enforceable, although a writ of execution must be returned no later than 2 years after issuance (see *supra*, §114). Amendments to the Wage Garnishment Law in 1992, including a supplemental return procedure (see *infra*, §260), alternative methods of obtaining full satisfaction (see *infra*, §246), and provisions for dormant and suspended earnings withholding orders (see *infra*, §248), were intended to remedy the gaps and inconsistencies that resulted from the 1989 repeal of the 90-day

withholding period. (See Stats. 1992, Chap. 283, §19; 21 Cal. Law Rev. Com. Reports, p. 140.)

SUPPLEMENT: [This section is current through the latest supplement]



78 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

A. In General.

5. Priority of Withholding Orders.

8 *Within Cal. Proc. Enf Judgm § 245*

[§ 245] Priority of Withholding Orders.

(1) *General Rules.* Except as otherwise provided by the Wage Garnishment Law, earnings withholding orders are subject to the following priority rules:

(a) *First order served.* The employer must comply with the first withholding order served. (*C.C.P. 706.023(a).*)

(b) *Orders served on same day.* If two or more withholding orders are served on the same day, the employer must comply with the order issued under the judgment first entered. If the judgments were entered on the same day, the employer may select the order with which to comply. (*C.C.P. 706.023(b).*)

(c) *Effect of subsequent orders.* A withholding order served while an employer is required to comply with another order with respect to the earnings of the same employee is ineffective, and the employer may not withhold earnings under the subsequent order. (*C.C.P. 706.023(c).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1214 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §10.12 et seq.)

(2) *Exceptions.* The general priority rules are subject to the following special provisions applicable to judgments for support and judgments for taxes:

(a) *Earnings assignment order for support.* An earnings assignment order for support has priority over all earnings withholding orders. (*C.C.P. 706.031(b)*, *infra*, §268.)

(b) *Withholding order for support.* A withholding order for support has priority over all other earnings withholding orders. (*C.C.P. 706.030(c)(2)*, *infra*, §266.)

(c) *Withholding order for taxes.* A withholding order for taxes has priority over all other earnings withholding orders except a withholding order for support. (*C.C.P. 706.077(a)*, *infra*, §273.)

(3) *Termination of Order With Lower Priority.* If withholding under an earnings withholding order ceases because of an order or assignment with higher priority, the order terminates after a continuous 2-year period during which no amounts are withheld. (*C.C.P. 706.032(a)(2)*, *infra*, §248.)

West's Key Number Digest, Garnishment 107

SUPPLEMENT: [This section is current through the latest supplement]



79 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

A. In General.

6. Obtaining Full Satisfaction of Judgment.

8 *Within Cal. Proc. Enf Judgm § 246*

[§ 246] Obtaining Full Satisfaction of Judgment.

The Wage Garnishment Law provides two procedures for obtaining full satisfaction of a money judgment through wage garnishment. (See 21 Cal. Law Rev. Com. Reports, p. 142.)

(1) *Adjustment of Amount Required To Satisfy Order.* First, the levying officer is permitted to adjust the amount due on the earnings withholding order. The amount required to satisfy the order is stated to be the total amount required to satisfy the writ of execution on the date the order is issued, but with the following additions and subtractions:

(a) The addition of statutory fees for service of the order and for performing duties under the order. (*C.C.P. 706.024(a)(1).*)

(b) The addition of costs, as authorized by *C.C.P. 685.090* (see *supra*, §49). (*C.C.P. 706.024(a)(2).*)

(c) The subtraction of partial satisfactions. (*C.C.P. 706.024(a)(3).*)

(d) The addition of daily interest accruing after issuance of the order, as adjusted for partial satisfactions. (*C.C.P. 706.024(a)(4).*) (On computation of interest, see *C.C.P. 685.050*, *supra*, §46.)

"From time to time" the levying officer may, in the officer's discretion, give the employer written notice of the amount required to satisfy the order, and the employer must determine the amount to withhold based on the levying officer's notice, even though a different amount is stated in the order. (*C.C.P. 706.024(b).*)

Once the full amount required to satisfy the order as stated in the order or in the levying officer's notice to the employer is withheld from the judgment debtor's earnings, interest ceases to accrue on that amount. (*C.C.P. 706.024(c).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1260 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §10.11.)

(2) *Additional Order for Costs and Interest.* The second method provides for a final earnings withholding order solely for the collection of costs and interest after an earlier earnings withholding order has been returned satisfied. (*C.C.P. 706.028(a), (b).*) This final withholding order is enforced in the same way as other earnings withholding orders.

(C.C.P. 706.028(c).)

Satisfaction of the amount stated as owing in the final earnings withholding order for costs and interest is equivalent to satisfaction of the judgment. Interest ceases to accrue on the date the order is issued, and the only costs that may be added after that date are the statutory fees for service of the order and for performing duties under the order. *(C.C.P. 706.028(d).)* (See Rutter Group, 2 Enforcing Judgments and Debts §6:1164 et seq.; C.E.B., 2 Debt Collection Practice 2d, §10.17.)

SUPPLEMENT: [This section is current through the latest supplement]



80 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

A. In General.

7. Satisfaction of Judgment Before Termination of Withholding Order.

8 Within Cal. Proc. Enf Judgm § 247

[§ 247] Satisfaction of Judgment Before Termination of Withholding Order.

If the underlying judgment is satisfied before an earnings withholding order terminates under *C.C.P. 706.022* (see *supra*, §244), the judgment creditor must promptly notify the levying officer, who must promptly serve a notice of termination on the employer. (*C.C.P. 706.027*.) This provision does not apply where the employer is aware of satisfaction by virtue of having withheld the amount necessary to satisfy the judgment. It rather applies where the judgment is satisfied by other means, i.e., additional payments from the judgment debtor or other debt collection procedures instituted by the creditor. (Law Rev. Com. Comment to *C.C.P. 706.027*.) (See Rutter Group, 2 Enforcing Judgments and Debts §§6:1261, 12:62; C.E.B., 2 Debt Collection Practice 2d, §§10.15, 10.16.)

SUPPLEMENT: [This section is current through the latest supplement]



81 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

A. In General.

8. Termination of Dormant or Suspended Withholding Order.

8 Witkin Cal. Proc. Enf Judgm § 248

[§ 248] Termination of Dormant or Suspended Withholding Order.

(1) *Dormant Order.* If withholding under an earnings withholding order ceases because the judgment debtor's employment has terminated, the order and the employer's duty to withhold terminate at the end of a continuous 180-day period during which nothing is withheld. (*C.C.P. 706.032(a)(1)*.) If the debtor returns to work during this period, the employer must resume withholding. (Law Rev. Com. Comment to *C.C.P. 706.032*.)

(2) *Suspended Order.* If withholding ceases because the judgment debtor's earnings are subject to an order or assignment with higher priority (see *supra*, §245), the order terminates at the end of a continuous 2-year period during which nothing is withheld. (*C.C.P. 706.032(a)(2)*.)

(3) *Duties of Employer.* After termination of a dormant or suspended earnings withholding order, the employer must return the order to the levying officer with a statement of reasons for the return. (*C.C.P. 706.032(b)*.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:1166 et seq.; C.E.B., 2 Debt Collection Practice 2d, §10.11.)

SUPPLEMENT: [This section is current through the latest supplement]



82 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

A. In General.

9. Liability of Employer.

8 *Witkin Cal. Proc. Enf Judgm* § 249

[§ 249] Liability of Employer.

(1) *Failure To Pay Withheld Earnings With Intent To Defraud.* An employer who fails to pay withheld earnings to a levying officer with the intent to defraud either the judgment creditor or the judgment debtor is guilty of a misdemeanor. (*C.C.P.* 706.152.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.143; Rutter Group, 2 Enforcing Judgments and Debts §6:1248 et seq.; on employer's duty to withhold, see *infra*, §258.)

(2) *Deferment or Acceleration of Payment of Earnings.* An employer may not defer or accelerate any payment of earnings to an employee with the intent to defeat or diminish the judgment creditor's rights under an earnings withholding order. If an employer violates this provision, the judgment creditor may bring a civil action against the employer to recover the amount that should have been withheld and paid. This remedy is not exclusive. (*C.C.P.* 706.153.)

(3) *Failure To Withhold or Pay.* A judgment creditor may bring a civil action against an employer who fails to withhold or pay the amount required to be withheld. This remedy is not exclusive. (*C.C.P.* 706.154(a).)

(4) *Compliance With Order.* An employer who complies with an order or notice that appears valid is not subject to any civil or criminal liability for compliance unless the employer has actively participated in a fraud. (*C.C.P.* 706.154(b).)

SUPPLEMENT: [This section is current through the latest supplement]



83 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

A. In General.

10. Rules and Forms.

8 Witkin Cal. Proc. Enf Judgm § 250

[§ 250] Rules and Forms.

(1) *Rules.* Except for the state's administrative hearings for withholding orders for taxes under *C.C.P. 706.070* et seq. (see *infra*, §269 et seq.), the Judicial Council may provide rules for practice and procedure in proceedings under the Wage Garnishment Law. (*C.C.P. 706.100.*)

(2) *Forms.* Under *C.C.P. 706.081*, most forms applicable to withholding orders for taxes are prescribed by the state. Forms for court-ordered tax withholding orders, however, are prescribed by the Judicial Council. The forms for all other documents required by the Wage Garnishment Law are prescribed by the Judicial Council and only those forms may be used. (*C.C.P. 706.120.*) The Judicial Council must also prepare instructions for employers. (*C.C.P. 706.127*, *infra*, §255.) Although various statutes specify information to be contained in particular wage garnishment forms, the Judicial Council has complete authority to adopt and revise the forms as necessary and may require additional information in the forms or may omit information from the forms that it determines is unnecessary. (Law Rev. Com. Comment to *C.C.P. 706.120.*) (See *C.C.P. 706.127* and *706.129* [requiring levying officers to have particular forms available]; Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1102, 6:1102.1.) Wage garnishment forms adopted by the Judicial Council are listed in an earlier section. (See *supra*, §25.)

SUPPLEMENT: [This section is current through the latest supplement]



84 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

B. Restrictions on Earnings Withholding.

8 *Witkin Cal. Proc. Enf Judgm § 251*

[§ 251] Restrictions on Earnings Withholding.

(1) *Amount of Exempt Earnings.* Except as otherwise provided by the Wage Garnishment Law, the amount of earnings of a judgment debtor exempt from levy under an earnings withholding order is the amount exempt under 15 U.S.C., §1673(a). (*C.C.P. 706.050.*) Under 15 U.S.C., §1673(a), the maximum amount of an individual's aggregate disposable earnings subject to garnishment for any workweek is (a) 25% of the individual's disposable earnings for that week, or (b) the amount by which the disposable earnings exceed 30 times the federal minimum hourly wage, whichever is less. (On special rules for earnings assignment orders for support and earnings withholding orders for taxes, see Legislative Com. Comment (Assembly) to *C.C.P. 706.050.*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1170 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §10.19 et seq.)

(2) *Federal Minimum Wage.* The federal minimum wage effective July 24, 2008 is \$ 6.55 per hour. The federal minimum wage effective July 24, 2009 is \$ 7.25 per hour. \$ 6.55 times 30 is \$ 196.50. \$ 7.25 times 30 is \$ 217.50.

(3) *Hardship Exemption.* Earnings that the judgment debtor proves are necessary for the support of the debtor or members of the debtor's family supported in whole or in part by the debtor (including the debtor's spouse or former spouse) are generally exempt from levy under the Wage Garnishment Law. (*C.C.P. 706.051(a), (b).*) (On procedure for claim of exemption, see *infra*, §261 et seq.) However, this exemption does not apply where the debt was incurred for common necessities of life furnished to the debtor or the debtor's family or for personal services rendered by an employee or former employee of the debtor. (*C.C.P. 706.051(c)(1), (c)(2).*) Nor does the exemption apply to withholding orders for support (see *C.C.P. 706.030, infra*, §266) or withholding orders for taxes (see *C.C.P. 706.070 et seq., infra*, §269 et seq.). (*C.C.P. 706.051(c)(3), (c)(4).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1178 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §§10.25, 10.26.)

Cases interpreting similar language in prior statutes may be useful in determining the scope of this exemption:

(a) On construction of exemption, see *Sanker v. Humborg (1941) 48 C.A.2d 205, 207, 119 P.2d 433* [liberal meaning of "necessary" earnings].

(b) On burden of proof, see *Perfection Paint Products v. Johnson (1958) 164 C.A.2d 739, 742, 330 P.2d 829* [burden on debtor to establish right to exemption].

(c) On who are family members, see *Lawson v. Lawson* (1911) 15 C.A. 496, 498, 115 P. 461 [parent dependent on debtor was included in "family," even though living apart from debtor]; *Diamond v. Bent* (1957) 157 C.A.2d Supp. 857, 859, 320 P.2d 621 ["family" excluded adult child attending school away from home but included minor child attending school].

(d) On what are common necessities, see *Los Angeles Finance Co. v. Flores* (1952) 110 C.A.2d Supp. 850, 856, 243 P.2d 139 [basics required for subsistence, such as food, heat, and shelter, was included; gold watch was not included]; *Lentfoehr v. Lentfoehr* (1955) 134 C.A.2d Supp. 905, 908, 286 P.2d 1019 [debt to former wife for attorneys' fees and court costs in divorce action was not one for common necessities]; *Carpenter v. Trujillo* (1969) 275 C.A.2d Supp. 1021, 1023, 79 C.R. 725 [medical expenses were for common necessities, but price of encyclopedia was not]; *Ratzlaff v. Portillo* (1971) 14 C.A.3d 1013, 1016, 92 C.R. 722 [automobile, though great convenience, was not common necessary in view of availability of public transportation, home delivery service, and neighborhood shopping centers]; *Thayer v. Madigan* (1975) 52 C.A.3d 16, 20, 125 C.R. 28 [distinction between debts for common necessities and other debts did not deny equal protection; purpose was to give suppliers of necessities credit preference over suppliers of nonessentials]; *J.J. MacIntyre Co. v. Duren* (1981) 118 C.A.3d Supp. 16, 19, 173 C.R. 715 ["common necessities of life" includes medical care].

(4) *Earnings Withholding Order for Support*. Half of a judgment debtor's disposable earnings (as defined by 15 U.S.C., §1672), plus any amount withheld from earnings under an earnings assignment order for support (see C.C.P. 706.031, *infra*, §268), is generally exempt from levy under the Wage Garnishment Law where the earnings withholding order is a withholding order for support under C.C.P. 706.030 (see *infra*, §266). (C.C.P. 706.052(a).) Thus, if 30% of a judgment debtor's earnings are withheld under an earnings assignment order for support, an additional 20% may be withheld under an earnings withholding order for support. (Law Rev. Com. Comment to C.C.P. 706.052 [also discussing distinctions between state and federal law].) (See Rutter Group, 2 Enforcing Judgments and Debts §6:1173 et seq.; C.E.B., 2 Debt Collection Practice 2d, §10.23.)

However, on the motion of any interested party, the court must make an equitable division of the judgment debtor's earnings that takes into account the needs of all the persons the judgment debtor is required to support, although the order issued to effectuate the division may not authorize withholding in excess of the amount that may be withheld for support under 15 U.S.C., §1673. (C.C.P. 706.052(b), (c); see Law Rev. Com. Comment to C.C.P. 706.052 [court may order that either more or less of judgment debtor's earnings be withheld].)

(5) *Earnings of Spouse*. An earnings withholding order may not be issued against the earnings of a judgment debtor's spouse except by court order on noticed motion. (C.C.P. 706.109.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:1104 et seq.)

West's Key Number Digest, Exemptions 48(1)

SUPPLEMENT: [This section is current through the latest supplement]



85 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

C. Procedure for Withholding Orders.

1. Application for Order.

8 *Witkin Cal. Proc. Enf Judgm* § 252

[§ 252] Application for Order.

(1) *Conditions for Application.* A judgment creditor may apply for issuance of an earnings withholding order by filing an application with a levying officer, if a writ of execution has been issued to the county where the debtor's employer is to be served and the time for levy under *C.C.P. 699.530(b)* (180 days from the date the writ was issued; see *supra*, §112) has not expired. (*C.C.P. 706.102(a)*.) This provision does not apply to an earnings withholding order for taxes. (*C.C.P. 706.102(b)*); on issuance of withholding order for taxes, see *infra*, §271.). (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1103, 6:1107; *C.E.B.*, 2 *Debt Collection Practice* 2d, §10.2.)

(2) *Form and Content.* The application must be executed under oath. (*C.C.P. 706.121*.) The contents of the application are specified by *C.C.P. 706.121*, and an optional form has been adopted by the Judicial Council. (See Judicial Council Form No. WG-001 [Application for Earnings Withholding Order].)

SUPPLEMENT: [This section is current through the latest supplement]



86 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

C. Procedure for Withholding Orders.

2. Issuance of Order.

8 *Witkin Cal. Proc. Enf Judgm* § 253

[§ 253] Issuance of Order.

(1) *By Levying Officer.* A levying officer with whom an application for a withholding order has been filed must promptly issue the order. (*C.C.P. 706.102(a)*.) The contents of the order are specified in *C.C.P. 706.125*, and a form has been adopted by the Judicial Council. (See Judicial Council Form No. WG-002 [Earnings Withholding Order].) The optional form includes instructions to the employer on the reverse side. (For form of earnings withholding order for support and instructions to employer, see Judicial Council Form No. WG-004 [Earnings Withholding Order for Support].) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1117 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §10.2.)

(2) *By Registered Process Server.* A judgment creditor may deliver an application for an earnings withholding order (see *supra*, §252) to a registered process server, who may then issue the order if (a) a writ of execution has been issued to the county where the judgment debtor's employer is to be served, and (b) the time for levy under *C.C.P. 699.530* (180 days from the date the writ was issued; see *supra*, §112) has not expired. (*C.C.P. 706.108(a)*); on service of order, see *infra*, §256.)

(3) *By State Directly.* The state may issue an earnings withholding order directly, without the use of a levying officer, for the purpose of collecting overpayments of unemployment compensation or disability benefits. (*C.C.P. 706.101(c)*); on service of order, see *infra*, §254.)

SUPPLEMENT: [This section is current through the latest supplement]



87 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

C. Procedure for Withholding Orders.

3. Service of Order, Notices, and Documents.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 254

[§ 254] In General.

(1) *Who May Serve.* An earnings withholding order must generally be served by the levying officer. (*C.C.P. 706.101(a)*.) In prescribed circumstances, it may be served by a registered process server (see *C.C.P. 706.108*, *infra*, §256), by the local child support agency (see *C.C.P. 689.040(a)*, *infra*, §405), or by the state directly (see *C.C.P. 706.101(c)*, *infra*, this section). (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1130 *et seq.*; *C.E.B.*, 2 *Debt Collection Practice* 2d, §10.4.)

(2) *Who May Be Served.* The order must be served on an employer by delivery to the managing agent or person in charge of the branch or office where the employee works or from which the employee is paid, or to any person to whom a summons and complaint may be delivered under *C.C.P. 416.10* *et seq.* (see 3 *Cal. Proc. (5th), Actions*, §1046 *et seq.*) (*C.C.P. 706.101(a)*.)

(3) *Method of Service.* Service of the order must be by personal delivery under *C.C.P. 415.10* or *415.20* (see 3 *Cal. Proc. (5th), Actions*, §§1008, 1009) or by registered or certified mail with return receipt requested. (*C.C.P. 706.101(b)*.) However, personal service is required if mailed service is ineffective (*C.C.P. 706.101(b)*) or if the judgment creditor requests personal delivery (*C.C.P. 706.101(e)*). Service of other notices or documents may be made by personal delivery or by first-class mail, and, if the employer's return has been received, must be made on the person designated by the employer in the return. (*C.C.P. 706.101(d)*.) (On service of withholding orders for taxes and related notices and documents, see *C.C.P. 706.080*, *infra*, §272.)

(4) *Time Limit for Service.* The order may not be served after expiration of the time for levy on a writ of execution specified in *C.C.P. 699.530(b)* (180 days from the date the writ was issued; see *supra*, §112). (*C.C.P. 706.103(c)*.)

(5) *Fee.* The fee for serving an earnings withholding order, including postage, travel, and the performance of all other duties of the levying officer, is \$ 30. No additional fees, costs, or expenses may be charged by the officer for performing duties under the Wage Garnishment Law (*Govt.C. 26750*), except that a \$ 10 processing fee must be assessed against the judgment debtor for each disbursement of money collected under a writ of execution (*Govt.C. 26746*). (For fee for service by registered process server, see *infra*, §256.)

(6) *Effect of Service.* Service of the order creates a lien on the earnings of the judgment debtor required to be withheld, and on all property of the employer subject to enforcement of a money judgment in the amount required to be withheld. The lien continues for 1 year from the date the earnings become payable unless the amount to be withheld is paid. (*C.C.P. 706.029.*) This provision prevails over the 2-year period for duration of an execution lien under *C.C.P. 697.710* (see *supra*, §92). (Legislative Com. Comment (Assembly) to *C.C.P. 706.029.*)

(7) *Service of Order Issued by State Directly.* Where an earnings withholding order is issued by the state directly, without the use of a levying officer, for purposes of collecting overpayments of unemployment compensation or disability benefits (see *supra*, §253), the order must be served by registered or certified mail, postage prepaid, with return receipt requested. Service is deemed complete at the time the return receipt is executed by, or on behalf of, the recipient. If the state does not receive a return receipt within 15 days from the date the order is deposited in the mail, it must refer the order to a levying officer for service in accordance with *C.C.P. 706.101(b)*. (*C.C.P. 706.101(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]



88 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

C. Procedure for Withholding Orders.

3. Service of Order, Notices, and Documents.

b. What Must Be Served.

8 *Witkin Cal. Proc. Enf Judgm* § 255

[§ 255] What Must Be Served.

The levying officer who issues an earnings withholding order must serve the following documents on the employer:

(1) The original and a copy of the earnings withholding order. (*C.C.P. 706.103(a)(1)*.)

(2) The form for the employer's return. (*C.C.P. 706.103(a)(2)*.) The contents of the employer's return are specified by *C.C.P. 706.126*, and a mandatory form has been adopted by the Judicial Council. (See Judicial Council Form No. WG-005 [Employer's Return (Wage Garnishment)].)

(3) A notice to the employee of the earnings withholding order. (*C.C.P. 706.103(a)(3)*.) The contents of the notice are specified in *C.C.P. 706.122*, and an optional form for employee instructions, in English and partly in Spanish, has been adopted by the Judicial Council. (See Judicial Council Form No. WG-003 [Employee Instructions (Wage Garnishment)].)

(4) A copy of the employer's instructions, unless otherwise provided by Judicial Council rule. (*C.C.P. 706.103(b)*.) The Judicial Council is required to prepare and maintain instructions for employers and make copies available to levying officers. (*C.C.P. 706.127*.) Employer instructions appear on the reverse of forms for earnings withholding orders adopted by the Judicial Council. (See Judicial Council Form No. WG-002 [Earnings Withholding Order]; Form No. WG-004 [Earnings Withholding Order for Support].) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1133; C.E.B., 2 *Debt Collection Practice* 2d, §10.4.)

SUPPLEMENT: [This section is current through the latest supplement]



89 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

C. Procedure for Withholding Orders.

3. Service of Order, Notices, and Documents.

c. Service by Registered Process Server.

8 *Witkin Cal. Proc. Enf Judgm § 256*

[§ 256] Service by Registered Process Server.

(1) *Filing With Levying Officer.* Before serving an earnings withholding order, a registered process server who has issued the order (see *supra*, §253) must deposit with the levying officer (a) a copy of the writ of execution; (b) the application for the order; and (c) a copy of the order, and must pay the fee provided by *Govt.C. 26750* for serving an earnings withholding order (\$ 30) (see *supra*, §254). (*C.C.P. 706.108(b)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1118 et seq., 6:1127 et seq., 6:1127 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §10.4.)

Within 5 days after serving an earnings withholding order, the registered process server must file with the levying officer (a) the writ of execution, if not already in the hands of the officer; (b) proof of service on the employer of the documents required by *C.C.P. 706.108(c)* (documents that would be served by levying officer); and (3) written instructions to the officer as required by *C.C.P. 687.010* (see *supra*, §29). (*C.C.P. 706.108(d)*.)

(2) *Time and Manner of Service.* A registered process server may serve an earnings withholding order whether issued by a levying officer or by a registered process server, but an order may not be served after expiration of the time for levy on a writ of execution specified in *C.C.P. 699.530(b)* (180 days from the date the writ was issued; see *supra*, §112). The registered process server must serve on the employer the same documents that would be served by the levying officer (see *supra*, §255). (*C.C.P. 706.108(c)*.)

(3) *Duties of Levying Officer.* If the requisite fee has been paid, the levying officer must perform all other duties required by the Wage Garnishment Law as if the officer had served the earnings withholding order. If, however, the registered process server has not filed documents with the levying officer as required by *C.C.P. 706.108(b)* and (d), service of the order is ineffective and the levying officer need not perform any duties under the order, may terminate the order, and may release any withheld earnings to the judgment debtor. (*C.C.P. 706.108(e)*.)

(4) *Fee.* A registered process server's fee for serving an earnings withholding order must be allowed as a recoverable cost under *C.C.P. 1033.5* (see 3 *Cal. Proc. (5th), Actions*, §999). (*C.C.P. 706.108(f)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Filing With Levying Officer.* In 2009, *C.C.P. 706.108(d)* was amended to specify that the time limitation is within 5 "court" days after serving an earnings withholding order.



90 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

C. Procedure for Withholding Orders.

4. Employer's Duties on Service of Withholding Order.

8 Witkin Cal. Proc. Enf Judgm § 257

[§ 257] Employer's Duties on Service of Withholding Order.

(1) *Delivery of Order and Notice to Employee.* Within 10 days from the date an employer is served with an earnings withholding order (see *supra*, §254), the employer must deliver to the judgment debtor a copy of the order and the notice to the employee of earnings withholding. However, delivery is not required if the debtor is no longer employed and the employer does not owe the employee any earnings. An employer who fails to comply is not subject to civil liability but may be held in contempt. (*C.C.P. 706.104(a)*.) This provision applies to all earnings withholding orders, including those for support and taxes. (See Law Rev. Com. Comment to *C.C.P. 706.104*.) (On delivery of jeopardy withholding order for taxes, see *C.C.P. 706.075*, *infra*, §272; on delivery of temporary earnings holding order, see *C.C.P. 706.076*, *infra*, §271.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1231 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §10.10.)

(2) *Employer's Return.* Within 15 days from the date of service, the employer must complete the employer's return on the form provided by the levying officer (see *supra*, §255) and mail it to the levying officer by first-class mail. If the earnings withholding order is ineffective, the employer must state in the return that the order will not be complied with for this reason, and must return the order to the levying officer. (*C.C.P. 706.104(b)*.) This provision applies to all earnings withholding orders, including those for support and taxes. (See Law Rev. Com. Comment to *C.C.P. 706.104*.)

SUPPLEMENT: [This section is current through the latest supplement]



91 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

C. Procedure for Withholding Orders.

5. Withholding by Employer.

8 *Witkin Cal. Proc. Enf Judgm* § 258

[§ 258] Withholding by Employer.

(1) *In General.* Except as otherwise provided by statute, an employer must withhold the amount specified by an earnings withholding order from all earnings of the employee payable for any pay period of the employee that ends during the withholding period. (*C.C.P. 706.022(b)*); on withholding period, see *supra*, §244.) Earnings from prior periods, even though still in the possession of the employer, are not subject to the order. (Legislative Com. Comment (Senate) to *C.C.P. 706.022*.) An employer's duty to withhold is not terminated but is merely suspended by the layoff, discharge, or suspension of the employee, and it resumes if the employee is rehired or returns to work during the withholding period. (Legislative Com. Comment (Senate) to *C.C.P. 706.022*; on termination of duty to withhold under dormant or suspended order, see *C.C.P. 706.032(a)*, *supra*, §248; on termination of duty to withhold by reason of order for collection of state taxes, see *C.C.P. 706.077*, *infra*, §273.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1096 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §10.11.)

(2) *Limited Liability of Employer.* An employer is not liable for withheld amounts paid to a levying officer under an earnings withholding order prior to service on the employer of a court order for termination or a notice of termination. (*C.C.P. 706.022(c)*.) (On employer's payments to levying officer, see *C.C.P. 706.025*, *infra*, §259; on liability of employer generally, see *supra*, §249.)

SUPPLEMENT: [This section is current through the latest supplement]



92 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

C. Procedure for Withholding Orders.

6. Payment of Amounts Withheld.

8 *Witkin Cal. Proc. Enf Judgm § 259*

[§ 259] Payment of Amounts Withheld.

(1) *Payment by Employer.* The amount withheld under an earnings withholding order must be paid monthly to the levying officer not later than the 15th day of each month, the initial payment to include all amounts withheld during the preceding calendar month up to the close of the pay period ending closest to the last day of that month. Each subsequent monthly payment must include amounts withheld for services rendered in the interim up to the close of the pay period ending closest to the last day of the preceding calendar month. (*C.C.P. 706.025(a)*.) However, the employer may elect to make more frequent payments, to be made not later than 10 days after the close of the pay period. (*C.C.P. 706.025(b)*.) (See *Shasta v. Smith (1995) 38 C.A.4th 329, 336, 45 C.R.2d 52* [judgment debtor was not relieved of liability to creditor by employer's failure to make payments of withheld wages]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1245 et seq., 6:1260; C.E.B., 2 *Debt Collection Practice* 2d, §10.11.)

(2) *Accounting and Payment by Levying Officer.* The levying officer must receive and account for the payments by the employer under *C.C.P. 706.025* and, at least once every 30 days, must turn them over to the person entitled to them. (*C.C.P. 706.026(a)*.) Further, at least once every 2 years, the officer must file an account with the court of all amounts collected under an earnings withholding order, including added costs and interest (see *C.C.P. 706.024*, supra, §246). (*C.C.P. 706.026(b)*.) This account is in the nature of a return on a writ (see supra, §114), and is required whether or not the writ has been returned. (*Law Rev. Com. Comment to C.C.P. 706.026*.)

(3) *Deductions From Employee Earnings.* For each payment made in accordance with an earnings withholding order, the employer may deduct \$ 1.50 from the earnings of the employee. (*C.C.P. 706.034*.)

West's Key Number Digest, Garnishment 106

SUPPLEMENT: [This section is current through the latest supplement]



93 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

C. Procedure for Withholding Orders.

7. Continuation of Order After Return of Writ.

8 *Within Cal. Proc. Enf Judgm § 260*

[§ 260] Continuation of Order After Return of Writ.

(1) *Supplemental Return.* An earnings withholding order may continue in effect as long as the underlying judgment is enforceable (see *supra*, §244), although a writ of execution must be returned no later than 2 years after issuance (see *C.C.P. 699.560*, *supra*, §114). If the writ is returned before the withholding order terminates, the levying officer must make a supplemental return on the writ on termination of the order. The return must contain the same information as an original return under *C.C.P. 699.560* (see *supra*, §114). (*C.C.P. 706.033.*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1263; C.E.B., 2 *Debt Collection Practice* 2d, §10.11.)

(2) *Adjustment of Amount Required To Satisfy Order.* *C.C.P. 706.024*, which provides for the adjustment of the amount required to satisfy an earnings withholding order to reflect partial satisfactions and the addition of statutory fees, costs, and interest (see *supra*, §246), permits the order to be fully satisfied without the necessity of obtaining another writ. (See Law Rev. Com. Comment to *C.C.P. 706.024.*)

(3) *Accounting.* Because a withholding order may remain in effect long after the writ is returned, at least once every 2 years, the levying officer must file an account with the court of all amounts collected under the order, including added costs and interest. (See *C.C.P. 706.026(b)*, *supra*, §259; 21 *Cal. Law Rev. Com. Reports*, p. 141.)

SUPPLEMENT: [This section is current through the latest supplement]



94 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

D. Procedure for Exemption Claims.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 261

[§ 261] In General.

(1) *Scope of Procedure.* Under *C.C.P. 706.051*, the portion of a judgment debtor's earnings necessary for the support of the debtor or the debtor's family may be exempt from a wage garnishment (see *supra*, §251). The procedure for establishing the exemption is set forth in *C.C.P. 706.105*. (See Legislative Com. Comment to *C.C.P. 706.105* [general provisions governing procedures for claiming exemptions from execution (see *C.C.P. 703.510* et seq., *supra*, §180 et seq.) are not applicable].) This procedure does not apply to a withholding order for support (see *C.C.P. 706.030*, *infra*, §266) or to a withholding order for taxes (see *C.C.P. 706.070* et seq., *infra*, §269 et seq.). (*C.C.P. 706.105(k)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.146; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1185 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §10.27 et seq.)

(2) *Conditions for Claim.* An exemption may be claimed if no prior hearing has been held on the earnings withholding order, or if there has been a material change in circumstances since the last prior hearing on the order. (*C.C.P. 706.105(a)*.)

(3) *How Claim Is Made.* A claim is made by filing with the levying officer the original and a copy of both of the following:

(a) The debtor's claim of exemption. (*C.C.P. 706.105(b)(1)*.) The claim must be executed under oath. (*C.C.P. 706.123*.) The contents of the claim are specified by *C.C.P. 706.123*, and an optional form for the claim has been adopted by the Judicial Council. (See Judicial Council Form No. WG-006 [Claim of Exemption].)

(b) The debtor's financial statement. (*C.C.P. 706.105(b)(2)*.) The financial statement must contain the same information required to be included in the general financial statement for claiming an exemption based on need under *C.C.P. 703.530*, and must be executed in the same way (see *supra*, §181). (*C.C.P. 706.124*.) Additional information that must be included in the statement is specified by *C.C.P. 706.124*, and an optional form for the financial statement has been adopted by the Judicial Council. (See Judicial Council Form No. WG-007 [Financial Statement].)

(4) *Copies of Forms.* Levying officers are required to have copies of the debtor's claim of exemption form and the debtor's financial statement form available at their offices for distribution without charge. (*C.C.P. 706.129*.)

West's Key Number Digest, Exemptions 48(1)

SUPPLEMENT: [This section is current through the latest supplement]



95 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

D. Procedure for Exemption Claims.

2. Notice, Opposition, and Hearing.

8 *Witkin Cal. Proc. Enf Judgm* § 262

[§ 262] Notice, Opposition, and Hearing.

(1) *Notice to Creditor.* When a claim of exemption is filed, the levying officer must promptly send the judgment creditor, by first-class mail, all of the following:

(a) A copy of the claim of exemption (see *supra*, §261). (*C.C.P. 706.105(c)(1).*)

(b) A copy of the financial statement (see *supra*, §261). (*C.C.P. 706.105(c)(2).*)

(c) A notice of the claim, stating that a claim of exemption has been filed and also that the earnings withholding order will be terminated or modified to reflect the amount of earnings claimed to be exempt unless a notice of opposition is filed. (*C.C.P. 706.105(c)(3).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1192 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §10.30.)

A mandatory form for a notice of filing a claim of exemption has been adopted by the Judicial Council. (See Judicial Council Form No. WG-008 [Notice of Filing of Claim of Exemption].)

(2) *Creditor's Opposition.* To contest a claim of exemption, a judgment creditor must file with the levying officer a "notice of opposition" within 10 days after notice of the claim is mailed. (*C.C.P. 706.105(d)*; see *Westervelt v. Robertson* (1981) 122 *C.A.3d Supp. 1, 9, 176 C.R. 94* [claim cannot be denied if notice of opposition is not timely filed; construing predecessor statute].) The notice of opposition must be executed under oath. (*C.C.P. 706.128.*) The contents of the notice are specified by *C.C.P. 706.128*, and an optional form for the creditor's notice has been adopted by the Judicial Council. (See Judicial Council Form No. WG-009 [Notice of Opposition to Claim of Exemption].)

(3) *Right to and Time of Hearing.* A creditor who files a timely notice of opposition to a claim of exemption is entitled to a hearing on the claim. The creditor is required to file a "notice of motion for an order determining the claim of exemption" with the court within 10 days after the notice of the claim is mailed by the levying officer. The hearing must then be held not later than 30 days from the date the notice of motion is filed, unless continued by the court for good cause. (*C.C.P. 706.105(e).*)

(4) *Notice of Hearing.* At the time prescribed by *C.C.P. 1005(b)* for giving notice of motion (see 6 *Cal. Proc.* (5th),

Proceedings Without Trial, §15 et seq.), the judgment creditor must give the levying officer written notice of the hearing and must serve the judgment debtor (and the debtor's attorney if such service is requested in the claim of exemption) with a copy of the notice of opposition and a notice of the hearing. Proof of service is required, and service is deemed complete when the notices are deposited in the mail. (C.C.P. 706.105(e).) An optional form for notice of a hearing on a claim of exemption has been adopted by the Judicial Council. (See Judicial Council Form No. WG-010 [Notice of Hearing on Claim of Exemption].)

(5) *Duties of Levying Officer.* After receiving notice of the hearing on an exemption claim, the levying officer must file the claim and the notice of opposition with the court before the date of the hearing. (C.C.P. 706.105(e).) (On officer's duty if timely notice of opposition and notice of hearing are not received, see *infra*, §263.)

SUPPLEMENT: [This section is current through the latest supplement]



96 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

D. Procedure for Exemption Claims.

3. Modification or Termination of Withholding Order.

8 *Within Cal. Proc. Enf Judgm § 263*

[§ 263] Modification or Termination of Withholding Order.

(1) *Effect of Failure To Oppose Claim of Exemption.* If the levying officer does not receive timely notice of opposition to a claim of exemption and notice of a hearing on the claim, the officer must serve the employer with a modified earnings withholding order or a notice that the earnings withholding order has been terminated, depending on what portion of the judgment debtor's earnings was claimed to be exempt. (*C.C.P. 706.105(f).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1202 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §§10.30, 10.33.)

(2) *Court Order After Hearing.* After a hearing on a claim of exemption, the court may order that an earnings withholding order be modified or terminated. The clerk must transmit a certified copy of the order to the levying officer, who must promptly serve the employee with a copy of the modified order or a notice that the order has been terminated. The court may order that the earnings withholding order be terminated retroactively, and must direct that improperly withheld earnings be paid to the judgment debtor. (*C.C.P. 706.105(g).*) The court is not required to make any findings. (*C.C.P. 706.106.*) An optional form for an order determining a claim of exemption has been adopted by the Judicial Council. (See Judicial Council Form No. WG-011 [Order Determining Claim of Exemption].)

(3) *Notice of Termination or Modification.* An optional form for notice of termination or modification of an earnings withholding order has been adopted by the Judicial Council. (See Judicial Council Form No. WG-012 [Notice of Termination or Modification of Earnings Withholding Order].)

(4) *Appeal.* A court order denying a claim of exemption or modifying or terminating a withholding order may be appealed. An appeal by the judgment creditor from a modifying or terminating order does not stay the order from which the appeal is taken. Until set aside or modified, the order must be given effect as if the appeal had not been taken. (*C.C.P. 706.105(j).*)

West's Key Number Digest, Garnishment 123 et seq.

SUPPLEMENT: [This section is current through the latest supplement]



97 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

D. Procedure for Exemption Claims.

4. Debtor's Recovery of Amounts Withheld.

8 Within Cal. Proc. Enf Judgm § 264

[§ 264] Debtor's Recovery of Amounts Withheld.

If an employer has withheld and paid over earnings pursuant to an earnings withholding order after the date of termination of the order, but prior to receipt of notice of termination, the judgment debtor may recover the earnings from the levying officer or the judgment creditor, whichever has possession. (*C.C.P. 706.105(i)*); on employer's immunity from liability, see *C.C.P. 706.022(c)*, supra, §258.) (See Rutter Group, 2 Enforcing Judgments and Debts §§6:1202, 6:1212; C.E.B., 2 Debt Collection Practice 2d, §10.33.)

If the employer has withheld earnings after termination but has not paid them to the levying officer, the employer must promptly pay those earnings to the debtor. (*C.C.P. 706.105(i)*.)

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98 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

D. Procedure for Exemption Claims.

5. Restriction on New Withholding Orders.

8 Within Cal. Proc. Enf Judgm § 265

[§ 265] Restriction on New Withholding Orders.

If an earnings withholding order is terminated by court order (see *supra*, §263), the judgment creditor may not apply for a new withholding order directed to the same employer for the same judgment debtor for 100 days following the date of service of the terminated order, or 60 days following the termination of the order, whichever is later, unless (1) the court orders otherwise, or (2) there has been a material change of circumstances since the hearing resulting in the termination. (*C.C.P. 706.105(h)*.) (See Rutter Group, 2 Enforcing Judgments and Debts §§6:1210, 6:1211.)

SUPPLEMENT: [This section is current through the latest supplement]



99 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

E. Orders Relating to Support.

1. Withholding Order for Support.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 266

[§ 266] In General.

(1) *Definition.* A "withholding order for support," which must be so designated on its face, is an earnings withholding order issued on a writ of execution to collect "delinquent" amounts under a judgment for the support of a child, spouse, or former spouse. (*C.C.P. 706.030(a)*; see *Vineyard v. Sisson* (1990) 223 *C.A.3d* 931, 936, 272 *C.R.* 914 [judgment creditor, who sought both writ of execution and earnings withholding order on supporting spouse's wages, was not entitled to delinquent support amounts under *C.C.P. 706.030* because creditor was not supported spouse]; *C.E.B.*, 2 Debt Collection Practice 2d, §10.14; on issuance by local child support agency of withholding order for support, see *infra*, §267; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

(2) *Priority.* A withholding order for support has priority over other earnings withholding orders, and the employer must hold and pay over the employee's earnings pursuant to the order notwithstanding the requirement of another earnings withholding order. (*C.C.P. 706.030(c)(2)*.) (On priority of earnings assignment order for support, see *C.C.P. 706.031(b)*, *infra*, §268.) Nevertheless, subject to this priority and the restrictions on earnings withholding provided by *C.C.P. 706.050* et seq. (see *supra*, §251), an employer must withhold earnings under both a withholding order for support and another earnings withholding order simultaneously. (*C.C.P. 706.030(c)(3)*.) Where an order for support and an order on another obligation are both in effect, the amount withheld for support is deducted from the employee's earnings first. Any remaining amount subject to earnings withholding is applied to the order that is not for support. (See *Law Rev. Com. Comment to C.C.P. 706.030*.)

(3) *Credit of Earnings Withheld.* Withheld earnings must be credited toward satisfaction of a support judgment as specified in *C.C.P. 695.221* (see *supra*, §54). (*C.C.P. 706.030(c)(7)*.)

(4) *Termination.* The order continues until (a) the date the employer has withheld the full amount required to satisfy the order, (b) the date of termination specified in a court order or a notice of termination served on the employer, or (c) 1 year after the employee's employment terminates, whichever is earliest. (*C.C.P. 706.030(c)(1)*.) (On termination of duty to withhold under general earnings withholding order, see *supra*, §244.)

SUPPLEMENT: [This section is current through the latest supplement]



100 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

E. Orders Relating to Support.

1. Withholding Order for Support.

b. Issuance by Local Child Support Agency.

8 *Witkin Cal. Proc. Enf Judgm* § 267

[§ 267] Issuance by Local Child Support Agency.

(1) *In General.* The local child support agency may issue a withholding order for support on a notice of levy pursuant to *Family C. 17522* to collect a support obligation (see 11 *Summary* (10th), *Husband and Wife*, §335). (*C.C.P. 706.030(b)*.) In doing so, the agency acts as the levying officer. (*C.C.P. 706.030(b)(1)*.) (On enforcement of support orders by local child support agency generally, see *infra*, §405.)

(2) *Service.* Service of the order may be made by first-class mail or in another manner described in *C.C.P. 706.101* (see *supra*, §254). Service is complete when it is received by the employer or a person described in *C.C.P. 706.101* as one to whom service of an earnings withholding order may be made (see *supra*, §254). If by first-class mail, service is complete as specified in *C.C.P. 1013* (see 6 *Cal. Proc.* (5th), *Proceedings Without Trial*, §22 et seq.). (*C.C.P. 706.030(b)(2)*.)

The agency must serve on the employer the withholding order, a copy of the order, and a notice informing the support obligor of the effect of the order and of the obligor's right to hearings and remedies under the Wage Garnishment Law and the Family Code. Forms necessary to obtain an administrative review and a judicial hearing, together with instructions on filing the forms, must accompany the notice. (*C.C.P. 706.030(b)(3)*.)

(3) *Duties of Employer.* Within 10 days of service, the employer must deliver a copy of the order, the notice, and the forms to the obligor. If the employer no longer employs the obligor and does not owe the obligor any earnings, the employer must so inform the agency. (*C.C.P. 706.030(b)(3)*.) The employer must send all withheld earnings to the State Disbursement Unit within 7 business days of their payment or crediting to the employee. (*C.C.P. 706.030(b)(5)*, (b)(6); 42 *U.S.C.*, §666(b)(6)(A)(i).) An employer who fails to comply with these requirements is subject to a civil penalty of \$ 500 for each occurrence. (*C.C.P. 706.030(b)(4)*); on liability of employer subject to garnishment generally, see *supra*, §249.)

(4) *Administrative Review.* On request by the obligor after service of the withholding order, the agency must provide for an administrative review to reconsider or modify the amount to be withheld for arrearages under the order. The agency must provide the review in the same manner and time frames as provided under *Family C. 17800* (see 11

Summary (10th), *Husband and Wife*, §315) for the agency's resolution of child support complaints generally. If the review cannot be completed within 30 days of receipt of the complaint, the agency must notify the employer to suspend withholding any disputed amount until the review is completed. On completion of the review, the agency must notify the employer of any modifications to the order. (*C.C.P. 706.030(b)(5)*.)

(5) *Judicial Review*. The obligor may seek a judicial determination of arrearages pursuant to *Family C. 17526* (see 11 *Summary* (10th), *Husband and Wife*, §334) or file a motion for equitable division of earnings pursuant to *C.C.P. 706.052* (see *supra*, §251) either before or after administrative review. Within 5 business days of receipt of notice that the obligor seeks judicial review, the agency must notify the employer to suspend withholding any disputed amount pending court determination. The employer must adjust the withholding within 9 days after receipt of that notice. (*C.C.P. 706.030(b)(6)*.)

SUPPLEMENT: [This section is current through the latest supplement]



101 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

E. Orders Relating to Support.

2. Earnings Assignment Order for Support.

8 *Witkin Cal. Proc. Enf Judgm* § 268

[§ 268] Earnings Assignment Order for Support.

(1) *Nature of Order.* An "earnings assignment order for support" is an order under *Family C. 5200* et seq. (see 11 *Summary* (10th), *Husband and Wife*, §249 et seq.) or *Prob.C. 3088* (see 11 *Summary* (10th), *Community Property*, §171), requiring an employer to withhold earnings for support. (*C.C.P. 706.011(b)*; see Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1074, 6:1088, 6:1219 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §10.13; on effect of earnings assignment order for support on public employee retirement benefits and retirement plan contributions, see *supra*, §202; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.) The Judicial Council has adopted a mandatory form for an earnings assignment order for support. (See Judicial Council Form No. FL-435 [Earnings Assignment Order for Spousal or Partner Support (Family Law)].)

In contrast to an earnings *withholding* order for support (see *C.C.P. 706.030*, *supra*, §266), an earnings *assignment* order for support can be used to collect not only arrearages of a support obligation, but also future installments. (See *Family C. 5208*; *Prob.C. 3088(e)*; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1088.)

Nothing in the Wage Garnishment Law affects an earnings assignment order for support. (*C.C.P. 706.031(a)*.)

(2) *Priority.* An assignment order for support has priority over attachments, executions, and other assignments, including earnings withholding orders (for support or otherwise). (See *C.C.P. 706.031(b)*; *Family C. 5243* (11 *Summary* (10th), *Husband and Wife*, §254); Law Rev. Com. Comment to *C.C.P. 706.031*.) Notwithstanding any earnings withholding order, an employer served with an earnings assignment order for support must withhold and pay over the earnings of the employee pursuant to the assignment order. An employer who is required to cease withholding earnings under an earnings withholding order must notify the levying officer that a supervening earnings assignment order for support is in effect. (*C.C.P. 706.031(b)*.) However, subject to this priority and the limitations on withholding under *C.C.P. 706.050* et seq. (earnings withholding restrictions; see *supra*, §251), and *C.C.P. 706.070* et seq. (withholding order for taxes; see *infra*, §269 et seq.), an employer must withhold earnings under both an earnings assignment order for support and an earnings withholding order. (*C.C.P. 706.031(c)*, (d), (e).) (See Law Rev. Com. Comment to *C.C.P. 706.031* [illustrating withholding under multiple orders].)

SUPPLEMENT: [This section is current through the latest supplement]



102 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

F. Orders Relating to Taxes.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 269

[§ 269] In General.

(1) *Scope of Special Procedure.* Earnings withholding orders for taxes, issued to collect state tax liability, are governed by *C.C.P. 706.070* et seq. However, except as otherwise provided, the general procedural provisions of the Wage Garnishment Law apply. (*C.C.P. 706.073.*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1089, 6:1227 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §§10.18, 10.24.)

(2) *Definitions.* The following terms are defined for purposes of *C.C.P. 706.070* et seq.:

(a) A "withholding order for taxes" is an earnings withholding order to collect a state tax liability. (*C.C.P. 706.072(a).*)

Where a warrant, notice of levy, or notice or order to withhold is served on an employer to enforce a state tax liability of a person who is an employee of that employer, it is deemed to be a withholding order for taxes as to any earnings that are subject to the provisions of the Wage Garnishment Law if the form provides both (1) notice on its face that it is to be treated as a withholding order for taxes as to any earnings that are subject to those provisions, and (2) all the information provided in a withholding order for taxes. (*C.C.P. 706.084.*) This statute deals with the situation where it is not clear whether an employer-employee relationship exists. The warrant, notice of levy, or notice or order to withhold may be issued on the assumption that the taxpayer is an independent contractor. However, so that the taxpayer cannot avoid the withholding by claiming that he or she is an employee and that earnings may be withheld only pursuant to an earnings withholding order, the warrant, notice, or order may require that it be treated as an earnings withholding order if the taxpayer is an employee. (See Law Rev. Com. Comment to *C.C.P. 706.084.*)

(b) "State" means the State of California or any state officer, department, board, or agency. (*C.C.P. 706.070(a).*) (See *C.C.P. 706.011(e)*, supra, §243 [as applied to state, "judgment creditor" means specific state agency seeking to collect judgment or tax liability].)

(c) "State tax liability" means the amount for which the state has a state tax lien under *Govt.C. 7162*, excluding a tax lien created under the Fish and Game Code. (*C.C.P. 706.070(b).*) (See Law Rev. Com. Comment to *C.C.P. 706.070* [listing taxes for which earnings withholding orders are permitted, including sales and use taxes, personal income taxes,

and bank and corporation taxes].)

(d) "Levying officer" means the specific state agency seeking to collect a state tax liability. (*C.C.P. 706.073*.)

(3) *Limitation on Other Collection Methods.* The Wage Garnishment Law does not limit the state's right to collect a state tax liability, except that (a) no levy on employee earnings is effective unless made in accordance with its provisions, and (b) other methods of collection may not be used to require an employer to withhold earnings in payment of a state tax liability. (*C.C.P. 706.071*; see Rev.C. 19264 [pilot program for electronic issuance of earnings withholding orders for taxes and related notices and documents].) This provision does not affect the collection of federal taxes. In addition, state taxes not within the scope of *C.C.P. 706.070* et seq. may be reduced to judgment, which may then be satisfied by an earnings withholding order. (See Law Rev. Com. Comment to *C.C.P. 706.071*.)

(4) *Review of Tax Liability Is Prohibited.* Review of a taxpayer's tax liability is not permitted in any court proceedings under the Wage Garnishment Law. (*C.C.P. 706.082*; on judicial review of administrative redetermination of amount withheld, see *C.C.P. 706.075(c)*, *infra*, §271.)

SUPPLEMENT: [This section is current through the latest supplement]



103 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

F. Orders Relating to Taxes.

2. Conditions for Order.

8 Within Cal. Proc. Enf Judgm § 270

[§ 270] Conditions for Order.

A "withholding order for taxes" must be so denoted on its face. (*C.C.P. 706.072(a)*.) The order may be issued only where (1) the existence of the tax liability appears on the face of the taxpayer's return, or (2) the liability has been assessed or determined in an administrative proceeding in which the taxpayer had notice and an opportunity for administrative review. If a taxpayer makes a timely request to review such an assessment or determination, the order may not be issued until the administrative review procedure is completed. (*C.C.P. 706.072(b)*.) However, the order may be issued whether or not the tax liability has been reduced to judgment. (*C.C.P. 706.072(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



104 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

F. Orders Relating to Taxes.

3. Issuance of Order.

8 Witkin Cal. Proc. Enf Judgm § 271

[§ 271] Issuance of Order.

(1) *By State.* The state may issue a withholding order for taxes, which must specify the total amount required to be withheld (unpaid tax liability, including penalties, accrued interest, and costs). Unless the order specifies a lesser amount, the amount to be withheld is the amount required to be withheld under *15 U.S.C., §1673(a)*, without the exception provided by *15 U.S.C., §1673(b)*. (*C.C.P. 706.074.*) Thus, an order issued by the state is limited to the amount that can be withheld on a garnishment by an ordinary creditor. (See Law Rev. Com. Comment to *C.C.P. 706.074.*) (On amount subject to withholding under *15 U.S.C., §1673(a)*, see *supra*, §251.)

(2) *By Court.* A court may issue a withholding order for taxes in an amount in excess of that authorized by *C.C.P. 706.074.* (*C.C.P. 706.076(a).*) The procedure is as follows:

(a) The state applies for an order in a court of record in the county of the taxpayer's last known residence. The application must include a statement under oath that the taxpayer has been served with a copy of the application and a notice informing the taxpayer of its purpose and the taxpayer's right to a hearing. (*C.C.P. 706.076(b), (c).*)

(b) A hearing is held on notice mailed at least 10 days before the hearing date. (*C.C.P. 706.076(d).*)

(c) After the hearing, the court issues an order requiring withholding of all earnings not exempt under *C.C.P. 706.051(b)*, but not for less than the amount permitted to be withheld under *C.C.P. 706.050.* (*C.C.P. 706.076(e).*) (On withholding restrictions under *C.C.P. 706.050* and *706.051*, see *supra*, §251.)

(3) *Temporary Earnings Holding Order.* If the state intends to apply for a withholding order for taxes and has determined that collection will be jeopardized during the pendency of the proceedings, it may issue a temporary earnings holding order, which must be denoted as such on its face, requiring the taxpayer's employer to retain earnings then or thereafter due. The original and a copy of the order and a notice informing the taxpayer of his or her rights must be served on the employer, who must deliver copies of each to the taxpayer, unless the taxpayer is no longer employed and the employer does not owe the taxpayer any earnings. (*C.C.P. 706.076(f).*) (On similar requirement for withholding orders for taxes generally, see *C.C.P. 706.075(b)*, *infra*, §272.)

A temporary order expires 15 days from the date it is served on the employer, unless extended by the court for good cause on an ex parte application. The state may not serve another temporary order on the same employer for the same employee in the next 6 months, unless the court otherwise orders for good cause. Both *C.C.P. 706.153* (employer's duty not to defer or accelerate earnings; see supra, §249) and *C.C.P. 706.154* (remedies of creditors and limitation of employer's liability; see supra, §249) apply to temporary orders. (*C.C.P. 706.076(f)*.)

(4) *Reconsideration of Amount Withheld.* The state must provide an administrative hearing to reconsider or modify the amount withheld under a withholding order for taxes, and the taxpayer may request a hearing at any time after service of the order. The hearing must be held and the matter must be determined within 15 days after the request is received by the state. The redetermined amount is subject to the hardship exemption provided by *C.C.P. 706.051(b)* (see supra, §251). The redetermination is subject to judicial review by administrative mandamus within 90 days after written notice of the determination is delivered or mailed to the taxpayer. (*C.C.P. 706.075(c)*.)

West's Key Number Digest, Exemptions 48(1)

SUPPLEMENT: [This section is current through the latest supplement]



105 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

F. Orders Relating to Taxes.

4. Service and Form of Documents.

8 *Witkin Cal. Proc. Enf Judgm* § 272

[§ 272] Service and Form of Documents.

(1) *Duties of State and Employer.* The state must serve a withholding order for taxes on the employer, together with an additional copy of the order and a notice informing the taxpayer of the effect of the order and of his or her rights. Within 10 days from the date of service, the employer must deliver a copy of the order and the notice to the taxpayer, except that immediate delivery must be made where a jeopardy withholding order has been served (see *infra*, §274). Delivery is not required if the taxpayer is no longer employed and the employer does not owe the taxpayer any earnings. (*C.C.P.* 706.075(a), (b); on similar requirement for temporary earnings holding order, see *C.C.P.* 706.076(f), *supra*, §271; on effect of statement in withholding instrument served on employer that it is to be treated as withholding order for taxes if taxpayer is employee, see *C.C.P.* 706.084, *supra*, §269.) An employer who fails to comply is not subject to civil liability, but may be held in contempt. (*C.C.P.* 706.075(d).)

(2) *Manner of Service.* Service of a withholding order for taxes may be made by first class mail or by any authorized state employee, and is complete when received by the employer or a person authorized to be served with an order under *C.C.P.* 706.101(a) (see *supra*, §254). Service of any other notice or document in connection with a withholding order for taxes may be served in the same way, and is complete when deposited in the mail. (*C.C.P.* 706.080; see *Rev.C.* 19264 [establishing, notwithstanding *C.C.P.* 706.080, voluntary 2-year pilot program for the electronic issuance of earnings withholding orders for taxes and related notices and documents].)

(3) *Form of Documents.* Apart from the forms used in connection with court-issued orders under *C.C.P.* 706.076 (see *supra*, §271), the state must prescribe the form of orders, notices, or other documents required with respect to a withholding orders for taxes. (*C.C.P.* 706.081; see *Law Rev. Com. Comment to C.C.P.* 706.081 [form must be prescribed by state taxing agency administering particular tax law].) The Judicial Council has adopted the following mandatory forms with respect to court-issued orders:

Judicial Council Form No. WG-020 [Application for Earnings Withholding Order for Taxes (State Tax Liability)].

Judicial Council Form No. WG-021 [Confidential Supplement to Application for Earnings Withholding Order for Taxes (State Tax Liability)].

Judicial Council Form No. WG-022 [Earnings Withholding Order for Taxes].

Judicial Council Form No. WG-023 [Notice of Hearing--Earnings Withholding Order for Taxes].

Judicial Council Form No. WG-024 [Temporary Earnings Withholding Order for Taxes (State Tax Liability)].

Judicial Council Form No. WG-025 [Confidential Supplement to Temporary Earnings Withholding Order for Taxes (State Tax Liability)].

Judicial Council Form No. WG-026 [Claim of Exemption and Financial Declaration (State Tax Liability)].

SUPPLEMENT: [This section is current through the latest supplement]



106 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

F. Orders Relating to Taxes.

5. Priority.

8 *Witkin Cal. Proc. Enf Judgm* § 273

[§ 273] Priority.

(1) *Priority of Orders Involving Support Over Tax Orders.* An earnings assignment order for support has priority over all earnings withholding orders (see *C.C.P. 706.031(b)*, supra, §268), and an earnings withholding order for support has priority over all *other* earnings withholding orders (see *C.C.P. 706.030(c)(2)*, supra, §266). Thus, either order would have priority over an earnings withholding order for taxes.

(2) *Priority of Tax Orders Over Orders Not Involving Support.* A withholding order for taxes has priority over all earnings withholding orders that do not involve support. When served with a withholding order for taxes that has priority, the employer must cease withholding under an earlier earnings withholding order and notify the levying officer that a supervening withholding order for taxes is in effect. (*C.C.P. 706.077(a)*.) (On procedure for payment where withholding order for taxes and other withholding order are in effect, see Law Rev. Com. Comment to *C.C.P. 706.077*.)

(3) *Priority of Earlier Over Later Tax Orders.* If a withholding order for taxes is in effect, a subsequent order for taxes is ineffective. (*C.C.P. 706.077(b)*.) The employer must promptly notify the taxing authority that issued or obtained the subsequent order of the reason for not honoring the second order. (See *C.C.P. 706.104(b)*, supra, §257; Law Rev. Com. Comment to *C.C.P. 706.077*.)

SUPPLEMENT: [This section is current through the latest supplement]



107 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VII. MONEY JUDGMENTS: WAGE GARNISHMENT

F. Orders Relating to Taxes.

6. Commencement and Termination of Withholding.

8 *Within Cal. Proc. Enf Judgm § 274*

[§ 274] Commencement and Termination of Withholding.

(1) *Commencement of Ordinary Withholding Order for Taxes.* Withholding under an ordinary withholding order for taxes commences with earnings payable for a pay period ending on or after the 10th day after service of the order. (*C.C.P. 706.078(a)*.) (For a similar provision on earnings withholding orders generally, see *C.C.P. 706.022(a)*, supra, §244.)

(2) *Commencement of Jeopardy Withholding Order for Taxes.* When the state determines that collection of a state tax liability will be jeopardized by delaying the time for commencing withholding, it may issue a withholding order for taxes designated on its face as a "jeopardy withholding order for taxes," requiring the employer to withhold beginning with earnings due at the time the order is served on the employer. (*C.C.P. 706.078(b)*); see Law Rev. Com. Comment to *C.C.P. 706.078* [jeopardy withholding order should be used "only in rare and unusual cases"].)

(3) *Termination.* Withholding continues until (a) the amount specified in the order is paid in full, (b) the order is withdrawn, or (c) 1 year after the employment ceases. (*C.C.P. 706.078(c)*.) (For similar provision on withholding orders for support, see *C.C.P. 706.030(c)(1)*, supra, §266.) If the relevant tax liability is satisfied before withholding is complete, the state must serve a notice of termination on the employer, who must discontinue withholding. (*C.C.P. 706.078(c)*.) The notice is in lieu of the notice required of ordinary judgment creditors (see *C.C.P. 706.027*, supra, §247). (Law Rev. Com. Comment to *C.C.P. 706.078*.)

SUPPLEMENT: [This section is current through the latest supplement]



108 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

A. Written Interrogatories to Judgment Debtor.

8 *Witkin Cal. Proc. Enf Judgm* § 275

[§ 275] Written Interrogatories to Judgment Debtor.

(1) *In General.* A judgment creditor may request information to aid enforcement of a money judgment by propounding written interrogatories to the debtor in the manner provided by *C.C.P. 2030.010* et seq. (see 2 *Cal. Evidence (4th), Discovery*, §87 et seq.). The judgment debtor must respond in the manner and within the time provided by *C.C.P. 2030.010* et seq. (*C.C.P. 708.010(a), 708.020(a)*); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.2 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1371 et seq.; C.E.B., 2 Debt Collection Practice 2d, §8.14; *Cal. Civil Practice*, 4 Procedure, §30:5; 14 *Pacific L. J.* 426.)

(2) *Restrictions.* A creditor may not serve interrogatories within 120 days after the debtor has responded to previous interrogatories or has been examined under *C.C.P. 708.110* et seq. (see *infra*, §278 et seq.). (*C.C.P. 708.020(b)*.) Nor may interrogatories be served within 120 days after the debtor has responded to previous demands for inspection under *C.C.P. 708.030* (see *infra*, §276). (*C.C.P. 708.030(b)*.) The debtor is not required to respond to any interrogatories or discovery so served. (*C.C.P. 708.020(b), 708.030(b)*.)

The limitation provided by *C.C.P. 2030.010* et seq. on the number of interrogatories that may be propounded (see 2 *Cal. Evidence (4th), Discovery*, §89) applies to each set of interrogatories propounded from time to time, but does not apply cumulatively. (*C.C.P. 708.020(d)*.) This provision makes clear that the 35-interrogatory limit imposed by *C.C.P. 2030.030* is not a cumulative limitation on interrogatories to a judgment debtor. "Thus, for example, a judgment creditor may propound 25 interrogatories to the judgment debtor and then 120 days later propound 30 more interrogatories without running afoul of the limitations." (Law Rev. Com. Comment to *C.C.P. 708.020*.)

(3) *Sanctions.* Interrogatories may be enforced to the extent practicable in the same manner as interrogatories in civil actions (see 2 *Cal. Evidence (4th), Discovery*, §249 et seq.). (*C.C.P. 708.020(c)*.) However, a trial court may not bar appeal from the judgment as a sanction for failure to answer. (*MacDonald v. Superior Court (1977) 75 C.A.3d 692, 697, 141 C.R. 667* [construing prior law].) The court is also authorized to make protective orders for the benefit of the judgment debtor. (Law Rev. Com. Comment to *C.C.P. 708.020*; on protective orders, see *C.C.P. 2030.090, 2 Cal. Evidence (4th), Discovery*, §114.)

(4) *Effect of Stay.* If enforcement of the judgment is stayed on appeal by giving a sufficient undertaking (see 9 *Cal. Proc.* (5th), *Appeal*, §230 et seq.), all proceedings under *C.C.P. 708.010* and *708.020* are stayed. In any other case in

which enforcement of the judgment is stayed, the proceedings are stayed unless the court expressly orders otherwise.
(*C.C.P. 708.010(b)*.)

West's Key Number Digest, Execution 358 et seq.

SUPPLEMENT: [This section is current through the latest supplement]



109 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

B. Demand for Inspection of Documents.

8 *Witkin Cal. Proc. Enf Judgm* § 276

[§ 276] Demand for Inspection of Documents.

(1) *Demand Authorized.* A judgment creditor may demand that the judgment debtor produce documents for inspection and copying if the demand requests information to aid in enforcement of the money judgment. The demand and the response must be made in the manner and within the time provided by *C.C.P. 2031.010* et seq. (see 2 *Cal. Evidence (4th), Discovery*, §118 et seq.). (*C.C.P. 708.030(a)*); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.6 et seq.; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1391.5 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §5.23.)

(2) *Restrictions.* An inspection demand may not be served within 120 days after the debtor has responded to a previous demand or to interrogatories served under *C.C.P. 708.020* (see supra, §275), or within 120 days after the debtor has been examined under *C.C.P. 708.110* et seq. (see infra, §278 et seq.). The debtor is not required to respond to any discovery so served. (*C.C.P. 708.030(b)*.)

(3) *Enforcement.* Inspection demands under *C.C.P. 708.030* may be enforced to the extent practicable in the same manner as inspection demands in civil actions (see 2 *Cal. Evidence (4th), Discovery*, §137 et seq.). (*C.C.P. 708.030(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]



110 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

1. Development of Law.

8 *Witkin Cal. Proc. Enf Judgm* § 277

[§ 277] Development of Law.

(1) *Former Law.* Former C.C.P. 714 et seq. established supplemental proceedings for the purpose of discovering assets of a judgment debtor and applying them to satisfaction of the judgment. The proceedings were ancillary or incidental to the main action and were summary, giving a speedy and inexpensive remedy. They were intended as a substitute for the former creditor's suit or creditor's bill in equity by which a judgment creditor, after a return of execution unsatisfied, sought to compel discovery of assets and to apply them to the judgment. The creditor's suit was a cumbersome independent action, and the statutory proceeding superseded it except in unusual situations. (See *Farmers & Merchants Bank of Los Angeles v. Bank of Italy* (1932) 216 C. 452, 455, 14 P.2d 527; *McCutcheon v. Superior Court* (1933) 134 C.A. 5, 8, 24 P.2d 911; *Tucker v. Fontes* (1945) 70 C.A.2d 768, 771, 161 P.2d 697.)

The examination proceeding consisted of a hearing at which the judgment debtor or a third person having property of the debtor or indebted to the debtor could be examined under oath. The proceeding was summary and factual, affording the widest scope of inquiry concerning the property and business affairs of the debtor. (See *Coleman v. Galvin* (1947) 78 C.A.2d 313, 318, 177 P.2d 606.)

Two statutes provided for the examination of the *judgment debtor*. Under former C.C.P. 714, where execution could be properly issued, a judgment creditor was entitled to an order requiring the judgment debtor to appear and answer concerning his or her property. The debtor could not be required to appear more than once every 4 months. (See *People v. McKamy* (1915) 28 C.A. 196, 199, 151 P. 743 [proceedings should not be used to harass; second order should not be made except on showing of new facts not previously known].) Under former C.C.P. 715, the creditor had the right to an examination order after execution had issued, without the necessity of its being returned unsatisfied. By affidavit or otherwise, the creditor had to prove that the debtor had property that the debtor unjustly refused to apply to satisfaction of the judgment. (See *Medical Finance Assn. v. Karnes* (1938) 32 C.A.2d Supp. 767, 84 P.2d 1076 [statute applied only where tangible personal property was in debtor's possession].)

Under former C.C.P. 717, after an execution had been issued or returned, a *third person* could be ordered to appear for an examination on proof by the judgment creditor, by affidavit or otherwise, that the third person had property of the judgment debtor or was indebted to the judgment debtor in an amount exceeding \$ 50. (See *Trounce v. Whittier Savings Bank* (1934) 136 C.A. 761, 763, 29 P.2d 789 [statutory procedure must be strictly followed]; *Tucker v. Fontes* (1945) 70

C.A.2d 768, 771, 161 P.2d 697 [affidavit could be on information and belief].) Under former C.C.P. 719, title or indebtedness could not be determined in an examination proceeding if the third person claimed an interest in the property or denied the debt. The creditor's proper remedy was a creditor's suit. (See *Takahashi v. Kunishima* (1939) 34 *C.A.2d 367, 373, 93 P.2d 645* [denial of indebtedness was conclusive against court's power to order payment of funds]; *Kapelus v. Family Health Foundation* (1969) 276 *C.A.2d 181, 183, 80 C.R. 763* [where garnishee denied debt, referee could only authorize suit to obtain judicial determination; purported trial and determination of issue of garnishee's liability was in excess of jurisdiction].)

(2) *Enforcement of Judgments Law*. The Enforcement of Judgments Law continues the former authorization of examination proceedings, while making some significant changes. (See *C.C.P. 708.110* et seq., infra, §278 et seq.; 16 *Cal. Law Rev. Com. Reports*, p. 1124 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



111 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

2. Examination of Judgment Debtor.

8 *Witkin Cal. Proc. Enf Judgm* § 278

[§ 278] Examination of Judgment Debtor.

(1) *Application and Affidavit.* A judgment creditor may apply to the proper court (see *infra*, §287) for an order requiring the judgment debtor to appear before the court, or before a court-appointed referee (see *infra*, §284), and furnish information to aid in enforcement of the money judgment. (*C.C.P. 708.110(a)*.) Information to aid in enforcement of the judgment may include information concerning future employment prospects. The debtor may not be ordered to appear if the judgment is no longer enforceable. (Law Rev. Com. Comment to *C.C.P. 708.110*.)

If the creditor has not caused the debtor to be examined during the preceding 120 days, the court must make the order on an *ex parte* application of the creditor. (*C.C.P. 708.110(b)*.) If the debtor has been examined during the preceding 120 days, the creditor must show good cause for the order, by affidavit or otherwise, and the application must be on noticed motion if the court so directs or a court rule so requires. (*C.C.P. 708.110(c)*.) A creditor may obtain an examination order even though the debtor may have been required to respond to written interrogatories under *C.C.P. 708.020* (see *supra*, §275) within the 120-day period. (Law Rev. Com. Comment to *C.C.P. 708.110*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.9 et seq.; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1271 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §8.15 et seq.; Cal. Civil Practice, 4 *Procedure*, §30:5; C.E.B., 14 *California Business Law Practitioner* 75 (Summer 1999) [Postjudgment Examination of a Debtor]; 10 *Am.Jur. P.P. Forms* (2005 ed.), *Executions* §214 et seq.)

(2) *Service of Order.* Not less than 10 days before the examination, the judgment creditor must serve a copy of the order on the judgment debtor by personal delivery in the manner provided by *C.C.P. 415.10* (see 3 *Cal. Proc. (5th), Actions*, §1008). (*C.C.P. 708.110(d)*.)

(3) *Lien.* Service of the order creates a lien on the personal property of the debtor for 1 year, unless extended or sooner terminated by the court. (*C.C.P. 708.110(d)*.) The lien may not be enforced beyond the time for enforcement of the judgment. (Law Rev. Com. Comment to *C.C.P. 708.110*.)

(4) *Notice.* The order must contain the following: "NOTICE TO JUDGMENT DEBTOR. If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court and the court may make an order requiring you to pay the reasonable attorney's fees incurred by the judgment creditor in this

proceeding." (*C.C.P. 708.110(e)*.)

(5) *Form*. The Judicial Council has approved an optional form for the application and order. (See Judicial Council Form No. EJ-125 [Application and Order for Appearance and Examination].)

West's Key Number Digest, Execution 378, 379

SUPPLEMENT: [This section is current through the latest supplement]



112 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

3. Examination of Third Person.

a. Issuance and Service of Order.

8 *Witkin Cal. Proc. Enf Judgm* § 279

[§ 279] Issuance and Service of Order.

(1) *Application and Affidavit.* A third party may be ordered to appear for examination before the proper court (see *infra*, §287), or before a court-appointed referee (see *infra*, §284), on an *ex parte* application by a judgment creditor who has a money judgment. The creditor must prove by affidavit based on information and belief or otherwise that the third person (a) has possession or control of property in which the judgment debtor has an interest, or (b) is indebted to the judgment debtor in an amount exceeding \$ 250. (*C.C.P. 708.120(a)*.) The third person may not be ordered to appear if the judgment is no longer enforceable. (Legislative Com. Comment (Assembly) to *C.C.P. 708.120*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.12 et seq.; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1295 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §8.20 et seq.)

(2) *Service of Order.* Not less than 10 days before the examination, a copy of the order must be served personally on the third person and personally or by mail on the judgment debtor. (*C.C.P. 708.120(b)*.)

(3) *Lien.* If the property or debt in the hands of the third person is sufficiently described so as to be identified, service of the order on the third person creates a lien on the judgment debtor's interest in the property or on the debt. The lien continues for 1 year from the date of the order unless extended or sooner terminated by the court. (*C.C.P. 120(c)*.)

(4) *Notice.* Specified notices to the third person and the judgment debtor must be contained in the order. The third person must be informed that failure to appear may result in arrest and a contempt citation, and the judgment debtor must be given a description of the property or debt and information on how to file an exemption claim. (*C.C.P. 708.120(e)*.) (On judgment debtor's claim of exemption, see *infra*, §280.)

(5) *Mileage Fees.* An order for examination of a third person is not effective unless, at the time it is served, the person serving the order tenders mileage fees for travel between the third person's residence and the place of examination. The fees must be in the same amount generally provided for witnesses required to attend civil proceedings. (*C.C.P. 708.120(f)*); on mileage fees in civil cases, see *Govt.C. 68093*, 2 *Cal. Evidence (4th)*, *Witnesses*, §17.)

(6) *Form.* The Judicial Council has approved an optional form for the application and order. (See Judicial Council Form No. EJ-125 [Application and Order for Appearance and Examination].)

SUPPLEMENT: [This section is current through the latest supplement]



113 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

3. Examination of Third Person.

b. Judgment Debtor's Claim of Exemption.

8 *Witkin Cal. Proc. Enf Judgm* § 280

[§ 280] Judgment Debtor's Claim of Exemption.

(1) *Procedure for Making Claim.* The judgment debtor may claim that any property or debt in the hands of a third person is exempt from enforcement of a money judgment. The debtor must apply for an exemption on noticed motion, filed with the court and personally served on the judgment creditor not less than 3 days before the date of examination. The application must be supported by an affidavit including all the information required for a claim of exemption from execution under *C.C.P. 703.520(b)* (see *supra*, §181). A notice of opposition to the claim of exemption is not required. (*C.C.P. 708.120(d)*.) (For comparable provision on claim of exemption in creditor's action, see *C.C.P. 708.260(a)*, *infra*, §294.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.15 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1350 et seq.; C.E.B., 2 Debt Collection Practice 2d, §8.28; on exemptions, see *C.C.P. 703.010* et seq., *supra*, §168 et seq., 187 et seq., 215 et seq.)

(2) *Determination of Claim.* The court must determine the claim of exemption. (*C.C.P. 708.120(d)*.) It may also determine that the property sought to be reached may properly be applied to the satisfaction of the judgment through an order in the examination proceeding. (Legislative Com. Comment (Assembly) to *C.C.P. 708.120*.) A contested claim may not be determined by a referee. (*C.C.P. 708.140(a)(3)*, *infra*, §284.)

(3) *Effect of Failure To Make Claim.* Failure to make a claim of exemption does not preclude a later claim unless (a) the property or debt is sufficiently described in the examination order so as to be identifiable, and (b) the debtor receives at least 10 days' written notice of the examination. (*C.C.P. 708.120(d)*.) A waiver of exemption by failure to make a claim is subject to the authority of the court to relieve the debtor from the failure under *C.C.P. 473*. (See Legislative Com. Comment (Assembly) to *C.C.P. 708.120*; on waiver of exemption by failure to claim, see *C.C.P. 703.030(c)*, *supra*, §171.) The third person may have a duty of "fair play" to protect the debtor's exemption rights. (See *Bowie v. Union Bank (1970) 11 C.A.3d 807, 815, 90 C.R. 103*.)

SUPPLEMENT: [This section is current through the latest supplement]



114 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

3. Examination of Third Person.

c. Third Person's Adverse Claim.

1. Right to Determination.

8 *Witkin Cal. Proc. Enf Judgm* § 281

[§ 281] Right to Determination.

(1) *Right To Have Adverse Claim Determined.* If the third person who is examined claims an interest in the property adverse to the judgment debtor or denies the debt, the court may, on the judgment creditor's request, determine the interest in the property or the existence of the debt. The court may grant a reasonable continuance for discovery or other preparation. The determination is conclusive as to the parties and the third person, but an appeal may be taken. (*C.C.P. 708.180(a)*.) A referee may not determine a third-party claim. (*C.C.P. 708.140(a)(3)*, *infra*, §284.) (On use of proceeding under *C.C.P. 708.180* to determine rights of intervening party claiming interest in property or debt, see *infra*, §283.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.18 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1353 et seq.; C.E.B., 2 Debt Collection Practice 2d, §8.46.)

(2) *When Determination May Not Be Made.* The determination may not be made if the third person's claim is made in good faith and any of the following conditions is satisfied:

(a) The court would not be a proper court for an independent civil action (including a creditor's action) to determine the interests in the property or the existence of the debt, and the third person objects to the determination. (*C.C.P. 708.180(b)(1)*.)

(b) At the time the order for examination is served on the third person, a civil action (including a creditor's action) is pending with respect to the interests in the property or the existence of the debt. (*C.C.P. 708.180(b)(2)*.)

(c) The court determines that the interests in the property or the existence of the debt should be determined in a creditor's action. (*C.C.P. 708.180(b)(3)*.) (See *Sea Foods Co. Ltd. v. O.M. Foods Co., Ltd. (2007) 150 C.A.4th 769, 783, 58 C.R.3d 700* [purpose of good faith requirement of *C.C.P. 708.180(b)* is to preclude third person who has acted in bad faith from delaying matter by compelling judgment creditor to resort to creditor's action to determine existence of debt].)

(3) *Good Faith Nature of Claim.* In *Evans v. Paye (1995) 32 C.A.4th 265, 37 C.R.2d 915*, a judgment creditor

sought to enforce a money judgment by executing on debts of \$ 35,000 and \$ 278,000 allegedly owed to the judgment debtors by their son. In a hearing under *C.C.P. 708.180*, the trial judge ruled that the denial of the \$ 35,000 debt was not made in good faith, granted a turnover order as to that amount, and ordered the debt applied to the satisfaction of plaintiff's judgment. However, the court declined to find that the denial of the \$ 278,000 debt was made in bad faith, and ordered that the parties' interests in that sum be determined in a creditor's action. *Held*, affirmed.

(a) The father's testimony under oath that he had loaned \$ 35,000 to the son was prima facie evidence of the debt. To determine the issue of good faith, the trial judge was not required to accept the son's explanation that he had received the money only in repayment for having advanced money to his brother's business, because this explanation contradicted the father's sworn statement, and the son had a self interest in disavowing the debt. This ruling was not necessarily inconsistent with the determination that the validity of the son's explanation for the \$ 278,000 transfer should be resolved in a creditor's action, because the evidence regarding the two transactions was not identical. (32 *C.A.4th* 283.)

(b) *C.C.P. 708.180* was intended to resolve the dilemma posed by former *C.C.P. 719*, under which the court lacked the power to determine whether the third person was indebted to the judgment debtor when the third person denied the debt. The statute expressly authorizes the trial court, in a hearing outside the framework of a creditor's action, to determine whether the third person in fact owes money to the judgment debtor, unless the denial of the debt is made in good faith and any of certain specified conditions is satisfied. The third person is afforded due process by the provision in *C.C.P. 708.180(a)* giving the court discretion to grant a continuance for discovery, the production of evidence, or other preparation for the hearing. (32 *C.A.4th* 279.)

(c) In a proceeding under *C.C.P. 708.180*, prima facie evidence of good faith, regardless of what other evidence is presented, is not sufficient to compel a creditor's action. In explicitly authorizing the trial court to determine whether the third person's denial of an alleged debt to the judgment debtor has been made in good faith, the statute necessarily envisions that the court will assess the credibility of the third person's claim in light of other evidence presented concerning the alleged debt. (32 *C.A.4th* 280, 281.)

(d) The third person has the burden to prove that the denial of the debt was made in good faith. The statute is structured so that the third person's good faith denial of an alleged debt, coupled with the existence of any of the other specified conditions, constitutes a defense to the creditor's request to determine the existence of the debt in the summary proceeding. Once the creditor has presented prima facie evidence of the existence of a debt by the third person to the judgment debtor, the burden shifts to the third person to establish by a preponderance of the evidence that the denial of the debt is made in good faith. (32 *C.A.4th* 281, 282.)

(e) For purposes of establishing good faith, it is not sufficient for the third person to show that the denial of the debt was not blatantly fraudulent. Permitting this low threshold of proof would be inconsistent with the statutory scheme, which favors use of the enforcement procedure of *C.C.P. 708.180* to determine the existence of a third person's debt to the judgment debtor, and would defeat the purpose of the statute, which is to preclude a third person who has acted in bad faith from delaying the matter by compelling resort to a creditor's suit to determine the existence of the debt. (32 *C.A.4th* 282.) However, evidence that the third person's denial is made in good faith can take many forms and, if credible, precludes a determination of the debt under the statute. (32 *C.A.4th* 283.) (See *Sea Foods Co. v. O.M. Foods Co., Ltd.*, *supra*, 150 *C.A.4th* 782 [applying principles stated in *Evans* with respect to *C.C.P. 708.180* to determination of adverse third-party claims to attached property under *C.C.P. 491.170* (6 *Cal. Proc.* (5th), *Provisional Remedies*, §199)].)

West's Key Number Digest, Execution 414

SUPPLEMENT: [This section is current through the latest supplement]



115 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

3. Examination of Third Person.

c. Third Person's Adverse Claim.

2. Restrictions on Transfer or Payment.

8 *Witkin Cal. Proc. Enf Judgm* § 282

[§ 282] Restrictions on Transfer or Payment.

(1) *Ex Parte Order Restraining Transfer or Payment to Judgment Debtor.* The judgment creditor may apply ex parte for an order forbidding transfer of the property or payment of the debt to the judgment debtor until the adverse claim is determined or a creditor's action is commenced and an order is obtained under *C.C.P. 708.240* (see infra, §293). The court may require an undertaking and may vacate or modify the order at any time without a hearing on such terms as are just. (*C.C.P. 708.180(c)*.) (On similar order in creditor's action, see *C.C.P. 708.240(a)*, infra, §293.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1361 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §8.46.)

(2) *Order on Noticed Motion Restraining Transfer or Payment to Anyone.* The judgment creditor may also apply on noticed motion for an order forbidding disposition of the property to any person or payment of the debt until the adverse claim is determined or a creditor's action is commenced and an order is obtained under *C.C.P. 708.240*. The order must be based on a determination that the judgment debtor probably owns an interest in the property or that the debt probably is owed to the judgment debtor. The court must require an undertaking and may modify or vacate the order at any time after a noticed hearing. (*C.C.P. 708.180(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



116 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

4. Intervention.

8 *Witkin Cal. Proc. Enf Judgm* § 283

[§ 283] Intervention.

The court may permit a person claiming an interest in the property or debt to intervene in an examination proceeding, and may determine that person's rights in the property or debt in a proceeding to determine a third person's adverse claim under *C.C.P. 708.180* (see supra, §281). (*C.C.P. 708.190*.) This procedure permits early resolution of a third-party claim to property subject to an examination proceeding. (Law Rev. Com. Comment to *C.C.P. 708.190*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1360; C.E.B., 2 *Debt Collection Practice* 2d, §8.29.)

SUPPLEMENT: [This section is current through the latest supplement]



117 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

5. Conduct of Examination.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 284

[§ 284] In General.

(1) *Witnesses.* Witnesses may be required to appear and testify in an examination proceeding in the same manner as on the trial of an issue. (*C.C.P. 708.130(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.27; Rutter Group, 2 Enforcing Judgments and Debts §6:1327 et seq.; on applicable privileges, see *infra*, §285.)

(2) *Appearance by Representative of Organization.* If a corporation, partnership, association, trust, or other organization is directed to appear, it must designate one or more persons familiar with its property and debts to appear and be examined. If a particular individual is ordered to appear, the individual must appear but may be accompanied by others familiar with the organization's property and debts. If the order does not designate a particular individual, it must advise the organization of its duty to do so. The organization, whether or not a party, may appear through any authorized officer, director, or employee, whether or not the person is an attorney. (*C.C.P. 708.150*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.28; Rutter Group, 2 Enforcing Judgments and Debts §6:1313 et seq.; C.E.B., 2 Debt Collection Practice 2d, §8.25.)

(3) *Appointment of Referee or Temporary Judge.* The court may appoint a temporary judge. (*C.C.P. 708.140(c)*.) Alternatively, the examination proceedings may be conducted by a court appointed referee who must be a member of the State Bar of California. (*C.C.P. 708.140(a)*), (b); see *Nebel v. Sulak* (1999) 73 C.A.4th 1363, 1368, 87 C.R.2d 385 [in small claims action, even though parties may not be represented by attorneys, nonlawyer may not conduct debtor examination]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.26; Rutter Group, 2 Enforcing Judgments and Debts §§1310.1, 6:1311; C.E.B., 2 Debt Collection Practice 2d, §8.30.)

(4) *Powers of Court and Referee.* Under *C.C.P. 708.140(a)*, the referee may do the following:

(a) Issue, modify, or vacate an order under *C.C.P. 708.205* to apply property to the satisfaction of the judgment (see *infra*, §290).

(b) Make a protective order under *C.C.P. 708.200* (see *infra*, §289).

(c) Issue a warrant under *C.C.P. 708.170* for failure to appear (see *infra*, §288).

The referee also has the same power as the court to grant adjournments, preserve order, and subpoena witnesses. (*C.C.P. 708.140(a)*.) However, only the court may do the following:

(a) Punish for contempt for disobeying a referee's order. (*C.C.P. 708.140(a)(1)*.)

(b) Award attorneys' fees under *C.C.P. 708.170* (see *infra*, §288). (*C.C.P. 708.140(a)(2)*.)

(c) Determine a contested claim of exemption or a third-party claim under *C.C.P. 708.180* (see *supra*, §§280, 281). (*C.C.P. 708.140(a)(3)*.) (See *Imperial Bank v. Pim Elec. (1995) 33 C.A.4th 540, 548, 39 C.R.2d 432*, *infra*, §290 [had judgment debtors raised claim of exemption in examination proceeding, court, not referee, would have determined claim].)

(5) *Proceedings Are Public*. An examination proceeding, although often occurring informally, is a public proceeding from which the public may not be excluded. (*Nebel v. Sulak, supra, 73 C.A.4th 1369* [judgment debtor examination].)

West's Key Number Digest, Execution 399.

SUPPLEMENT: [This section is current through the latest supplement]



118 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

5. Conduct of Examination.

b. Privileges.

8 *Witkin Cal. Proc. Enf Judgm* § 285

[§ 285] Privileges.

(1) *In General.* Despite the broad scope of inquiry permitted at a judgment debtor examination, the judgment debtor generally is entitled to assert the same privileges that a trial witness may assert as a basis for refusing to answer questions or respond to requests for information. (*Hooser v. Superior Court* (2000) 84 C.A.4th 997, 1002, 101 C.R.2d 341 [in view of privacy interests of clients, attorney judgment debtor could not be compelled to disclose to judgment creditor identities of clients whose relationship with attorney had not been disclosed to third parties, or client-specific information regarding funds in client trust account].) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1328 et seq.)

(2) *Marital Privilege.* The privilege of *Ev.C.* 970 et seq. not to testify against one's spouse (see 2 *Cal. Evidence* (4th), *Witnesses*, §169 et seq.) is not applicable in examination proceedings. (*C.C.P.* 708.130(b).) This provision is intended to prevent collusion between spouses to conceal assets. (See 16 *Cal. Law Rev. Com. Reports*, p. 1128.)

(3) *Privilege Against Self-Incrimination.* The self-incrimination privilege (see 2 *Cal. Evidence* (4th), *Witnesses*, §355 et seq.) applies in examination proceedings, but the examined person must be able to demonstrate a reasonable danger of incrimination. In *Troy v. Superior Court* (1986) 186 C.A.3d 1006, 231 C.R. 108, T was convicted of conspiracy and mail fraud in a federal court, served his sentence, and was released. A number of the defrauded persons obtained money judgments in civil suits against T, and a receiver was appointed to collect funds to satisfy the judgments. The receiver obtained a court order directing T to appear at a judgment debtor examination, and T asserted his Fifth Amendment privilege to each question asked. His theory was that revelation of any assets or personal information about himself could lead to an inquiry of how and when the assets were acquired, making that information a link in the chain of evidence that prosecuting agencies might use to initiate new criminal cases against him. As evidence of his status as an easy target for further prosecution, he pointed out that he was investigated by federal postal inspectors even after his conviction, that he was still on formal probation, that he was subject to an SEC injunction, and that violation of either the probation or injunction could result in a return to prison. *Held*, he did not meet his burden of showing a "real danger" of criminal prosecution. "At present, there is no criminal prosecution pending against [T], and as far as anyone knows, there is not even an investigation which might lead to criminal prosecution. This is a civil proceeding in which a receiver, acting on behalf of a number of judgment creditors, is interested only in discovering

assets which can be used to satisfy outstanding judgments. Were we to accept [T's] argument, as the respondent court aptly put it, 'a defrauder who makes it big can always be cloaked and immune from a subsequent judgment debtor examination because there's always, quote, somebody out there who can come around and initiate a prosecution.' [T's] fear of inadvertently providing information which might cause him to be preyed upon by various prosecutorial agencies is based upon pure speculation, and not the existence of the 'real danger' which must exist for [T]roy to properly invoke the Fifth Amendment privilege." (186 C.A.3d 1013.)

In re Marriage of Sachs (2002) 95 C.A.4th 1144, 116 C.R.2d 273, presented similar issues in the context of delinquent support payments. A judgment debtor examination was brought by a former wife against her former husband, who owed her substantial sums in child and spousal support arrearages. The wife, who had judgments against the husband in three states, obtained an order for him to appear at the examination and served him with a subpoena duces tecum. At the examination, the husband invoked his privilege against self-incrimination and refused to answer any questions or to produce any documents, alleging that the evidence produced could provide evidence tending to incriminate him on contempt charges arising out of his failure to comply with the various support orders. The trial judge denied the wife's motion to compel the husband to answer and to produce documents. *Held*, reversed in part and affirmed in part.

(a) A court confronted with a civil defendant who may be exposed to criminal prosecution arising from the same facts as the civil action must weigh the parties' competing interests with a view to accommodating the interests of both parties, if possible. The judicial determination whether silence is justified must be controlled by the facts of the particular case. (95 C.A.4th 1156.)

(b) Under the husband's theory, a spouse ordered to pay support could refuse to comply with the order at the outset and then, having defied the order, invoke the Fifth Amendment in perpetuity, relying on the refusal to pay support as grounds for shielding his or her income from discovery. However, common sense dictates that a spouse not be able to take advantage of his or her own wrongdoing as the husband did. A spouse's refusal to pay support should not be rewarded with protection for his or her income. (95 C.A.4th 1158.)

(c) Nevertheless, because the privilege against self-incrimination applies to judgment debtor examinations, the wife's right to support payments must accommodate the husband's rights as well as her own. (95 C.A.4th 1160.)

(d) In resolution of these competing interests, the wife should be permitted to conduct a judgment debtor examination in conjunction with *Family C. 3552 and 3665* (examination of party's income tax returns; see 11 *Summary* (10th), *Husband and Wife*, §§174, 291). In other words, she may obtain copies of the husband's income tax returns and examine him about their contents, subject to the statutory requirements of confidentiality. (95 C.A.4th 1161.)

SUPPLEMENT: [This section is current through the latest supplement]



119 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

5. Conduct of Examination.

c. Testimony Concerning Settlement Negotiations.

8 *Witkin Cal. Proc. Enf Judgm* § 286

[§ 286] Testimony Concerning Settlement Negotiations.

In *Young v. Keele* (1987) 188 C.A.3d 1090, 233 C.R. 850, after judgment, plaintiff creditors and defendant debtor engaged in settlement negotiations and reached a tentative agreement for satisfaction of the judgment. Shortly before a debtor's examination under C.C.P. 708.110 (see supra, §278), defendant reneged on the agreement. At the examination, defendant refused to answer questions about the proposed settlement and the source of funds to be used, citing *Ev.C. 1152* (offer to settle or compromise claim is not admissible to prove offeror's liability; see 1 *Cal. Evidence* (4th), *Circumstantial Evidence*, §140) and *Ev.C. 1154* (offer to accept lesser amount than due on claim is not admissible to prove invalidity of all or part of claim; see 1 *Cal. Evidence* (4th), *Circumstantial Evidence*, §149). *Held*, order requiring defendant to answer affirmed.

(a) *Public policy*. The public policy considerations behind *Ev.C. 1152* and *1154* do not support defendant's contention. The provisions were enacted to ease trial caseloads by encouraging settlements. A debtor examination hearing, in contrast, is intended to be summary and factual according the widest scope for inquiry, the object of the proceeding being to compel the judgment debtor to give information concerning the debtor's property. "Public policy does not support a judgment debtor's attempt to be less than candid about his assets and ability to pay the judgment especially when a definite legislative policy has established a procedure for aiding judgment creditors." (188 C.A.3d 1093.)

(b) *Statutory interpretation*. The wording of *Ev.C. 1152* and *1154* does not support defendant's contention. The provisions only prohibit the *introduction of evidence* of an offer to compromise a claim for the purpose of proving *liability for that claim*. Here, plaintiffs are not seeking to offer evidence but to elicit information to help satisfy their judgment. (188 C.A.3d 1093.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1334, 6:1334.1; C.E.B., 2 *Debt Collection Practice* 2d, §8.32.)

SUPPLEMENT: [This section is current through the latest supplement]



120 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

6. Proper Court for Examination.

8 *Witkin Cal. Proc. Enf Judgm* § 287

[§ 287] Proper Court for Examination.

(1) *In General.* The proper court for the examination of a judgment debtor or a third person is the court in which the money judgment was entered, except that a person sought to be examined may not be required to attend a court outside the county of the person's residence or place of business, unless the distance from the residence or place of business to the place of examination is less than 150 miles. (*C.C.P. 708.160(a), (b).*) If the person sought to be examined does not reside or have a place of business in the county where the judgment was entered, the superior court in the county of the person's residence or place of business is a proper court for examination of that person. (*C.C.P. 708.160(c)*; see *Coleman v. Galvin* (1947) 78 *C.A.2d* 313, 317, 177 *P.2d* 606 [similar result under prior law].) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.25; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1283 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §8.16.)

(2) *Application.* If seeking an examination in a court other than that in which the judgment was entered, the judgment creditor must file an application that includes the following:

(a) An abstract of judgment. (*C.C.P. 708.160(d)(1).*)

(b) An affidavit stating the residence or place of business of the person sought to be examined. (*C.C.P. 708.160(d)(2).*)

(c) Any necessary affidavit or showing required by *C.C.P. 708.110* (judgment debtor; see *supra*, §278) or *C.C.P. 708.120* (third person; see *supra*, §279). (*C.C.P. 708.160(d)(3).*)

(d) The filing fee for a motion provided in *Govt.C. 70617(a)* (\$ 40). (*C.C.P. 708.160(d)(4).*)

SUPPLEMENT: [This section is current through the latest supplement]



121 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

7. Failure To Appear for Examination.

8 *Witkin Cal. Proc. Enf Judgm* § 288

[§ 288] Failure To Appear for Examination.

If an order requiring a person to appear for an examination is properly served and the person fails to appear, the court may issue a warrant to have the person brought to court to explain the failure, and may punish the person for contempt. Alternatively, the court may issue a warrant for the person's arrest pursuant to *C.C.P. 1993* (see 2 *Cal. Evidence (4th), Witnesses, §31*). If the failure to appear is without good cause, the judgment creditor must be awarded reasonable attorneys' fees, and any fees awarded against the judgment debtor become part of the principal amount of the judgment. (*C.C.P. 708.170(a)*; see *Eby v. Chaskin (1996) 47 C.A.4th 1045, 1049, 55 C.R.2d 517* [although *C.C.P. 708.170(a)* permits award of attorneys' fees as sanction against judgment debtor for failure to appear, it did not support imposition of that sanction against debtor's counsel].) The contempt power of the court under *C.C.P. 1209* et seq. (see *infra*, §340 et seq.) is not limited by *C.C.P. 708.170*. (Law Rev. Com. Comment to *C.C.P. 708.170*.) A referee may not punish for contempt or make an award of attorneys' fees. (*C.C.P. 708.140(a)*, *supra*, §284.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §§7.29, 7.30; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1316 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §8.48 et seq.)

Wilfully making improper service that results in an arrest for failure to appear is a misdemeanor. (*C.C.P. 708.170(b)*.)

West's Key Number Digest, Execution 395, 416.

SUPPLEMENT: [This section is current through the latest supplement]



122 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

8. Protective Orders.

8 Witkin Cal. Proc. Enf Judgm § 289

[§ 289] Protective Orders.

In an examination proceeding, the court, on its own motion or on motion of the examined person, may make such protective orders as justice may require. (*C.C.P. 708.200.*) This is comparable to the court's power under *C.C.P. 708.020* (see *supra*, §275) to make a protective order with respect to written interrogatories to the judgment debtor. (Law Rev. Com. Comment to *C.C.P. 708.200.*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.31; Rutter Group, 2 Enforcing Judgments and Debts §6:1336; C.E.B., 2 Debt Collection Practice 2d, §8.27.)

SUPPLEMENT: [This section is current through the latest supplement]



123 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

C. Examination Proceedings.

9. Order Applying Property to Satisfaction of Judgment.

8 *Witkin Cal. Proc. Enf Judgm* § 290

[§ 290] Order Applying Property to Satisfaction of Judgment.

(1) *In General.* At the conclusion of an examination proceeding involving either the judgment debtor or a third person, the court may order the judgment debtor's interest in property, or a debt owed to the judgment debtor, to be applied toward satisfaction of the money judgment if the property is not exempt from enforcement of a money judgment. The order creates a lien on the property or debt. (*C.C.P. 708.205(a)*.) (On procedure for applying property or debt to satisfaction of judgment, see Law Rev. Com. Comment to *C.C.P. 708.205* [citing cases approving various enforcement procedures].) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.32; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1339 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §§8.43, 8.44.)

(2) *Turnover Order Is Proper in Absence of Exemption Claims.* In *Imperial Bank v. Pim Elec.* (1995) 33 *C.A.4th* 540, 39 *C.R.2d* 432, a referee ordered judgment debtors, two individuals and a corporation, to turn over to a levying officer 27 specific assets identified by the debtors during their judgment debtor examinations to satisfy a debt owed to the judgment creditor, a bank, even though there had been no determination whether the assets were exempt or subject to third-party claims. *Held*, affirmed.

(a) The debtors made no claims of exemption prior to the turnover order. Although, by its terms, *C.C.P. 708.205* authorizes the referee to order the debtor to turn over property if it is "not exempt," the section must be read as empowering the referee to issue a turnover order unless the judgment debtor raises claims of exemption in the examination procedure or prior to issuance of the order. Alternatively, it could be presumed that the referee had determined the property to be "not exempt" in the absence of any contested claim raised by the judgment debtor. (33 *C.A.4th* 548.)

(b) Although a writ of execution and a notice of levy did not precede the turnover order, the debtors had ample opportunity to raise claims of exemption. The examination proceeding and the accompanying authorization of turnover orders enforceable by contempt sanctions are an alternative to proceeding by way of levy under a writ of execution and may precede a notice of levy. However, because the debtors were never provided notice that they could claim exemptions, they did not waive exemption claims and were entitled to raise them after complying with the turnover order. (33 *C.A.4th* 550.)

(c) *C.C.P. 708.120(d)* specifies the procedures for a judgment debtor to claim exemptions in a third person's examination proceeding (see supra, §280). Although *C.C.P. 708.205* does not set forth in similar detail the time or manner in which the debtor may claim exemptions during the debtor's own examination proceedings, the debtor has several opportunities to do so. *C.C.P. 703.100* (see supra, §176) provides some guidance: The determination whether property is exempt must be made under the circumstances existing at the earliest of the following times: (1) the time of levy, (2) the time of the commencement of court proceedings for the application of the property to the satisfaction of the money judgment, or (3) the time a lien is created under the *Enforcement of Judgments Law*. (33 *C.A.4th* 552.)

(d) The debtors were not denied procedural due process dictated by *C.C.P. 699.040* (see supra, §101), because that statute, dealing with turnover orders in aid of execution, is inapplicable and its requirements are not found in *C.C.P. 708.205*. The statutory framework within which the turnover order was issued safeguards the judgment debtor's procedural due process rights and allows for the assertion of exemptions following issuance of the order, where the debtor has neither raised nor waived the claim of exemption prior to issuance of the order. (33 *C.A.4th* 553.)

(e) The turnover order was not an improper remedy, even though it did not expressly direct the sale of the assets. The order provided the method by which the levying officer was to gain possession of the judgment debtors' property. Where the court orders the property turned over to the levying officer, *C.C.P. 701.510* et seq. (see supra, §144 et seq.) provide the details for disposition of the property once the officer has custody of it. (33 *C.A.4th* 555.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1349.1.)

(3) *Alternative Order Where Third Person's Adverse Claim Is Not Determined*. If a third person who is examined claims an interest in the property adverse to the judgment debtor or denies the debt and the court does not determine the adverse claim, the court may not order the property or debt to be applied toward the satisfaction of the judgment but may make an order restricting transfer or payment under *C.C.P. 708.180(c)* or (d) (see supra, §282). (*C.C.P. 708.205(b)*.) (See C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §7.33; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1349; C.E.B., 2 *Debt Collection Practice* 2d, §8.43.)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General*. See *Palacio Del Mar Homeowners Assn. v. McMahon* (2009) 174 *C.A.4th* 1386, 1390, 95 *C.R.3d* 445 [turnover order under *C.C.P. 708.205* may not direct examinee to deliver nonmonetary property directly to judgment creditor].



124 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

D. Creditor's Action.

1. Nature of Action.

8 *Witkin Cal. Proc. Enf Judgm* § 291

[§ 291] Nature of Action.

(1) *Under Former Law.* Under former C.C.P. 720, where a third person, alleged to have property of a judgment debtor or to be indebted to the debtor, claimed an interest in the property or denied the debt, the judgment creditor could maintain an action against the third person for recovery of the property or the debt. The creditor's action, or creditor's bill in equity, was an independent equitable action against the third person to subject the property or debt to payment of the claim of the judgment creditor where the statutory enforcement proceedings were, for some reason, inadequate. (See *Phillips v. Price* (1908) 153 C. 146, 150, 94 P. 617; *Bond v. Bulgheroni* (1932) 215 C. 7, 9, 8 P.2d 130; *Woodcock v. Petrol Corp.* (1941) 48 C.A.2d 652, 656, 120 P.2d 889 [court was not precluded by record in prior judgment but could make independent inquiry as to equitable nature of judgment]; *Certified Grocers of Calif., Ltd. v. San Gabriel Valley Bank* (1983) 150 C.A.3d 281, 287, 290, 197 C.R. 710 [creditor of bank depositor could maintain action against bank to extent of deposited funds, but could not pursue debtor's nonassignable claim for punitive damages].)

Although the creditor's action was an independent action, it was intended solely to reach assets to satisfy the judgment on which execution was sought. If the execution was recalled or quashed, any rights obtained by the creditor's suit failed. (*Parker v. Howe* (1931) 114 C.A. 166, 169, 299 P. 553.)

(2) *Under Enforcement of Judgments Law.* A creditor's action similar to that recognized by the former law is authorized in the Enforcement of Judgments Law. (See 16 Cal. Law Rev. Com. Reports, p. 1129 et seq.; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.34 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1392 et seq.; C.E.B., 2 Debt Collection Practice 2d, §11.1 et seq.; Cal. Civil Practice, 4 Procedure, §30:69; 14 *Pacific L. J.* 429.) However, it is anticipated that this expensive and cumbersome action will be reserved for situations in which the third person has failed to perform the duties of a garnishee under C.C.P. 701.010 et seq. (see supra, §§139, 140), where the court has not determined disputed ownership of the property or the existence of the debt under C.C.P. 708.180 (see supra, §281), or where the third person's interest in the property has not been resolved under C.C.P. 720.010 et seq. (see infra, §364 et seq.). (16 Cal. Law Rev. Com. Reports, p. 1509.)

(3) *Conditions.* If a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor, the judgment creditor may bring an action against the third person to have the interest or debt applied to the satisfaction of the money judgment. (C.C.P. 708.210.) The action may be brought without

first levying under a writ of execution, examining the third person, or resorting to any other procedure for satisfaction of the judgment. (Law Rev. Com. Comment to *C.C.P.* 708.210 [noting that former case law requiring exhaustion of legal remedies before instituting equitable creditor's suit is not continued].)

(4) *Parties*. The judgment debtor must be joined in the action but is not an indispensable party. (*C.C.P.* 708.220.) If, however, a debtor claiming an exemption (see *infra*, §294) is not named as a party to the action, the debtor may obtain an order under *C.C.P.* 389 (see 4 *Cal. Proc.* (5th), *Pleading*, §190 et seq.) to be made a party. (*C.C.P.* 708.260(a).)

(5) *Venue*. The judgment debtor's residence may not be considered in determining proper venue unless otherwise provided by contract between the debtor and the third person. (*C.C.P.* 708.220.) Thus, venue is the same as if the judgment debtor had brought the action against the third person. (Law Rev. Com. Comment to *C.C.P.* 708.220.)

(6) *No Jury Trial*. There is no right to a jury trial in a creditor's action. (*C.C.P.* 708.270.)

(7) *Lien*. Service of summons on the third person creates a lien on the interest of the debtor in the property or on the debt owed the judgment debtor. (*C.C.P.* 708.250.) This provision merely codifies the equitable lien recognized by early case law in creditor's "bill in equity" actions. It does not endow equitable liens with new recordation entitlement or immediate enforcement remedies. The lien secures an as-yet unproven claim to an equitable interest, and transfers in derogation of the claim are not recoverable against the transferor personally until the equitable claim is established by judgment. (*Wardley Dev. v. Superior Court* (1989) 213 *C.A.3d* 391, 397, 262 *C.R.* 87.)

West's Key Number Digest, Debtor and Creditor 11; Garnishment 118 et seq.

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Conditions*. See *Cabral v. Soares* (2007) 157 *C.A.4th* 1234, 1240, 69 *C.R.3d* 242 [former wife claimed that former husband and his sister induced their mother to change her will to leave husband's share of estate to sister to prevent wife's enforcement of husband's support obligations; wife could allege constructive trust to enforce husband's right to deceased mother's estate].



125 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

D. Creditor's Action.

2. Time for Bringing Action.

8 *Witkin Cal. Proc. Enf Judgm* § 292

[§ 292] Time for Bringing Action.

A creditor's action must be commenced before expiration of the later of the following:

(1) The time when the judgment debtor may bring an action against the third person concerning the property or debt. (*C.C.P. 708.230(a)(1)*.)

(2) One year after the creation of a lien on the property or debt pursuant to the Enforcement of Judgments Law if the lien is created at a time when the debtor may bring an action against the third person concerning the property or debt. (*C.C.P. 708.230(a)(2)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.35; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.Rutter Group, 2 Enforcing Judgments and Debts §6:1398 et seq.; C.E.B., 2 Debt Collection Practice 2d, §11.2.)

A creditor's action also may not be commenced after the period for enforcement of the judgment has expired. (*C.C.P. 708.230(b)*.) (On period for enforcement of judgment, see *supra*, §34.) However, a timely creditor's action may be prosecuted to judgment even though the judgment is no longer enforceable against the original debtor. (*C.C.P. 708.230(c)*.) The judgment in the creditor's action may then be enforced as provided in *C.C.P. 708.280* (see *infra*, §295). (Law Rev. Com. Comment to *C.C.P. 708.230*.)

SUPPLEMENT: [This section is current through the latest supplement]



126 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

D. Creditor's Action.

3. Order Forbidding Transfer or Payment.

8 *Witkin Cal. Proc. Enf Judgm* § 293

[§ 293] Order Forbidding Transfer or Payment.

(1) *Transfer or Payment to Debtor.* On an ex parte application, or a noticed motion if the court so directs or a court rule so requires, the judgment creditor may obtain an order restraining the third person from transferring the property to the debtor or paying the debt to the debtor. The order must remain in effect until judgment is entered in the action or until an earlier time provided in the order. The court has discretion to require an undertaking and may modify or vacate the order at any time without a hearing on such terms as are just. (*C.C.P. 708.240(a).*) (On similar order in examination proceeding, see *C.C.P. 708.180(c)*, supra, §282.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1409 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §11.4.)

(2) *Transfer or Payment to Anyone.* Under *C.C.P. 525* et seq. the judgment creditor may apply for a temporary restraining order, a preliminary injunction, or both, restraining the third person from transferring the property to any person or otherwise disposing of the property. The court may dissolve or modify the order as provided in it. (*C.C.P. 708.240(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



127 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

D. Creditor's Action.

4. Debtor's Claim of Exemption.

8 *Witkin Cal. Proc. Enf Judgm* § 294

[§ 294] Debtor's Claim of Exemption.

(1) *Filing of Claim.* A judgment debtor may claim that any or all of the property or debt subject to a creditor's action is exempt from enforcement of a money judgment. The claim must be made by application on noticed motion filed with the court and served, personally or by mail, on the judgment creditor not later than 30 days before trial. The application must be supported by an affidavit including all the material required for a claim of exemption from execution under *C.C.P. 703.520* (see *supra*, §181). A notice of opposition to the claim is not required. (*C.C.P. 708.260(a)*.) (For comparable provision on claim of exemption in examination proceeding, see *C.C.P. 708.120(d)*, *supra*, §280.) (See *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §7.40; *Rutter Group, 2 Enforcing Judgments and Debts* §§6:1415, 6:1416; *C.E.B.*, *2 Debt Collection Practice* 2d, §11.5; on exemptions, see *C.C.P. 703.010* et seq., *supra*, §168 et seq.)

(2) *Waiver of Right.* Failure to make a claim of exemption is ordinarily a waiver of the exemption. (*C.C.P. 708.260(a)*.) Waiver does not occur, however, where (a) the debtor has not been served with process adequately identifying the property or debt, and (b) the debtor lacks actual notice of the pendency of the action and the identity of the property or nature of the debt. (*C.C.P. 708.260(b)*.)

West's Key Number Digest, Debtor and Creditor 11

SUPPLEMENT: [This section is current through the latest supplement]



128 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

D. Creditor's Action.

5. Judgment.

8 *Within Cal. Proc. Enf Judgm § 295*

[§ 295] Judgment.

(1) *Court Orders.* After determining the judgment creditor's claim and the judgment debtor's claim of exemption, the court must render judgment as follows:

(a) If the debtor has an interest in the property or debt, the court must render judgment accordingly, and may apply the property or debt to the satisfaction of the creditor's judgment against the debtor. (*C.C.P. 708.280(b)*); see Law Rev. Com. Comment to *C.C.P. 708.280* [noting that property may be applied to satisfaction of judgment in manner appropriate to type of property and citing Law Rev. Com. Comment to *C.C.P. 708.205* (see *supra*, §290), discussing available enforcement procedures].)

(b) If the debtor's interest in the property is established, the court may order the third person not to transfer the property until it can be applied to the satisfaction of the judgment. (*C.C.P. 708.280(c)*.)

(c) If the third person has transferred property subject to a lien in favor of the creditor or, contrary to a court order of which the person has notice, has paid the debt to the debtor or transferred the property, the court must render judgment against the third person in the lesser of (1) the value of the debtor's interest in the property or the amount of the debt, or (2) the amount of the creditor's judgment against the debtor remaining unsatisfied. (*C.C.P. 708.280(d)*.)

(d) If the property or debt is exempt from enforcement of a money judgment, the court must so adjudge and may not make the orders referred to in *C.C.P. 708.280(b)*, (c), or (d). (*C.C.P. 708.280(a)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1415, 6:1417 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §11.6.)

(2) *Costs.* Costs incurred by or taxed against the creditor in the creditor's action may not be recovered from the debtor as the cost of enforcing the judgment. (*C.C.P. 708.290*.) (On liability of third person for costs and attorneys' fees for failure to obey levy under writ of execution, see *C.C.P. 701.020(c)*, *supra*, §139.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1406.)

SUPPLEMENT: [This section is current through the latest supplement]



129 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

E. Charging Order.

8 *Witkin Cal. Proc. Enf Judgm § 296*

[§ 296] Charging Order.

(1) *Assets of Partnership or Limited Liability Company Are Not Subject to Execution on Judgment Against Partner or Member Personally.* The assets of a partnership or limited liability company are not subject to execution on a judgment against a partner or member personally, but only where the partnership or limited liability company is itself a judgment debtor. (*C.C.P. 699.720(a)(2)*, supra, §116.) A transferable partnership or membership interest in a partnership or limited liability company is ordinarily an economic interest only, i.e., a personal property interest in profits and losses and the right to receive distributions. (See *Corp.C. 15672* [limited partnership]; *Corp.C. 16503* [general partnership]; *Corp.C. 17301(a)* [limited liability company]; C.E.B., *Advising California Partnerships* 2d, §6.86 et seq.; *14 Pacific L. J. 430*; on remedies of creditors of partners and limited liability company members generally, see *9 Summary* (10th), *Partnership*, §§28, 40, 69, 76, 86, 153, 161.)

(2) *Enforcement by Charging Order.* When a money judgment is rendered against the partner or member personally, and not against the partnership or limited liability company, the partner's or member's interest may be reached by a charging order under *Corp.C. 15673* (limited partnership); *Corp.C. 16504* (general partnership); or *Corp.C. 17302* (limited liability company). (*C.C.P. 708.310*; see C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §7.79; Rutter Group, *2 Enforcing Judgments and Debts* §6:1465 et seq.; C.E.B., *2 Debt Collection Practice* 2d, §11.7 et seq.)

Evans v. Galardi (1976) *16 C.3d* 300, *128 C.R. 25*, *546 P.2d* 313, involved an unsuccessful attempt to reach assets of limited partners. In 1969, plaintiff and defendants formed El Dorado, a limited partnership, which built a motel. The general partner was a corporation, which operated the motel, and the stock of which was initially owned by the three individuals. In 1970, plaintiff contracted to sell to defendants all of his interest in the limited partnership and all of his stock in the corporation, and defendants gave him their promissory note for the price. Defendants defaulted, and plaintiff sued and recovered judgment against them as individuals for the amount due. He then obtained a writ of execution and instructed the sheriff to levy on the motel. El Dorado filed a third-party claim, contending that plaintiff could only reach the partnership assets by a charging order. The trial judge sustained the third-party claim, and plaintiff appealed, contending that, because defendants as limited partners were each entitled to half the net profits of the business, and together owned all the equitable interest in the corporation general partner, El Dorado was not a bona fide third party. *Held*, judgment affirmed.

(a) Assets of the limited partnership were not available to satisfy the judgment against the limited partners in their individual capacities. (1) No California decision has considered the question, but authorities elsewhere and legal commentators agree that a limited partner has no interest in partnership property. By the very nature of the relationship, the limited partner is primarily an investor who contributes capital and acquires the right to share in profits, but is not liable for debts except to the extent of his or her capital contribution. (2) No contrary conclusion is compelled simply because defendants were entitled to 100% of the net partnership profits. (16 C.3d 309.) And no showing was made that El Dorado was not a bona fide limited partnership or that it was used by defendants to perpetrate a fraud. (16 C.3d 310.)

(b) A charging order was the proper remedy. Plaintiff's argument, that an exception should be implied where the judgment debtors own the entire proprietary interest in the business, is not persuasive; the statutory remedy of charging order has replaced levies of execution in both general and limited partnership cases. (16 C.3d 310.)

(3) *Procedure*. A judgment creditor may apply for an order charging the partnership or membership interest of the judgment debtor with payment of the unsatisfied amount of the judgment debt. The court may appoint a receiver, and make all other orders, directions, and inquiries required by the circumstances. (See *Corp.C. 15522(1)* and *15673* [limited partnership]; *Corp.C. 16504(a)* [general partnership]; *Corp.C. 17302(a)* [limited liability company]; *Ribero v. Callaway* (1948) 87 C.A.2d 135, 138, 196 P.2d 109 [application should be by noticed motion].)

Service of a notice of motion for the charging order on the judgment debtor and other partners or members creates a lien on the debtor's interest. The lien continues under the terms of the order if the order is issued, and is extinguished if the order is denied. (*C.C.P. 708.320*; see *Fansler v. Fansler* (1988) 206 C.A.3d 81, 86, 253 C.R. 186 [motion to charge partnership interest invokes equitable jurisdiction; court is not limited to four corners of prior judgment, but must consider whether circumstances surrounding judgment render inequitable its enforcement by lien].)

The lien on a general partnership or limited liability company interest may be foreclosed at any time. A purchaser at the foreclosure sale has the rights of a transferee. (*Corp.C. 16504(b)* [general partnership]; *Corp.C. 17302(b)* [limited liability company].)

The judgment debtor is entitled to the benefit of exemption laws applicable to the partnership or membership interest. (*Corp.C. 15522(4)* and *15673* [limited partnership]; *Corp.C. 16504(e)* [general partnership]; *Corp.C. 17302(d)* [limited liability company].)

SUPPLEMENT: [This section is current through the latest supplement]



130 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

F. Lien in Pending Action or Proceeding.

1. Nature and Scope of Remedy.

8 *Witkin Cal. Proc. Enf Judgm* § 297

[§ 297] Nature and Scope of Remedy.

(1) *Development of Law.* Under former law, the judge of the court in which an action or special proceeding was pending had discretion to allow a judgment creditor of one of the parties to intervene, and to grant the creditor a lien on the cause of action or any judgment subsequently procured by the debtor. However, an assignee by operation of law of a party in a personal injury action could not acquire an interest in general damages acquired by that party. (Former C.C.P. 688.1; see *Washington v. Washington* (1959) 170 C.A.2d 652, 654, 339 P.2d 169 [action was pending for purposes of lien after reversal on appeal and prior to entry of new judgment]; *Atiya v. Di Bartolo* (1976) 63 C.A.3d 121, 126, 133 C.R. 611 [refusal to order lien on ground that to do so would impede settlement negotiations was abuse of discretion]; *Abatti v. Eldridge* (1980) 103 C.A.3d 484, 486, 488, 489, 163 C.R. 82 ["cause of action" was broadly interpreted to mean "the obligation sought to be enforced"; creditor of defendant sued for specific enforcement of real property option agreement could acquire lien on any money defendant might recover from plaintiff].) The judgment creditor made a motion on written notice to all parties. If a lien was granted, a compromise, settlement, or satisfaction could not be entered unless the lien was satisfied or discharged or the creditor consented. (Former C.C.P. 688.1.) Although a judgment creditor could be permitted to intervene, this was seldom necessary. As a lien claimant, the creditor ordinarily had no reason to participate in the main action, and would be satisfied by the award of a lien on the prospective judgment. (See *McClearen v. Superior Court* (1955) 45 C.2d 852, 856, 291 P.2d 449.) If a lien was granted, the judgment debtor could appeal from the order (see *Hersch v. Boston Ins. Co.* (1959) 175 C.A.2d 751, 753, 346 P.2d 796); if a lien was denied, the order was appealable by the creditor as a final judgment (*McClearen v. Superior Court*, *supra*, 45 C.2d 856).

The Enforcement of Judgments Law authorizes a comparable remedy (see C.C.P. 708.410 et seq.), which continues existing procedures "with some significant modifications." (16 Cal. Law Rev. Com. Reports, p. 1134.)

(2) *Cause of Action As Subject to Enforcement of Judgment.* A cause of action for money or property that is the subject of a pending action or special proceeding is subject to enforcement of a money judgment (C.C.P. 695.030(b)(2), *supra*, §55), although the cause of action is *not* subject to execution (C.C.P. 699.720(a), *supra*, §116). (On levy on property that is subject of pending action or proceeding, see C.C.P. 700.180, *supra*, §136.)

(3) *Availability and Scope of Lien.* If a judgment creditor has a money judgment against a judgment debtor who is a

party to a pending action or special proceeding, the creditor may acquire a lien to the extent necessary to satisfy the judgment on (a) any cause of action of the debtor for money or property that is the subject of the action or proceeding, and (b) the rights of the debtor to money or property under any judgment subsequently procured in the action or proceeding. (*C.C.P. 708.410(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.45 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1476 et seq.; C.E.B., 2 Debt Collection Practice 2d, §11.12 et seq.; *14 Pacific L. J. 430*.) (On enforcement of lien, see *infra*, §304; on availability of lien in pending eminent domain proceeding, see Law Rev. Com. Comment to *C.C.P. 708.730*, *infra*, §317.)

The lien is ineffective after the time for enforcement of the judgment has expired. (*C.C.P. 683.020*, *supra*, §34.)

(4) *When Action Is Pending*. An action or special proceeding is pending until the time for appeal has expired or, if an appeal is filed, until the appeal has been finally determined. (*C.C.P. 708.410(d)*.)

(5) *Intervention*. Once the creditor has obtained a lien, the court may permit the creditor to intervene in the action or proceeding pursuant to *C.C.P. 387* (see 4 *Cal. Proc. (5th), Pleading*, §212 et seq.). (*C.C.P. 708.430(a)*); see *In re Marriage of Kerr (1986) 185 C.A.3d 130, 134, 229 C.R. 610* [abuse of discretion to deny intervention where intervention would not retard principal action, require hearing of further evidence, delay trial, or change position of original parties].)

A creditor who has not intervened is nevertheless deemed to be a party to the action or proceeding for purposes of opposing a claim of exemption under *C.C.P. 708.450* (see *infra*, §302), or seeking an order applying the property to satisfaction of the creditor's judgment under *C.C.P. 708.470* (see *infra*, §303). (*C.C.P. 708.430(b)*.)

(6) *Indorsement on Judgment and Abstract*. If a lien is created, the court clerk must indorse a statement of the existence of the lien and the time of its creation on the judgment recovered in the action or proceeding. Any abstract issued on the judgment must include a statement of the lien in favor of the creditor. (*C.C.P. 708.460*.)

(7) *Purpose of Lien*. The purpose of the lien "is to establish and preserve the judgment creditor's priority until the judgment is final and nonappealable." (Law Rev. Com. Comment to *C.C.P. 708.410*; on priorities, see *infra*, §§298, 299.)

West's Key Number Digest, Trusts 151(1), 152

SUPPLEMENT: [This section is current through the latest supplement]



131 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

F. Lien in Pending Action or Proceeding.

2. Priorities.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 298

[§ 298] In General.

(1) *Determination at Time Lien Created.* Former C.C.P. 688.1 was silent on priorities and case law was divided. The equitable rule of priority to the person who first applied for the lien was sometimes invoked. (See *Dell Connate Masonry Co. v. Lewis* (1971) 16 C.A.3d 678, 680, 681, 94 C.R. 439 [plaintiff's creditor who moved for order for lien in pending action took priority over plaintiff's lawyer to whom plaintiff had granted lien to secure payment of attorneys' fees after plaintiff had received notice of creditor's motion].) However, the prevailing view seemed to be that priority was determined at the time the lien was granted. (See *Takehara v. H.C. Muddox Co.* (1972) 8 C.3d 168, 172, 104 C.R. 345, 501 P.2d 913 [priority is determined at time of creation of lien; rejecting contention that all liens attached simultaneously at time judgment was rendered]; *Nicoletti v. Lizzoli* (1981) 124 C.A.3d 361, 366, 177 C.R. 685 [contractual liens of medical lienors created before lien in pending action had priority].)

Under the Enforcement of Judgments Law, a lien is created when the creditor's notice of lien is filed. (C.C.P. 708.410(b), *infra*, §300.) Priority is determined at that time. (See 16 Cal. Law Rev. Com. Reports, p. 1134; *Cetenko v. United Calif. Bank* (1982) 30 C.3d 528, 534, 179 C.R. 902, 638 P.2d 1299, 1 Cal. Proc. (5th), Attorneys, §173 [priority of contractual lien for attorneys' fees created years before lien in pending action was granted]; *Cappa v. F & K Rock & Sand* (1988) 203 C.A.3d 172, 175, 249 C.R. 718 [following *Cetenko*, and refusing to create exception for judgments based on child support arrearages]; *Wujcik v. Wujcik* (1994) 21 C.A.4th 1790, 1794, 27 C.R.2d 102 [attorney's contractual lien on judgment in personal injury action took precedence over judgment lien of plaintiff's former spouse for child support, where it predated divorce judgment]; *Pangborn Plumbing Corp. v. Carruthers & Skiffington* (2002) 97 C.A.4th 1039, 1049, 119 C.R.2d 416, 1 Cal. Proc. (5th), Attorneys, §172 [law firm's contractual lien created before creditor's judgment lien had priority; public policy and equitable considerations mandated this result because it was firm's labor, skill, and materials that resulted in recovery; citing *Cetenko*]; Rutter Group, 2 Enforcing Judgments and Debts §6:1488 et seq.; C.E.B., 2 Debt Collection Practice 2d, §11.13; 34 A.L.R.4th 665 [priority between attorney's lien for fees against judgment and lien of creditor against same judgment].)

(2) *No Special Priority for Tax Liens.* *Roseburg Loggers v. U.S. Plywood-Champion Papers* (1975) 14 C.3d 742, 748, 122 C.R. 567, 537 P.2d 399, decided under former C.C.P. 688.1, held that an unemployment insurance tax lien had no special priority over an ordinary lien in a pending action.

Under *C.C.P. 688.020* (see *supra*, §51), miscellaneous creditors' remedies, including a lien in a pending action, are available to enforce state tax liability, but no special priority is provided by the Enforcement of Judgments Law.

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Determination at Time Lien Created.* See *Waltrip v. Kimberlin* (2008) 164 C.A.4th 517, 530, 79 C.R.3d 460

[judgment creditor's judgment liens on pending action, filed in debtor's commercial tort litigation, did not have priority over lien of debtor's attorney in tort litigation, which was created when debtor entered into fee agreement with attorney].



132 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

F. Lien in Pending Action or Proceeding.

2. Priorities.

b. Equitable Offset.

8 *Witkin Cal. Proc. Enf Judgm* § 299

[§ 299] Equitable Offset.

In *Salaman v. Bolt* (1977) 74 C.A.3d 907, 141 C.R. 841, plaintiff lessors leased property to defendant B, lessee, and later brought unlawful detainer. The trial judge awarded B attorneys' fees and costs. B then confessed to judgment in favor of F, his attorney, for services rendered, and F made a motion for a lien on B's cause of action for fees. The motion was denied, but the Court of Appeal reversed on appeal of that order, holding that F had a judgment lien on B's judgment. Plaintiffs meanwhile obtained a judgment against B on an unrelated cause of action, and moved to offset their judgment against B's judgment for attorneys' fees. The trial judge gave priority to F's judgment lien, and denied plaintiffs' claim of offset. *Held*, reversed.

(a) The right of equitable offset, which is a means by which a debtor may satisfy in whole or in part a judgment or claim held against the debtor out of a judgment or claim that the debtor has subsequently acquired against the judgment creditor, exists independently of statute and rests on the inherent power of the court to do justice to the parties before it. Under C.C. 2897, lien claimants have priority according to the time of the orders creating their liens, "other things being equal." The cases indicate, however, that as between a *statutory* lien and a right of equitable offset, things are not equal, and the offset is given an equitable preference. (74 C.A.3d 918, citing *Harrison v. Adams* (1942) 20 C.2d 646, 128 P.2d 9, *infra*, §513.)

(b) The language of former C.C.P. 688.1 is consistent with this approach, and plaintiffs were therefore entitled to offset their judgment against B's judgment, with F's lien reaching only the excess remaining, if any. (74 C.A.3d 919.)

In *Brienza v. Tepper* (1995) 35 C.A.4th 1839, 42 C.R.2d 690, the court held that an attorney's contractual lien was entitled to priority over a subsequently acquired offset through assignment from a third-party judgment creditor. The court distinguished *Salaman* on two grounds:

(a) An attorney's contractual lien, or "charging" lien, unlike a statutory lien, is equitable in nature. Thus, the equities of the lien and the offset had to be balanced, and the equities clearly supported giving priority to the lien. (35 C.A.4th 1847.)

(b) The assignment of the third-party judgment was not a true equitable offset between the parties as existed in *Salaman*, where the offset represented a separate, though unrelated, claim between the parties to the litigation. Although the judgment debtor was entitled to obtain the assigned judgment as an offset, it could not be accorded the same weight in equity as a true equitable offset between the parties where judgment is obtained by filing suit, expending time, and incurring fees and costs. (35 C.A.4th 1847.)

SUPPLEMENT: [This section is current through the latest supplement]



133 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

F. Lien in Pending Action or Proceeding.

3. Notice.

8 *Witkin Cal. Proc. Enf Judgm* § 300

[§ 300] Notice.

(1) *Filing and Service.* To obtain a lien, the judgment creditor must file a notice of lien and an abstract or certified copy of the money judgment in the pending action or special proceeding. (*C.C.P. 708.410(b)*); see Legislative Com. Comment (Assembly) to *C.C.P. 708.410* [noting that former requirement of prior court hearing for creation of lien is not continued].) At the time of filing or "promptly thereafter," the creditor must serve a copy of the notice of lien, and a statement of the date when the notice of lien was filed in the action or proceeding on all parties who have appeared in the action or proceeding. Service may be made personally or by mail. Failure to serve the other parties does not affect the lien, but the rights of a party are not affected by the lien until the party has notice of the lien. (*C.C.P. 708.410(c)*.) (See *In re Marriage of Kerr (1986) 185 C.A.3d 130, 133, 229 C.R. 610* [creditor substantially complied with *C.C.P. 708.410(b)*, (c) by filing noticed motion to intervene in dissolution proceeding and attaching certified copy of probate order imposing lien on conservatorship assets that would be subject to dissolution decree]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1483 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §11.13 et seq.)

(2) *Contents.* The notice of lien must contain all of the following:

(a) A statement that the lien has been created under *C.C.P. 708.410* et seq., and the title of the court and the cause and number of the pending action or proceeding. (*C.C.P. 708.420(a)*.)

(b) The names and addresses of the judgment creditor (*C.C.P. 708.420(b)*) and the judgment debtor (*C.C.P. 708.420(c)*).

(c) The title of the court where the creditor's money judgment is entered, the cause and number of the action, the date of entry, and the date and location of any subsequent renewals. (*C.C.P. 708.420(d)*.)

(d) The amount required to satisfy the creditor's judgment at the time the notice of lien is filed. (*C.C.P. 708.420(e)*.)

(e) A statement that the lien attaches to any cause of action of the judgment debtor that is the subject of the action or proceeding and to the debtor's rights to money or property under any judgment subsequently procured in the action or proceeding. (*C.C.P. 708.420(f)*.)

(f) A statement that no compromise, dismissal, settlement, or satisfaction of the pending action or proceeding or any of the debtor's rights under any judgment in the action or proceeding may be entered into, and that the debtor may not enforce his right to money or property under the judgment, unless (1) the court in which the action or proceeding is pending has given prior approval, (2) the creditor has consented in writing or has released the lien, or (3) the creditor's money judgment has been satisfied. (*C.C.P. 708.420(g)*.) (On restrictions on compromise, dismissal, settlement, or satisfaction, see *infra*, §301.)

(g) A statement that the debtor may claim an exemption for any or all of the money or property within 30 days after the debtor has notice of the creation of the lien, and a statement that the exemption is waived if not timely claimed. (*C.C.P. 708.420(h)*.) (On debtor's claim of exemption, see *infra*, §302.) (See *Casa Eva I Homeowners Assn. v. Ani Const. & Tile (2005) 134 C.A.4th 771, 779, 36 C.R.3d 401* [form entitled "notice of judgment lien on personal property" did not warn that judgment creditor was invoking *C.C.P. 708.410* et seq. or specify procedures for settling with judgment debtor and consequences of failing to do so; form failed to comply with mandatory requirements of *C.C.P. 708.420* and was ineffective to create lien].)

(3) *Form*. The Judicial Council has approved an optional form for the notice of lien. (See Judicial Council Form No. EJ-185 [Notice of Lien].)

West's Key Number Digest, Judgment 754, 776

SUPPLEMENT: [This section is current through the latest supplement]



134 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

F. Lien in Pending Action or Proceeding.

4. Restrictions on Compromise, Dismissal, Settlement, Satisfaction, or Enforcement.

8 *Within Cal. Proc. Enf Judgm § 301*

[§ 301] Restrictions on Compromise, Dismissal, Settlement, Satisfaction, or Enforcement.

(1) *In General.* No compromise, dismissal, settlement, or satisfaction of the action or proceeding may be entered into by or on behalf of the debtor, and no judgment recovered by the debtor may be enforced, unless (a) the creditor's money judgment is satisfied, (b) the lien is released, (c) the judgment creditor consents in writing, or (d) a court order so authorizes. This provision does not apply, however, to a party who has no notice of the lien as required under *C.C.P. 708.410(c)* (see *supra*, §300). (*C.C.P. 708.440(a)*); see *Epstein v. Abrams (1997) 57 C.A.4th 1159, 1166, 67 C.R.2d 555* [*C.C.P. 708.440* is not applicable to contractually created attorneys' liens]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1499 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §11.17.)

(2) *Procedure for Court Authorization.* The debtor must apply for an authorization order on noticed motion, and notice must be served on the creditor, personally or by mail. In its discretion and after a hearing, the court may make an order including such terms and conditions as the court deems necessary. (*C.C.P. 708.440(b)*); see *Oldham v. California Capital Fund (2003) 109 C.A.4th 421, 432, 134 C.R.2d 744* [in approving settlement under *C.C.P. 708.440*, trial court must consider whether settlement is structured to evade judgment creditor's lien; approval was abuse of discretion where judge lacked sufficient information regarding nature and effect of settlement provisions].) Permitting compromise, dismissal, settlement, or satisfaction pursuant to court order prevents the judgment creditor from forcing the debtor to proceed with the action where the court concludes that settlement is in the best interests of the parties. (See Law Rev. Com. Comment to *C.C.P. 708.440*.)

SUPPLEMENT: [This section is current through the latest supplement]



135 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

F. Lien in Pending Action or Proceeding.

5. Debtor's Claim of Exemption.

8 *Within Cal. Proc. Enf Judgm § 302*

[§ 302] Debtor's Claim of Exemption.

(1) *Right To Claim.* If a lien is created under *C.C.P. 708.410* et seq., the judgment debtor may claim that all or a portion of the money or property that the debtor may recover in the action or special proceeding is exempt from the enforcement of a money judgment. (*C.C.P. 708.450(a)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1494 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §11.18; on exemptions, see *C.C.P. 703.010* et seq., supra, §168 et seq.)

(2) *Application and Notice.* The claim must be made by application on a noticed motion filed and served on the judgment creditor, personally or by mail, not later than 30 days after the debtor has notice of the lien. The application must be supported by an affidavit including all the material required for a claim of exemption from execution under *C.C.P. 703.520(b)* (see supra, §181). Notice of opposition to the claim of exemption is not required. (*C.C.P. 708.450(a)*.) For purposes of the debtor's claim, the creditor is deemed to be a party to the action or proceeding. (*C.C.P. 708.430(b)*, supra, §297.)

(3) *Determination.* The court may determine the claim prior to the entry of the judgment in the action or proceeding or may consolidate the exemption hearing with the hearing on a motion to enforce the lien under *C.C.P. 708.470* (see infra, §303). (*C.C.P. 708.450(b)*.)

(4) *Waiver of Right.* The debtor's failure to make a claim of exemption constitutes a waiver of the exemption. (*C.C.P. 708.450(a)*.)

(5) *Termination of Lien.* If the debtor establishes that his or her right to money or property under the judgment in the pending action or proceeding is all or partially exempt, the court must order termination of the lien to the extent of the exemption. (*C.C.P. 708.450(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]



136 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

F. Lien in Pending Action or Proceeding.

6. Enforcement of Lien.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 303

[§ 303] In General.

(1) *Requirement of Court Order or Creditor's Consent.* Generally, unless the judgment creditor's money judgment is satisfied or the lien is released, a judgment recovered in the action or proceeding in the judgment debtor's favor may not be enforced without a court order or the creditor's written consent. (See *C.C.P. 708.440*, supra, §301.)

(2) *Order for Satisfaction of Lien.* If the judgment debtor is entitled to money or property under the judgment in the action or special proceeding and a lien exists, the court may order that the debtor's rights under the judgment be applied to satisfy the lien. Any party to the action or proceeding may apply for the order on a noticed motion, and notice must be served on all other parties, personally or by mail. (*C.C.P. 708.470(a)*.) For purposes of this provision, the creditor is deemed to be a party to the action. (*C.C.P. 708.430(b)*, supra, §297.) (See *Brown v. Superior Court (2004) 116 C.A.4th 320, 335, 9 C.R.3d 912, 1 Cal. Proc. (5th), Attorneys*, §171 [in exercising discretion whether to grant judgment creditor's *C.C.P. 708.470(a)* application, trial court having notice of competing contractual lien claim by judgment debtor's attorney was required to take potential priority of that lien into account, even though attorney could not intervene and was required to establish his claim in separate action]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1502 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §11.19.)

(3) *Order Forbidding Transfer of Property.* If the judgment determines that the debtor has an interest in the property, the court may order the party having custody or control not to transfer the property until it can be applied to satisfaction of the lien. (*C.C.P. 708.470(b)*.)

(4) *Judgment Against Party Improperly Transferring Property.* If the court determines that a party (other than the debtor) with notice of the lien has transferred property subject to the lien or paid an amount to the debtor that was subject to the lien, the court must render judgment against the party equal to the lesser of (a) the value of the debtor's interest in the property or the amount paid, or (b) the amount of the creditor's lien. (*C.C.P. 708.470(c)*.) (See *In re Marriage of Katz (1991) 234 C.A.3d 1711, 1719, 1720, 286 C.R. 495*, citing the text [wife's transfer to husband of more than one-half of community property interest during marital dissolution proceeding gave rise to liability under *C.C.P. 708.470(c)*]; *Pangborn Plumbing Corp. v. Carruthers & Skiffington (2002) 97 C.A.4th 1039, 1055, 119 C.R.2d 416, 1 Cal. Proc. (4th), Attorneys*, §172 [*C.C.P. 708.470(c)* only authorizes judgment against party that, despite notice of

judgment creditor's lien, transfers funds to judgment debtor; thus, statute did not empower trial judge to order settlement proceeds accepted and held by debtor's law firm, with contractual lien for fees, to be applied to judgment lien]; *Casa Eva I Homeowners Assn. v. Ani Const. & Tile* (2005) 134 C.A.4th 771, 779, 36 C.R.3d 401 [C.C.P. 708.470(c) was not applicable to settlement that involved transfer of causes of action to judgment debtor's insurers, rather than transfer of property or money to debtor]; Rutter Group, 2 Enforcing Judgments and Debts §6:1502 et seq.; C.E.B., 2 Debt Collection Practice 2d, §11.19.)

SUPPLEMENT: [This section is current through the latest supplement]



137 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

F. Lien in Pending Action or Proceeding.

6. Enforcement of Lien.

b. After Final Judgment.

8 Witkin Cal. Proc. Enf Judgm § 304

[§ 304] After Final Judgment.

A lien in a pending action or special proceeding may be enforced by any applicable procedure after judgment in the action or proceeding is entered and the time for appeal has expired or, if an appeal is filed, after the appeal is finally determined. (*C.C.P. 708.480*; see Rutter Group, 2 Enforcing Judgments and Debts §6:1507; C.E.B., 2 Debt Collection Practice 2d, §11.20.)

The Legislative Committee Comment (Assembly) to *C.C.P. 708.480* lists the following available remedies:

- (1) Levy on a final money judgment under a writ of execution. (See *C.C.P. 700.190*, supra, §137.)
- (2) Sale or collection of property levied on. (See *C.C.P. 701.510*, supra §135, and *C.C.P. 701.520*, supra, §145.)
- (3) Appointment of a receiver to collect the judgment. (See *C.C.P. 708.620*, infra, §310.)
- (4) Application for an assignment order. (See *C.C.P. 708.510*, infra, §305.)
- (5) Collection from a public entity. (See *C.C.P. 708.710* et seq., infra, §312 et seq.)

In certain circumstances, property subject to a pending action or proceeding may be levied on prior to final judgment in the action. (See *C.C.P. 700.180*, supra, §136.)

SUPPLEMENT: [This section is current through the latest supplement]



138 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

G. Assignment Order.

1. Nature and Procedure.

8 *Witkin Cal. Proc. Enf Judgm* § 305

[§ 305] Nature and Procedure.

(1) *In General.* A judgment creditor may apply to the court for an order requiring the judgment debtor to assign to the creditor or a receiver appointed under *C.C.P. 708.610* et seq. (see *infra*, §310) all or part of the debtor's right to a payment due or to become due, whether or not the right is conditioned on future developments. (*C.C.P. 708.510(a)*); see *C.J.E.R.*, Judges Benchbook: Civil Proceedings--After Trial §7.56 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1422 et seq.; *C.E.B.*, 2 Debt Collection Practice 2d, §11.21 et seq.; *14 Pacific L. J. 431.*)

(2) *Nature of Remedy.* This remedy permits reaching certain types of property that cannot be reached by levy under a writ of execution. It also provides an optional method for reaching assignable types of property that are subject to levy, such as accounts receivable, general intangibles, judgments, and instruments. (See Legislative Com. Comment (Assembly) to *C.C.P. 708.510.*)

(3) *Application and Notice.* The creditor must apply to the court on a noticed motion and serve notice on the judgment debtor, either personally or by mail. (*C.C.P. 708.510(a)*, (b).)

(4) *Assignable Property.* The assignment order procedure is applicable to, but not limited to, the following types of payments:

(a) Federal wages not subject to withholding under an earnings withholding order. (*C.C.P. 708.510(a)(1).*)

(b) Rents, commissions, and royalties. (*C.C.P. 708.510(a)(2)*, (a)(3), (a)(4).)

(c) Payments due from a patent or copyright. (*C.C.P. 708.510(a)(5).*)

(d) The loan value of an insurance policy. (*C.C.P. 708.510(a)(6).*) Loan value is not subject to execution (see *C.C.P. 699.720(a)(6)*, *supra*, §116) and is subject to an exemption from enforcement of a money judgment (see *C.C.P. 704.100(b)*, *supra*, §199).

(5) *Factors Considered.* Subject to limitations on recovery under an assignment order (see *infra*, §309), the court may consider all relevant factors in determining whether an assignment is appropriate. These include (a) the reasonable

requirements of a debtor who is a natural person and of persons supported by the debtor, (b) payments the debtor is required to make or that are deducted to satisfy other judgments and wage assignments, including earnings assignment orders for support, (c) the remaining amount due on the money judgment, and (d) the amount received to satisfy the right to payment that may be assigned. (*C.C.P. 708.510(c)*.)

(6) *Restraining Order*. When an application for an assignment order is pending, the creditor may apply for an order restraining the debtor from assigning or otherwise disposing of the right to payment that is sought to be assigned. (*C.C.P. 708.520*.) The following procedure applies:

(a) The application may be made *ex parte* unless the court or a court rule requires a noticed motion. (*C.C.P. 708.520(a)*.)

(b) The court may issue the order on a showing of need. It may, in its discretion, require the creditor to provide an undertaking. (*C.C.P. 708.520(b)*.)

(c) The order must be personally served on the debtor and must contain a notice that failure to comply may subject the debtor to being held in contempt. (*C.C.P. 708.520(d)*.)

(d) The court may modify or vacate the order at any time with or without a hearing on such terms as are just. (*C.C.P. 708.520(c)*.)

West's Key Number Digest, Execution 402(1), 405

SUPPLEMENT: [This section is current through the latest supplement]



139 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

G. Assignment Order.

2. Effect of Assignment.

8 *Witkin Cal. Proc. Enf Judgm § 306*

[§ 306] Effect of Assignment.

(1) *Priority of Assignment.* The priority of an assignment ordered by the court is generally governed by C.C. 955.1, giving priority between bona fide assignees for value to the assignee first giving written notice to the obligor (see 1 *Summary* (10th), *Contracts*, §738). For purposes of priority, the assignee under a court-ordered assignment is deemed to be a bona fide assignee for value under the terms of C.C. 955.1. (*C.C.P. 708.530(a)*.) However, an assignment of the right to future rent is recordable as an instrument affecting real property, the priority of which is governed by C.C. 1214, generally protecting a bona fide purchaser only if he or she records first (see 12 *Summary* (10th), *Real Property*, §327). (*C.C.P. 708.530(b)*.) (See C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §7.61; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1451 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §11.27.)

(2) *Rights of Obligor.* The rights of an obligor are not affected by an assignment order until the obligor receives notice of the order. An "obligor" is a person obligated to make payments to the judgment debtor or who may become obligated to make payments depending on future developments. (*C.C.P. 708.540*.) These provisions are similar to those governing the liability of a third person under levy (see *C.C.P. 701.020*, supra, §139) and the duties of an account debtor (see *C.C.P. 701.050*, supra, §142). (Law. Rev. Com. Comment to *C.C.P. 708.540*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1449, 6:1455; C.E.B., 2 *Debt Collection Practice* 2d, §11.28.)

SUPPLEMENT: [This section is current through the latest supplement]



140 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

G. Assignment Order.

3. Debtor's Claim of Exemption.

8 Witkin Cal. Proc. Enf Judgm § 307

[§ 307] Debtor's Claim of Exemption.

A judgment debtor may claim that all or part of a right to payment is exempt from enforcement of a money judgment by filing an application with the court on a noticed motion and personally serving notice of the motion on the judgment creditor not less than 3 days before the date set for the hearing on the creditor's application for an assignment order. The application must be supported by an affidavit including all the material required for a claim of exemption from execution under *C.C.P. 703.520(b)* (see *supra*, §181). (*C.C.P. 708.550(a), (b)*); on exemptions, see *C.C.P. 703.010 et seq.*, *supra*, §168 *et seq.*) The court must determine the claim of exemption at the hearing on issuance of the assignment order. (*C.C.P. 708.550(c)*.) Failure to make the claim constitutes a waiver of the exemption. (*C.C.P. 708.550(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.51; Rutter Group, 2 Enforcing Judgments and Debts §6:1445 *et seq.*; C.E.B., 2 Debt Collection Practice 2d, §11.31; on effect of exemption in limiting recovery under assignment order, see *infra*, §309.)

SUPPLEMENT: [This section is current through the latest supplement]



141 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

G. Assignment Order.

4. Modifying or Setting Aside Order.

8 Within Cal. Proc. Enf Judgm § 308

[§ 308] Modifying or Setting Aside Order.

Either the judgment creditor or the judgment debtor may apply for an order to modify or set aside an assignment order, on a noticed motion served on the other party, personally or by mail. (*C.C.P. 708.560(a)*.) On a showing of a material change in circumstances since the time of the previous hearing on the assignment order, the court must modify or set aside the assignment order and may order any necessary reassignment. The order must state whether and to what extent it applies to payments already made. (*C.C.P. 708.560(b)*.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:1457; C.E.B., 2 Debt Collection Practice 2d, §11.32.)

SUPPLEMENT: [This section is current through the latest supplement]



142 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

G. Assignment Order.

5. Limitations on Recovery.

8 *Within Cal. Proc. Enf Judgm § 309*

[§ 309] Limitations on Recovery.

(1) *Assignment Otherwise Prohibited.* The court may not order an assignment that is otherwise prohibited by law. (*C.C.P. 708.510(a)*.) The assignment of federal employee retirement benefits is an example. (Legislative Com. Comment (Assembly) to *C.C.P. 708.510*.)

(2) *Amount Needed for Satisfaction.* A right to payment may be assigned only to the extent necessary to satisfy the money judgment. (*C.C.P. 708.510(d)*.)

(3) *Earnings and Retirement Benefits.* An assignment of earnings or periodic payments of pension or retirement benefits may not exceed the amount that may be withheld from a like amount of earnings under the Wage Garnishment Law (*C.C.P. 706.010* et seq., supra, §241 et seq.). (*C.C.P. 708.510(e)*.)

(4) *Effect of Exemption.* Where a portion of the assigned payment is exempt from the enforcement of a money judgment by statute, the amount of the payment assigned may not exceed the amount by which the payment exceeds the exempt amount. (*C.C.P. 708.510(f)*.) (On procedure for claiming exemption, see supra, §307.) (On limitations on recovery generally, see Rutter Group, 2 *Enforcing Judgments and Debts* §6:1436 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §11.22.)

SUPPLEMENT: [This section is current through the latest supplement]



143 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

H. Appointment of Receiver.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 310

[§ 310] In General.

(1) *Necessary Showing for Appointment.* The court may appoint a receiver to enforce a judgment where the judgment creditor shows that, considering the interests of both the creditor and the judgment debtor, the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment. (*C.C.P.* 708.620.) (See *Conaway v. Conaway* (1963) 218 *C.A.2d* 427, 428, 32 *C.R.* 890 [receiver should not be appointed where fund sought is exempt from execution and there is consequently nothing to receive; decided under prior law]; *C.J.E.R.*, Judges Benchbook: Civil Proceedings--After Trial §7.65; *C.E.B.*, 2 *Civ. Proc. Before Trial* 3d, Chap. 41; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:1458 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §§11.33, 11.34; 14 *Pacific L. J.* 432; 10 *Am.Jur. P.P. Forms* (2005 ed.), *Executions* §285 et seq.)

(2) *General Receivership Law Governs.* The appointment, qualifications, powers, rights, and duties of the receiver are governed by *C.C.P.* 564 et seq. (see 6 *Cal. Proc.* (5th), *Provisional Remedies*, §419 et seq.) and *C.C.P.* 571 (see 2 *Cal. Proc.* (5th), *Courts*, §343). (*C.C.P.* 708.610.)

Under the general receivership law, a receiver may be appointed after judgment to carry the judgment into effect (*C.C.P.* 564(b)(3)), to dispose of property according to the judgment, to preserve property during the pendency of an appeal, or to collect and disburse rents pursuant to the Enforcement of Judgments Law or during the redemption period following a judicial foreclosure sale of real property (*C.C.P.* 564(b)(4)). (On preservation of property pending appeal, see *Sibert v. Shaver* (1952) 113 *C.A.2d* 19, 21, 247 *P.2d* 609 [partnership accounting].)

(3) *Specific Circumstances Warranting Appointment.* The appointment of a receiver may be appropriate in the following circumstances:

(a) Where a writ of execution would not reach certain property and other remedies appear inadequate. (Legislative Com. Comment (Assembly) to *C.C.P.* 708.620.)

(b) In examination proceedings under *C.C.P.* 708.110 et seq. (see *supra*, §278 et seq.). (Legislative Com. Comment (Assembly) to *C.C.P.* 708.620; see *Tucker v. Fontes* (1945) 70 *C.A.2d* 768, 771, 161 *P.2d* 697 [after hearing evidence in proceedings, court is authorized to appoint receiver].)

(c) To enforce a judgment or order under the Family Code. (*Family C. 290*; see *Nichols v. Superior Court (1934) 1 C.2d 589, 593, 36 P.2d 380* [community property in dissolution proceeding]; *Jackson v. Jackson (1967) 253 C.A.2d 1026, 1040, 62 C.R. 121* [payments under property settlement agreement]; *Sheridan v. Sheridan (1972) 33 C.A.3d 917, 919, 109 C.R. 466* [sovereign immunity does not prevent receivership with respect to salary of federal employee]; 11 *Summary* (10th), *Husband and Wife*, §266.)

(d) To enforce a charging order against a partnership or limited liability company. (*Corp.C. 15522(1)* and *15673* [limited partnership]; *Corp.C. 16504(a)* [general partnership]; *Corp.C. 17302(a)* [limited liability company]; see *Ribero v. Callaway (1948) 87 C.A.2d 135, 139, 196 P.2d 109* [noticed motion is required].)

(e) To preserve the value of property. (*C.C.P. 699.070*, supra, §102.)

(f) To enforce a judgment for the possession or sale of property. (*C.C.P. 712.060*, infra, §325.)

(g) To enforce a judgment against a franchise granted by a public entity. (*C.C.P. 708.920*, infra, §320.)

(h) To enforce an equitable decree affecting specific property or calling for the performance of some act. (See *Engwicht v. Pacific States Life Assur. Co. (1908) 153 C. 183, 189, 96 P. 7* [distribution of fund]; *Gibson v. River Farms Co. of Calif. (1938) 28 C.A.2d 757, 761, 83 P.2d 966* [payments pursuant to tax assessment]; *First Nat. Trust & Savings Bank of San Diego v. Cervený (1949) 93 C.A.2d 255, 258, 208 P.2d 1018* [judgment impressing trust on property to secure purchase money].)

SUPPLEMENT: [This section is current through the latest supplement]



144 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

H. Appointment of Receiver.

2. Transfer of Alcoholic Beverage License.

8 *Witkin Cal. Proc. Enf Judgm* § 311

[§ 311] Transfer of Alcoholic Beverage License.

(1) *Necessity and Prerequisites of Appointment.* An alcoholic beverage license is not subject to execution. (*C.C.P.* 699.720(a)(1), *supra*, §116.) A judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment only by appointment of a receiver under *C.C.P.* 708.630. (*C.C.P.* 708.630(a).) The court may appoint a receiver to transfer the debtor's interest in the license, unless the debtor establishes that the amount of delinquent taxes and claims of prior creditors exceed the probable sale price of the license. (*C.C.P.* 708.630(b).) (See *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §7.66; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:1459 *et seq.*)

(2) *Powers and Duties of Receiver.* The receiver may exercise the powers of the licensee, and must comply with regulations of the Department of Alcoholic Beverage Control and the applicable provisions of the Alcoholic Beverage Control Act (see *B. & P.C.* 23000 *et seq.*). (*C.C.P.* 708.630(c).)

(3) *Application and Obtaining of Permit.* An application must be filed to transfer the license to the receiver and a temporary retail permit must be obtained during the pendency of the transfer. (*C.C.P.* 708.630(c).)

West's Key Number Digest, Judgment 875

SUPPLEMENT: [This section is current through the latest supplement]



145 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

I. Collection of Debt Owed Judgment Debtor by Public Entity.

1. Nature and Scope of Remedy.

8 *Witkin Cal. Proc. Enf Judgm* § 312

[§ 312] Nature and Scope of Remedy.

(1) *Continuation of Former Law.* Under former C.C.P. 710, a judgment creditor could reach money, other than earnings, owed to the debtor by the state or a local public entity. (See *Department of Water & Power of Los Angeles v. Inyo Chemical Co.* (1940) 16 C.2d 744, 751, 108 P.2d 410 [statute applied to liquidated tort liability of governmental subdivision, not just to contractual obligations]; *Wilson v. Walters* (1941) 19 C.2d 111, 115, 119 P.2d 340; *Credit Bureau of San Diego v. Getty* (1943) 61 C.A.2d Supp. 823, 834, 142 P.2d 105 [statute was not applicable to money in possession of governmental agency that was not owed by governmental agency; e.g., bail held by county treasurer but owed to debtor by court clerk]; *McDaniel v. San Francisco* (1968) 259 C.A.2d 356, 361, 66 C.R. 384 [retirement contributions due on demand after termination of employment].) With some procedural modifications, C.C.P. 708.710 et seq. continue the substance of the former law. (See 16 Cal. Law Rev. Com. Reports, p. 1139 et seq.; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.67 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1509 et seq.; C.E.B., 2 Debt Collection Practice 2d, §11.36 et seq.; 14 *Pacific L. J.* 432.)

(2) *Definitions.* For purposes of C.C.P. 708.710 et seq., a "public entity" is the state, a county, city, district, public authority or agency, or any other political subdivision in the state. (C.C.P. 708.710(b).) A "local public entity" is any public entity other than the state. (C.C.P. 708.710(a).) A "state agency" is a state office, officer, department, division, bureau, board, commission, or agency claims against which are paid by warrants drawn by the controller. (C.C.P. 708.710(d).)

(3) *Debt Requirement.* The claim and deposit procedure is available if money is owing and unpaid to the judgment debtor by a public entity. (C.C.P. 708.730(a).) Money is "owing and unpaid" when there is an existing and unsatisfied legal liability on the part of the public entity. (Law Rev. Com. Comment to C.C.P. 708.730.)

(4) *Available Remedies.* If a public entity owes money to a judgment debtor, the obligation of the entity may be applied to the satisfaction of a money judgment against the debtor only in one of the following ways:

(a) The claim and deposit procedure under C.C.P. 708.710 et seq. (C.C.P. 708.720(a)(1).)

(b) The wage garnishment procedure under C.C.P. 706.010 (see supra, §241 et seq.). (C.C.P. 708.720(a)(2).) The

earnings of a public officer or employee may not be withheld under the claim and deposit procedure and, except as expressly provided by law, those earnings may be withheld only under the Wage Garnishment Law. (*C.C.P.* 708.720(b).)

(c) The procedure for establishing a lien in a pending action or proceeding under *C.C.P.* 708.410 et seq. (see supra, §297 et seq.). (*C.C.P.* 708.720(a)(3).) If the obligation of a public entity is the subject of a pending action or special proceeding, the claim and deposit procedure is not applicable, and the obligation may be applied to the satisfaction of the judgment only as provided by *C.C.P.* 708.410 et seq. (*C.C.P.* 708.720(c).)

(5) *Limitation on Liability of Public Officer or Employee.* A public officer or employee is not liable for failure to perform a duty imposed by *C.C.P.* 708.710 et seq. unless information furnished by the judgment creditor is sufficient to enable the officer or employee in the exercise of reasonable diligence to ascertain the identity of the judgment debtor from that information and from records on file in the office where the officer or employee works. In this context, "office" does not include a branch or subordinate office located in a different city. (*C.C.P.* 708.790.)

SUPPLEMENT: [This section is current through the latest supplement]



146 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

I. Collection of Debt Owed Judgment Debtor by Public Entity.

2. Filing, Notice, and Lien.

8 *Witkin Cal. Proc. Enf Judgm* § 313

[§ 313] Filing, Notice, and Lien.

(1) *Filing*. A judgment creditor seeking relief must file an abstract or certified copy of the judgment, with an affidavit stating (a) the exact amount required to satisfy the judgment, (b) facts tending to establish the identity of the debtor, and (c) that the creditor desires the relief provided by *C.C.P. 708.710* et seq. (*C.C.P. 708.730(a)*.) The creditor must also pay the entity a \$ 6 fee. (*C.C.P. 708.785(a)*.) Fees received by the state must be deposited to the credit of the fund from which payments on account of collection under the claim and deposit procedure are made. (*C.C.P. 708.785(b)*.) (On entity with which to file, see *infra*, §§314, 315.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1516 et seq.; *C.E.B.*, 2 *Debt Collection Practice* 2d, §11.37.)

(2) *Notice to Debtor*. Promptly after filing the judgment and affidavit, the creditor must serve notice of the filing on the debtor, personally or by mail. (*C.C.P. 708.730(b)*.) The notice serves the same purpose as a notice of levy under a writ of execution pursuant to *C.C.P. 699.540* (see *supra*, §113). (Law Rev. Com. Comment to *C.C.P. 708.730*.)

(3) *Lien*. Filing the abstract or certified copy of the judgment and the affidavit creates a lien on the money owed to the judgment debtor by the public entity in the amount that may properly be applied to the satisfaction of the money judgment. (*C.C.P. 708.780(a)*.) (See Law Rev. Com. Comment to *C.C.P. 708.780* [noting that creation of lien at time of filing under this provision is consistent with prior case law under which priority was based on the time of filing].) (On lien where judgment is for support, see *infra*, §318; on lien against lottery prize, see *infra*, §317.)

SUPPLEMENT: [This section is current through the latest supplement]



147 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

I. Collection of Debt Owed Judgment Debtor by Public Entity.

3. Collection of Debt Owed by State Agency.

8 *Witkin Cal. Proc. Enf Judgm § 314*

[§ 314] Collection of Debt Owed by State Agency.

(1) *Filing With Agency.* Except as provided with respect to certain support judgments (see *infra*, §318), where a state agency owes money to the judgment debtor, the judgment creditor must file the abstract or certified copy of the judgment and the affidavit (see *supra*, §313) with that agency before the time the agency presents the debtor's claim to the controller. (*C.C.P. 708.740(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.70; Rutter Group, 2 Enforcing Judgments and Debts §§6:1520, 1527; C.E.B., 2 Debt Collection Practice 2d, §11.37.)

(2) *Agency's Presentation of Claim to Controller.* In presenting the debtor's claim to the controller, the state agency must (a) note that the abstract or certified copy of the judgment and the affidavit have been filed, (b) state the amount required to satisfy the judgment, and (c) state any amounts advanced to the debtor by the state or owed by the debtor to the state. (*C.C.P. 708.740(b)*.)

(3) *Deposit in Court and Discharge of Claim.* To discharge the debtor's claim, except as provided with respect to certain support judgments (see *infra*, §318), the controller must (a) deduct an amount sufficient to offset any amount advanced to the debtor or owed by the debtor to the state, (b) deposit with the court, by a warrant or a check payable to the court, as much of the remaining amount of the claim as is necessary to satisfy the judgment, as shown by the affidavit, and (c) pay any balance on the claim to the debtor. (*C.C.P. 708.740(c)*.)

Any claims that are honored on behalf of a judgment creditor are considered refunds of tax overpayments to the debtor. (*C.C.P. 708.740(h)*.)

West's Key Number Digest, Judgment 875

SUPPLEMENT: [This section is current through the latest supplement]



148 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

I. Collection of Debt Owed Judgment Debtor by Public Entity.

4. Collection of Debt Owed by Public Entity Other Than State Agency.

8 Witkin Cal. Proc. Enf Judgm § 315

[§ 315] Collection of Debt Owed by Public Entity Other Than State Agency.

(1) *Filing.* Where a public entity other than a state agency owes money to a judgment debtor, the judgment creditor must file the abstract or certified copy of the judgment and the affidavit (see *supra*, §313) with the auditor of the public entity or, if there is no auditor, with the official of the entity whose duties correspond to those of an auditor. (*C.C.P.* 708.750.) (See *C.J.E.R.*, Judges Benchbook: Civil Proceedings--After Trial §7.71; Rutter Group, 2 Enforcing Judgments and Debts §§6:1522, 1527; *C.E.B.*, 2 Debt Collection Practice 2d, §11.37.)

(2) *Deposit in Court and Discharge of Claim.* To discharge the debtor's claim, the auditor must (a) deduct an amount sufficient to offset any amount advanced to the debtor or owed by the debtor to the public entity, (b) deposit with the court as much of the remaining amount of the claim as is necessary to satisfy the judgment, as shown by the affidavit, and (c) pay any balance on the claim to the debtor. (*C.C.P.* 708.750.)

SUPPLEMENT: [This section is current through the latest supplement]



149 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

I. Collection of Debt Owed Judgment Debtor by Public Entity.

5. Procedure After Deposit in Court.

8 *Within Cal. Proc. Enf Judgm § 316*

[§ 316] Procedure After Deposit in Court.

(1) *Notice of Deposit.* Except for certain support judgments (see *infra*, §318), the court clerk must promptly notify the judgment debtor, personally or by mail, that an amount claimed by the judgment creditor has been deposited by the public entity. (*C.C.P. 708.770(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.73 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1529; C.E.B., 2 Debt Collection Practice 2d, §11.38.)

(2) *Debtor's Exemption Claim.* A judgment debtor may claim an exemption within 10 days after a notice of deposit is served by filing with the court a claim of exemption, including all the material required for a claim of exemption from execution under *C.C.P. 703.520(b)* (see *supra*, §181), and a notice of motion for an order determining the claim of exemption. The judgment debtor must also serve the judgment creditor, personally or by mail, with a copy of the notice of motion, a copy of the claim of exemption, and a notice of hearing on the motion. (*C.C.P. 708.770(b)*.) Failure to make a claim of exemption constitutes a waiver of the exemption. (*C.C.P. 708.770(f)*.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:1530 et seq.; C.E.B., 2 Debt Collection Practice 2d, §11.40; on exemptions, see *C.C.P. 703.010* et seq., *supra*, §168 et seq.)

(3) *Creditor's Opposition.* The judgment creditor may oppose the claim of exemption within 10 days after being served by filing with the court a notice of opposition to the claim, executed under oath, including all the matters required for a notice of opposition to a claim of exemption from execution under *C.C.P. 703.560* (see *supra*, §183). The judgment creditor must also serve a copy of notice of opposition to the claim of exemption on the judgment debtor, personally or by mail. (*C.C.P. 708.770(d)*.)

(4) *Determination of Claim.* Unless continued for good cause, the hearing on the motion must be held not later than 30 days from the date the notice of motion is filed with the court. (*C.C.P. 708.770(c)*.) The hearing and order, extensions of time, and the right of appeal are governed by the applicable provisions of *C.C.P. 703.580* (see *supra*, §§184, 185), *C.C.P. 703.590* (see *supra*, §180), and *C.C.P. 703.600* (see *supra*, §180), relating to claims of exemption from execution. (*C.C.P. 708.770(e)*.)

(5) *Distribution of Money.* After the determination of a timely claim of exemption, or after the expiration of the time allowed for claiming an exemption if no exemption is claimed, the court must pay the nonexempt portion of the

money deposited to which the judgment creditor is entitled to the judgment creditor, and any balance to the judgment debtor, unless some other disposition is required by law. (*C.C.P.* 708.775.) (See Rutter Group, 2 Enforcing Judgments and Debts §6:1533; C.E.B., 2 Debt Collection Practice 2d, §11.41.)

SUPPLEMENT: [This section is current through the latest supplement]



150 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

I. Collection of Debt Owed Judgment Debtor by Public Entity.

6. Particular Judgments or Debts.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 317*

[§ 317] In General.

(1) *Eminent Domain Award.* The procedure under *C.C.P. 708.710* et seq. is applicable where money is owed to the judgment debtor pursuant to an eminent domain award. The particular remedy of the judgment creditor may depend on the status of the money when it is sought to be reached. Where an eminent domain proceeding is pending, the creditor may obtain a lien in the proceeding under *C.C.P. 708.410* et seq. (see supra, §297 et seq.). If the judgment is final and the public entity has not paid the award to the debtor, the creditor may use the claim and deposit procedure. If the award has been paid into court and the creditor has not obtained a lien, procedures such as garnishment or motion are available. (Law Rev. Com. Comment to *C.C.P. 708.730*.)

(2) *Tax Overpayment.* Except for due and unpaid support (see infra, §318), nothing in *C.C.P. 708.710* et seq. authorizes the use of the claim and deposit procedure against an overpayment of tax, penalty, or interest under Rev.C. 17001 et seq. (Personal Income Tax Law), Rev.C. 23001 et seq. (Corporation Tax Law), or *Unemp.Ins.C. 13000* et seq. (withholding tax on wages). (*C.C.P. 708.795*.)

(3) *Lien Against Lottery Prize.* A lien on behalf of a judgment creditor is created against a lottery prize to be paid in annual installments, and continues until the judgment is paid or expires, whichever occurs first, provided that the judgment creditor fulfills the following conditions: (a) Beginning with the second installment against which the lien is asserted, the creditor must file an annual affidavit with the lottery stating that the judgment has not been satisfied and the amount of the remaining unsatisfied judgment. (b) If the judgment lien is renewed (see supra, §39), the creditor must file a certified copy of the renewal application with the lottery. In each case, the filing must be made not less than 45 days, nor more than 90 days, before the annual payment due date of the prize. If the creditor fails to comply with these provisions, the lien expires, but the creditor is not precluded from otherwise enforcing the judgment under *C.C.P. 708.710* et seq. (*C.C.P. 708.755*.)

SUPPLEMENT: [This section is current through the latest supplement]



151 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

I. Collection of Debt Owed Judgment Debtor by Public Entity.

6. Particular Judgments or Debts.

b. Support Judgment.

8 *Witkin Cal. Proc. Enf Judgm* § 318

[§ 318] Support Judgment.

Support judgments are enforced against debts of public entities by the local child support agency in prescribed circumstances. The procedures differ, to some degree, from those generally applicable.

(1) *Judgments Being Enforced Under Family C. 17400*. A special claim and deposit procedure exists where (a) the judgment is for child, spousal, or family support and related costs, (b) a state agency owes the judgment debtor money, including, but not limited to, money on a claim for refund under the Personal Income Tax Law or the Corporation Tax Law or as a result of the debtor's winnings in the California State Lottery, and (c) the local child support agency is enforcing the support obligation under *Family C. 17400* (see 11 *Summary* (10th ed.), *Husband and Wife*, §310). (*C.C.P.* 708.730(c), (e); 708.740(d), (i); on collection of debts of state agencies generally, see *supra*, §314.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1521.)

The procedure is as follows:

(a) *Filing of affidavit*. The local child support agency may file the affidavit generally required by *C.C.P.* 708.730(a) (see *supra*, §313) with the state agency owing the debt, but need not file an abstract or certified copy of the judgment. Instead, the affidavit must state that an abstract may be obtained. A single affidavit may apply to multiple debtors and may incorporate by reference forms or other automated data transmittals containing the information needed to identify the debtors and the amounts required to satisfy the judgments. (*C.C.P.* 708.730(c).) The affidavit applies to all claims for refund under the Personal Income Tax Law or the Corporation Tax Law by the debtor for 1 year after the filing or until October 1 of the year following the filing, whichever occurs later. (*C.C.P.* 708.780(b).)

(b) *Notice of filing*. The Director of the Department of Child Support Services may act in lieu of the judgment creditor in giving the notice to the debtor required by *C.C.P.* 708.730(b) (see *supra*, §313). (*C.C.P.* 708.730(c).)

(c) *Discharge of claim*. The affidavit must also be filed with the Department of Child Support Services. Filing the affidavit with the department is sufficient to require the controller to transfer the funds claimed by the debtor, even though the debtor has filed a claim with another state agency. (*C.C.P.* 708.740(a).) The controller must direct payment

to the county agency designated in the affidavit. (*C.C.P. 708.740(d)*.) If the debtor's claim is less than \$ 10, the controller may disregard the creditor's claim. Where there is more than one claimant for a tax refund, the Franchise Tax Board has discretion to allocate an overpayment among the claimants. (*C.C.P. 708.740(f)*.)

(d) *Notice of deposit and request for relief.* In lieu of service of the notice of deposit under *C.C.P. 708.770(a)* (supra, §316), a state agency served with the affidavit and presenting the claim of the judgment creditor to the controller must send a notice of deposit to the debtor with instructions to file any request for relief with the local child support agency. A claim is deemed waived unless the debtor files the request for relief within 15 days after service of the notice. Service of the notice and request may be made personally or by mail. If the matter cannot be resolved with the local child support agency, it must so advise the debtor, who is then authorized to commence proceedings under *C.C.P. 708.770* or other appropriate provisions of law. The notice from the local child support agency has the same effect, for any limitation, as a notice of deposit under *C.C.P. 708.770(a)*. (*C.C.P. 708.770(g)*) [referring to district attorney rather than local child support agency]; see *Family C. 17305* [providing for transfer of district attorney's duties respecting support enforcement to local child support agency].)

(2) *Judgments Where Debt Is for Lottery Winnings or Tax Refund.* Where the judgment is for support and the money owed is for lottery winnings or a refund of a personal income tax overpayment, and the support obligation is not being enforced under *Family C. 17400*, the judgment creditor may file an abstract or certified copy of the judgment with the local child support agency in the county in which the support judgment is entered or registered, and the local child support agency must then file the claim pursuant to *C.C.P. 708.730(c)*. When funds are received by the local child support agency, it must discharge the debtor's claim by forwarding the funds to the court clerk pursuant to *C.C.P. 708.740(c)* (see supra, §314). (*C.C.P. 708.740(e)*.) If two or more local child support agencies submit claims on behalf of a creditor, the controller may select which claim to honor. (*C.C.P. 708.740(g)*.)

Notices and litigation to enforce rights in these proceedings are the responsibility of the judgment creditor. (*C.C.P. 708.740(e)*.) In lieu of service of the notice of deposit under *C.C.P. 708.770(a)* (supra, §316), a state agency served with the affidavit and presenting the judgment creditor's claim to the controller must send a notice of deposit to the debtor with instructions to file any request for relief with the court clerk. (*C.C.P. 708.770(g)*) [referring to district attorney rather than local child support agency]; see *Family C. 17305* [providing for transfer of district attorney's duties respecting support enforcement to local child support agency].)

SUPPLEMENT: [This section is current through the latest supplement]



152 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

I. Collection of Debt Owed Judgment Debtor by Public Entity.

6. Particular Judgments or Debts.

c. Debt Owed Under Public Works Contract.

8 *Within Cal. Proc. Enf Judgm § 319*

[§ 319] Debt Owed Under Public Works Contract.

(1) *Amount of Deposit in Court.* Where the judgment debtor is a public works contractor, the amount deemed owing and unpaid to the debtor within the meaning of *C.C.P. 708.740* (see supra, §314) or *C.C.P. 708.750* (see supra, §315) is the amount of the contract price payable under the contract on completion, reduced by sums due to mechanics, materialmen, subcontractors, and others entitled to serve stop notices under C.C. 3181 to the extent that they have filed claims under C.C. 3179 et seq. (see 3 *Cal. Proc. (5th), Actions*, §220). (*C.C.P. 708.760(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.72; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1528; C.E.B., 2 *Debt Collection Practice* 2d, §11.39.)

(2) *Time of Deposit in Court.* The officer making payments under the public works contract may not make a deposit to satisfy a judgment creditor's claim until the contract is completed. However, the officer may deposit an amount sufficient to satisfy the debtor's claim before payments to persons filing stop notices are made as long as an amount sufficient to make these payments is retained. (*C.C.P. 708.760(b)*.)

West's Key Number Digest, Judgment 875

SUPPLEMENT: [This section is current through the latest supplement]



153 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

J. Enforcement Against Particular Interests.

1. Franchise.

8 *Within Cal. Proc. Enf Judgm § 320*

[§ 320] Franchise.

(1) *In General.* Under the Enforcement of Judgments Law, a franchise granted by a public entity is not subject to execution. (*C.C.P. 699.720(a)(7)*, supra, §116.) However, a money judgment may be enforced under *C.C.P. 708.920* against a franchise from a public entity, other than the franchise of being a corporation. (*C.C.P. 708.910*; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.82 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1534 et seq.; C.E.B., 2 Debt Collection Practice 2d, §11.42.) Private franchises are governed by the general rules applicable to the satisfaction of money judgments. (Law Rev. Com. Comment to *C.C.P. 708.910*.) The Legislature may not pass any law permitting the leasing or alienation of a franchise so as to relieve it from liabilities incurred in its operation or use. (Cal. Const., Art. XX, §4.)

(2) *Procedure.* To apply a franchise to the satisfaction of a money judgment, the judgment creditor must apply to the court on noticed motion and serve notice of the motion, personally or by mail, on the judgment debtor and the public entity that granted the franchise. The court has discretion to order enforcement against a franchise, and in doing so takes into account all the circumstances of the case, including, but not limited to the nature of the franchise, whether the franchise is by its terms transferable, and the likelihood that application of the franchise to the satisfaction of the judgment will yield a substantial amount. (*C.C.P. 708.920(a)*.)

(3) *Nature of Enforcement.* The franchise may be applied to satisfy the judgment by means that appear proper to the court, including sale or assignment of the franchise, assignment of the proceeds, or appointment of a receiver. A court order may include provisions relating to the place of sale of the franchise, possession of the property of the judgment debtor necessary for the exercise of the franchise, receipt of proceeds of the franchise, recovery of penalties imposed by law and recoverable for injury to the franchise or for damages or other cause, and the judgment debtor's powers, duties, and liability for penalties and forfeiture. (*C.C.P. 708.920(b)*.)

(4) *Limitations on Enforcement.* Notwithstanding *C.C.P. 708.920*, an order applying a franchise to the satisfaction of a money judgment is subject to applicable laws governing the sale, transfer, or other actions concerning the franchise, including provisions requiring the approval of the Public Utilities Commission or local public entities and statutory or administrative regulations. (*C.C.P. 708.930*.)

SUPPLEMENT: [This section is current through the latest supplement]



154 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

J. Enforcement Against Particular Interests.

2. Beneficiary's Interest in Trust.

a. Enforcement of Judgments Law.

8 *Witkin Cal. Proc. Enf Judgm* § 321

[§ 321] Enforcement of Judgments Law.

(1) *In General.* Although a beneficiary's interest in a trust is not subject to execution (*C.C.P.* 699.720(a)(8), *supra*, §116), it may be subject to satisfaction of a money judgment under *C.C.P.* 709.010. (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.85 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1576 et seq.; C.E.B., 2 Debt Collection Practice 2d, §11.43.) However, the provisions of that statute are subject to the limitations on the enforcement of a money judgment against the judgment debtor's interest in a spendthrift or other protective trust under *Prob.C.* 15300 et seq. (see *infra*, §322). (*C.C.P.* 709.010(c); see *Ammco Ornamental Iron v. Wing* (1994) 26 *C.A.4th* 409, 420, 31 *C.R.2d* 564 [order determining that judgment could be satisfied from assets of spendthrift trust without compliance with *Prob.C.* 15306.5 was improper].)

(2) *Trusts Subject to Enforcement Procedure.* *C.C.P.* 709.010 is applicable to private or charitable express trusts and constructive trusts to be administered in the manner of express trusts under a judgment or decree. (*C.C.P.* 709.010(a) [referring to "trust" as defined in *Prob.C.* 82 (see 13 *Summary* (10th), *Trusts*, §1)].)

(3) *Judgment Creditor's Petition.* To subject a beneficiary's interest in a trust to enforcement of a money judgment, the judgment creditor must petition the court administering the trust under *Prob.C.* 17000 et seq. (see 13 *Summary* (10th), *Trusts*, §217 et seq.). The court has discretion to apply the judgment debtor's interest in the trust to the satisfaction of the judgment by proper means, including, but not limited to, the imposition of a lien on or sale of the debtor's interest, the collection of trust income, and the liquidation and transfer of trust property by the trustee. (*C.C.P.* 709.010(b).)

SUPPLEMENT: [This section is current through the latest supplement]



155 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

J. Enforcement Against Particular Interests.

2. Beneficiary's Interest in Trust.

b. Limitations Under Trust Law.

8 *Within Cal. Proc. Enf Judgm § 322*

[§ 322] Limitations Under Trust Law.

(1) *In General.* The Trust Law limits the enforcement of a money judgment against a beneficiary's interest in a spendthrift or other protective trust. (See *Prob.C. 15300* et seq., 13 *Summary* (10th), *Trusts*, §151 et seq.; C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §7.88 et seq.; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1578 et seq.)

(2) *Restraints on Transfer.* Generally, where a trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer (i.e., is a "spendthrift trust"), the interest is not subject to enforcement of a money judgment until paid to the beneficiary. (*Prob.C. 15300* [interest in income]; *Prob.C. 15301(a)* [interest in principal].) However, if an amount of principal is due and payable to the beneficiary, a judgment creditor may petition the court under *C.C.P. 709.010* (see supra, §321) for an order directing the trustee to satisfy all or part of the judgment out of that amount. (*Prob.C. 15301(b)*.) A disclaimer or renunciation by a beneficiary of all or part of the beneficiary's interest in a trust is not a transfer under *Prob.C. 15300* or *15301*. (*Prob.C. 15309*.)

If the settlor is a beneficiary, a transfer restraint is invalid against creditors of the settlor. (*Prob.C. 15304(a)*.)

(3) *Trust for Education or Support.* If the trust instrument requires the trustee to pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest, to the extent necessary for education or support, is not subject to enforcement of a money judgment until paid to the beneficiary. (*Prob.C. 15302*.) However, notwithstanding a transfer restriction under *Prob.C. 15300* or *15301*, any amount to which the beneficiary is entitled or that the trustee determines to pay in excess of what is necessary for education or support may be applied to the satisfaction of a money judgment against the beneficiary by a petition under *C.C.P. 709.010*. (*Prob.C. 15307*; see *Prob.C. 15308* [order under *Prob.C. 15307* is subject to modification].)

If the settlor is a beneficiary of a trust for education or support, creditors of the settlor may reach the maximum amount the trustee could pay to or for the benefit of the settlor, to the extent of the settlor's proportionate contribution to the trust. (*Prob.C. 15304(b)*.)

(4) *Discretionary Trust.* If payments to a trust beneficiary are within the discretion of the trustee, whether or not the trust instrument provides a standard for the exercise of discretion, a creditor may not compel the trustee to pay any amount that may be paid only in the trustee's discretion. But if the beneficiary's interest is not subject to a valid restraint under *Prob.C. 15300* or *15301*, and the trustee (a) knows the beneficiary's interest has been transferred or (b) has been served with process in a creditor's proceeding under *C.C.P. 709.010*, the trustee is liable to the creditor for any discretionary payment to the extent the payment impairs the creditor's right. (*Prob.C. 15303.*)

If the settlor is a beneficiary of a trust in which payments are within the trustee's discretion, creditors of the settlor may reach the maximum amount the trustee could pay to or for the benefit of the settlor, to the extent of the settlor's proportionate contribution to the trust. (*Prob.C. 15304(b).*)

(5) *Support Claims.* Notwithstanding any provision in a trust instrument, the court may, to the extent the court determines that it is equitable and reasonable under the circumstances of the particular case, order the trustee to satisfy all or part of a money judgment for the support of the beneficiary's spouse, former spouse, or minor child from any payments the beneficiary has the right to compel the trustee to make or payments the trustee, in the exercise of discretion, determines to make in the future. (*Prob.C. 15305*; see *Prob.C. 15308* [order under *Prob.C. 15305* is subject to modification]; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

Notwithstanding any provision in a trust instrument, where the beneficiary is liable by statute to reimburse a public entity for support payments to the beneficiary, or to the beneficiary's spouse or minor child, on the entity's petition under *C.C.P. 709.010* the court may make a similar order. However, this provision is not applicable to a trust for the benefit of a disabled individual whose disability constitutes a substantial handicap and substantially impairs the individual's ability to provide for his own care, unless the trust results in the individual being ineligible for needed public social services under *Welf.C. 10000* et seq. (*Prob.C. 15306*; see *Prob.C. 15308* [order under *Prob.C. 15306* is subject to modification].)

(6) *Restitution Claims.* Notwithstanding any provision in a trust instrument, the court may, to the extent the court determines that it is equitable and reasonable under the circumstances of the particular case, order the trustee to satisfy all or part of a judgment awarding restitution for the commission of a felony or a money judgment for damages incurred as a result of conduct for which the defendant was convicted of a felony from any payments the beneficiary has the right to compel the trustee to make or payments the trustee, in the exercise of discretion, determines to make in the future. (*Prob.C. 15305.5.*)

(7) *Claims of General Creditors.* Notwithstanding a transfer restriction, a judgment creditor may petition the court under *C.C.P. 709.010* for an order directing the trustee to satisfy all or part of the judgment out of amounts to which the beneficiary is entitled or which the trustee, in his or her discretion, determines to pay. (*Prob.C. 15306.5(a).*) This provision does not limit the discretion a trustee is given under a trust to make payments. Further, the trustee has no duty to oppose the petition or make a claim of exemption on behalf of the beneficiary and is not liable for any action taken or omitted in compliance with the order. (*Prob.C. 15306.5(e).*)

The aggregate of all such orders may not exceed more than 25% of the payment that would ordinarily be made to the beneficiary. (*Prob.C. 15306.5(b), (f).*) Nor may the order require the payment of any amount necessary for the support of the beneficiary or persons the beneficiary is required to support. (*Prob.C. 15306.5(c).*) An order under *Prob.C. 15306.5* is subordinate to an order under *Prob.C. 15305* to satisfy a support judgment, regardless of when the orders are made. The amount ordered under *Prob.C. 15306.5* must be reduced by the amount ordered under *Prob.C. 15305*. (*Prob.C. 15306.5(d).*) An order under *Prob.C. 15306.5* is subject to modification. (*Prob.C. 15308.*)

West's Key Number Digest, Trusts 147(1), 147(2), 148, 151(1), 152

SUPPLEMENT: [This section is current through the latest supplement]



156 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

J. Enforcement Against Particular Interests.

3. Contingent Interest.

8 *Witkin Cal. Proc. Enf Judgm* § 323

[§ 323] Contingent Interest.

Contingent remainders, executory interests, and other interests that are not vested in the judgment debtor are not subject to execution. (*C.C.P.* 699.720(a)(9), *supra*, §116.) However, a judgment creditor may apply to the court on noticed motion for an order applying contingent interests to the satisfaction of a money judgment. The court has discretion to order application by such means as it determines are proper to protect the interests of both the debtor and the creditor, including but not limited to the imposition of a lien on or the sale of the debtor's interest. (*C.C.P.* 709.020; see *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §7.94; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:1583; *C.E.B.*, 2 *Debt Collection Practice* 2d, §11.44.)

This statute is intended to permit the court, in an examination proceeding, creditor's action, or otherwise, "to fashion a suitable remedy through its equitable powers in order to prevent a sacrifice sale" of the debtor's interest while preserving the creditor's rights. (*Law Rev. Com. Comment to C.C.P.* 709.020.)

SUPPLEMENT: [This section is current through the latest supplement]



157 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

VIII. MONEY JUDGMENTS: MISCELLANEOUS CREDITORS' REMEDIES

J. Enforcement Against Particular Interests.

4. Guardianship or Conservatorship Estate.

8 Witkin Cal. Proc. Enf Judgm § 324

[§ 324] Guardianship or Conservatorship Estate.

Property in a guardianship or conservatorship estate is not subject to execution (*C.C.P. 699.720(a)(10)*, supra, §116) or other procedure for the enforcement of a money judgment under the Enforcement of Judgments Law (*C.C.P. 709.030*). However, a judgment creditor may apply to the court in which the guardianship or conservatorship proceeding is pending for an order requiring payment of the judgment. (*C.C.P. 709.030*; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §7.95; Rutter Group, 2 Enforcing Judgments and Debts §6:1584; C.E.B., 2 Debt Collection Practice 2d, §11.45.)

The exemption from enforcement is applicable even when the judgment creditor is in the process of enforcing its judgment when the conservatorship of the judgment debtor's property arises. The provision of *C.C.P. 709.030* that conservatorship property is not subject to the procedures for enforcing a money judgment refers to all of the procedures from beginning to end. Thus, if the transfer of property has not been completed at the time the conservatorship arises, the creditor must, in accordance with the statute, apply for payment under the Probate Code. (*Neiman Marcus v. Tait (1995) 33 C.A.4th 271, 274, 39 C.R.2d 143.*)

SUPPLEMENT: [This section is current through the latest supplement]



158 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

A. In General.

1. Nature and Scope of Law.

8 *Within Cal. Proc. Enf Judgm* § 325

[§ 325] Nature and Scope of Law.

(1) *Nonmoney Judgments Under Enforcement of Judgments Law.* Under the Enforcement of Judgments Law, a *writ of execution* is reserved for the enforcement of a money judgment (see *supra*, §107). With respect to nonmoney judgments, a judgment of possession is enforced by a *writ of possession* and a judgment of sale is enforced by a *writ of sale*. (See 16 Cal. Law Rev. Com. Reports, p. 1155; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.151 et seq.; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.151 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1725; for forms for enforcement of nonmoney judgments, see 10 Am.Jur. P.P. Forms (2005 ed.), Executions §381 et seq.)

The Enforcement of Judgments Law deals with the following nonmoney judgments:

- (a) Judgment for possession of personal property. (See *C.C.P. 714.010* et seq., *infra*, §329 et seq.)
- (b) Judgment for possession of real property. (See *C.C.P. 715.010* et seq., *infra*, §332 et seq.)
- (c) Judgment for sale of property. (See *C.C.P. 716.010* et seq., *infra*, §§338, 339.)
- (d) Other judgments. (See *C.C.P. 717.010*, *infra*, §340.)

(2) *General Provisions Applicable to Possession and Sale.* The Enforcement of Judgments Law provides for a writ of possession or sale (see *C.C.P. 712.010* et seq., *infra*, §§326, 327) and for satisfaction of a money judgment included in a judgment for possession or sale (see *C.C.P. 712.040*, *infra*, §328). In addition, a judgment for possession or sale may be enforced by a receiver appointed under *C.C.P. 708.610* et seq. (see *supra*, §310). (*C.C.P. 712.060*.)

SUPPLEMENT: [This section is current through the latest supplement]



159 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

A. In General.

2. Issuance of Writ of Possession or Sale.

8 *Witkin Cal. Proc. Enf Judgm* § 326

[§ 326] Issuance of Writ of Possession or Sale.

(1) *Application.* After entry of a judgment for the possession or sale of property, a judgment creditor may apply for a writ of possession or sale. On application, the clerk of the court must issue the writ, directed to the levying officer in the county where the judgment is to be enforced. A separate writ must be issued for each county where the judgment is to be enforced. In an unlawful detainer action, the application must include a declaration under penalty of perjury stating the daily rental value of the property on the date the complaint was filed. (*C.C.P. 712.010*; for a comparable provision applicable to a writ of execution on a money judgment, see *C.C.P. 699.510(a)*, supra, §107.) The fee for issuing the writ is \$ 15. (*Govt.C. 70626(a)(1)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1726 et seq.; on judgment for possession of personal property, see *infra*, §329 et seq.; on judgment for possession of real property, see *infra*, §332 et seq.; on judgment for sale of property, see *infra*, §§338, 339.)

(2) *Successive Writs.* Writs of possession or sale may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until 180 days after issuance of a prior writ for that county, unless the prior writ has been returned. (*C.C.P. 712.010*.)

(3) *Contents.* A writ of possession or sale must require the levying officer to enforce the judgment. (*C.C.P. 712.020*.) The writ must include the following information:

(a) The date of issuance. (*C.C.P. 712.020(a)*.)

(b) The title of the court where the judgment is entered and the cause and number of the action. (*C.C.P. 712.020(b)*.)

(c) The judgment creditor's name and address, and the judgment debtor's name and last known address. (*C.C.P. 712.020(c)*.)

(d) The date of the judgment and of any subsequent renewals, and where entered in the court records. (*C.C.P. 712.020(d)*.)

(e) If the judgment for possession or sale includes a money judgment, the creditor has the option to include the

amount required to satisfy the money judgment as of the date the writ was issued and the amount of interest accruing daily from that date. (*C.C.P. 712.020(e)*.)

(f) The name and address of any person requesting notice of sale under the judgment. (*C.C.P. 712.020(f)*.)

(g) Any other information required to be included in the particular writ. (*C.C.P. 712.020(g)*.) (On additional information required depending on type of writ, see *C.C.P. 714.010* [possession of personal property; *infra*, §329]; *C.C.P. 715.010* [possession of real property; *infra*, §332]; *C.C.P. 716.010* [sale of property; *infra*, §338].)

(4) *Form.* The Judicial Council has approved a form for a writ of execution, possession, or sale for optional use. (See Judicial Council Form No. EJ-130 [Writ of Execution].) (See generally 9A Am.Jur. P.P. Forms (2005 ed.), Executions §123 et seq.)

West's Key Number Digest, Execution 88

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Application.* *Govt.C. 70626* was amended in 2009. The fee for issuing the writ is \$ 25 until July 1, 2017. (*Govt.C. 70626(a)(1)*, (e).)



160 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

A. In General.

3. Delivery, Execution, and Return of Writ.

8 *Witkin Cal. Proc. Enf Judgm* § 327

[§ 327] Delivery, Execution, and Return of Writ.

(1) *In General.* A writ of possession or sale is directed to the levying officer with instructions from the judgment creditor. On delivery of the writ, the levying officer must execute it in the manner prescribed by law. (*C.C.P.* 712.030(a).) (For a comparable provision applicable to a writ of execution on a money judgment, see *C.C.P.* 699.530, supra, §112.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1739, 6:1740.)

(2) *Time for Levy.* The levying officer may not levy on or otherwise seize property under a writ of possession or sale after the expiration of 180 days from the date of issuance of the writ. (*C.C.P.* 712.030(b).)

(3) *Return of Writ.* The return of a writ of possession or sale is subject to the requirements of *C.C.P.* 699.560 (see supra, §114), governing the return of a writ of execution. (*C.C.P.* 712.050.)

West's Key Number Digest, Execution 61-

SUPPLEMENT: [This section is current through the latest supplement]



161 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

A. In General.

4. Collection of Included Money Judgment.

8 *Within Cal. Proc. Enf Judgm § 328*

[§ 328] Collection of Included Money Judgment.

(1) *Available Remedies.* A money judgment included in a judgment for possession or sale may be enforced as follows:

(a) A writ of possession or sale may be enforced as a writ of execution. (*C.C.P. 712.040(a).*)

(b) If a writ of possession or sale is issued but the money judgment is not satisfied, the judgment creditor may use a writ of execution after the writ of possession or sale has been returned or 180 days after it has been issued, whichever is earlier. (*C.C.P. 712.040(a).*)

(c) If a writ of possession or sale has not been issued, a writ of execution may be issued. (*C.C.P. 712.040(a).*)

(d) Whether or not a writ of possession or sale has been issued, enforced, or returned, the wage garnishment procedures provided by *C.C.P. 706.010* et seq. (see supra, §241 et seq.) may be employed. (*C.C.P. 712.040(b).*)

(e) Whether or not a writ of possession or sale has been issued, enforced, or returned, the miscellaneous creditors' remedies provided by *C.C.P. 708.010* et seq. (see supra, §275 et seq.) may be employed. (*C.C.P. 712.040(b).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1774 et seq.)

(2) *Restrictions in Judgment for Sale.* Notwithstanding the remedies so provided, a money judgment included in a judgment for sale (see infra, §338, 339) may only be enforced as ordered by the court. (*C.C.P. 712.040(c).*) For example, costs and attorneys' fees may be ordered to be satisfied out of the proceeds from the sale of the property, if the property is security for those amounts. (Legislative Com. Comment (Senate) to *C.C.P. 712.040*.)

(3) *Exemption Claims.* The judgment debtor is entitled to claim any available exemptions for property that is sought to be applied to the satisfaction of a money judgment pursuant to a writ of possession or sale. (Legislative Com. Comment (Senate) to *C.C.P. 712.040*; on exemptions, see *C.C.P. 703.010* et seq., supra, §168 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



162 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

B. Judgment for Possession of Personal Property.

1. Writ of Possession.

8 *Witkin Cal. Proc. Enf Judgm* § 329

[§ 329] Writ of Possession.

(1) *In General.* A judgment for possession of personal property may be enforced by a writ of possession of personal property issued pursuant to *C.C.P. 712.010* (see *supra*, §326). (*C.C.P. 714.010(a)*; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.151 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1741 et seq.)

(2) *Contents.* In addition to the information required by *C.C.P. 712.020* (see *supra*, §326), the writ must describe the property to be delivered to the judgment creditor in satisfaction of the judgment and must state the value of the property if specified in the judgment or a supplemental order. (*C.C.P. 714.010(b)*.)

(3) *Execution.* To execute a writ of possession of personal property, the levying officer must (a) search for the property specified in the writ, (b) take custody of the property in the possession of the judgment debtor or the debtor's agent in the same manner as a levy under a writ of execution on that property in the possession of the debtor, and (c) deliver the property to the creditor in satisfaction of the judgment. Custody of personal property used as a dwelling is governed by *C.C.P. 700.080* (see *supra*, §127), and custody of property in a private place is governed by *C.C.P. 699.030* (see *supra*, §100). (*C.C.P. 714.020(a)*.)

West's Key Number Digest, Execution 88

SUPPLEMENT: [This section is current through the latest supplement]



163 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

B. Judgment for Possession of Personal Property.

2. Where Property Cannot Be Taken Into Custody.

8 Within Cal. Proc. Enf Judgm § 330

[§ 330] Where Property Cannot Be Taken Into Custody.

If property specified in the writ of possession cannot be taken into custody, the levying officer must demand the property from the judgment debtor, if the debtor can be located. If custody is not obtained after demand, the levying officer must so state in the return of the writ. Thereafter, the judgment for possession of the property may be enforced in the same manner as a money judgment for the value of the property as specified in the judgment or a supplemental order. (*C.C.P. 714.020(b)*.) The writ of possession may be treated as a writ of execution (see *supra*, §107 et seq.). (*C.C.P. 714.020(c)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.153; Rutter Group, 2 Enforcing Judgments and Debts §6:1742.)

SUPPLEMENT: [This section is current through the latest supplement]



164 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

B. Judgment for Possession of Personal Property.

3. Turnover Order.

8 Witkin Cal. Proc. Enf Judgm § 331

[§ 331] Turnover Order.

(1) *Application.* In addition to or in lieu of a writ of possession of personal property, a judgment creditor may apply for an order directing the judgment debtor to transfer possession of the property or documentary evidence of title, or both, to the creditor. The creditor may apply *ex parte* unless the court directs or a court rule requires the application to be made on noticed motion. (*C.C.P. 714.030(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.154; Rutter Group, 2 Enforcing Judgments and Debts §6:1747 et seq.; for comparable provision applicable to money judgments, see *C.C.P. 699.040*, *supra*, §101.)

(2) *Issuance.* The order may be issued on a showing of need. (*C.C.P. 714.030(b)*.)

(3) *Service.* The order must be personally served on the judgment debtor and must notify the debtor that failure to comply may subject the debtor to contempt of court. (*C.C.P. 714.030(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]



165 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

C. Judgment for Possession of Real Property.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 332

[§ 332] In General.

(1) *Enforcement by Writ of Possession.* A judgment for possession of real property may be enforced by a writ of possession of real property issued under *C.C.P. 712.010* (see supra, §326). (*C.C.P. 715.010(a)*; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.155 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1750 et seq.; C.E.B., 2 Landlord-Tenant Practice 2d, §13.64 et seq.) Judgments for possession of real property are rendered in such actions as those for unlawful detainer, forcible entry, ejectment, or quiet title. (See 16 Cal. Law Rev. Com. Reports, p. 1158.)

(2) *Application for Writ.* The application for the writ must provide a place to indicate that the writ applies to all tenants, subtenants, if any, named claimants, if any, and any other occupants of the premises. (*C.C.P. 715.010(a)*.)

(3) *Contents of Writ.* In addition to the information required by *C.C.P. 712.020* (see supra, §326), a writ of possession of real property must contain the following:

(a) A description of the property to be used to satisfy the judgment. (*C.C.P. 715.010(b)(1)*.)

(b) A statement that the levying officer will remove the occupants from the property and place the judgment creditor in possession if the property is not vacated within 5 days from the date a copy of the writ is served on the occupant or, if the writ is posted, within 5 days from the date a copy of the writ is served on the judgment debtor. (*C.C.P. 715.010(b)(2)*.) (On execution of writ, see *C.C.P. 715.020*, infra, §333.)

(c) A statement that any personal property (except a mobilehome) remaining on the real property after the judgment creditor is in possession will be disposed of under *C.C.P. 1174* (see infra, §337) unless the debtor or owner pays the reasonable cost of storage and takes possession of the personal property not later than 15 days after the creditor takes possession of the real property. (*C.C.P. 715.010(b)(3)*.) (On disposition of personal property, see *C.C.P. 715.030*, infra, §337.)

(d) The date the complaint was filed in the action that resulted in the judgment of possession. (*C.C.P. 715.010(b)(4)*.)

(e) The date on which the court will hear objections to enforcement of a judgment of possession filed under *C.C.P. 1174.3* (see *infra*, §§334, 335), unless a summons, complaint, and prejudgment claim of right of possession were served on the occupants under *C.C.P. 415.46* (see *12 Summary* (10th), *Real Property*, §729). (*C.C.P. 715.010(b)(5)*.)

(f) The daily rental value of the property as of the date a complaint for unlawful detainer was filed unless a summons, complaint, and prejudgment claim of right of possession were served on the occupants under *C.C.P. 415.46*. (*C.C.P. 715.010(b)(6)*.)

(g) If a summons, complaint, and prejudgment claim of right of possession were served on the occupants under *C.C.P. 415.46*, a statement that the writ applies to all tenants and any subtenants, named claimants, or other occupants. (*C.C.P. 715.010(b)(7)*.)

(4) *Service or Posting of Form for Claim of Right to Possession.* At the time the writ of possession is served or posted, the levying officer must also serve or post a copy of the form for a claim of right to possession, unless a summons, complaint, and prejudgment claim of right of possession were served on the occupants in accordance with *C.C.P. 415.46*. (*C.C.P. 715.010(c)*.) (On claim of right to possession, see *infra*, §§334, 335.)

(5) *Unlawful Detainer Proceedings.* The procedure generally employed to obtain a judgment for possession of real property is unlawful detainer. (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1751; C.E.B., 2 *Landlord-Tenant Practice* 2d, §9.10.) Where the plaintiff in an unlawful detainer proceeding is successful, a judgment for possession of the premises may be enforced under *C.C.P. 712.010* et seq., subject to the occupant's right, in specified circumstances, to cure default and retain possession by payment of past due rent, damages, and costs within 5 days after entry of the judgment. (*C.C.P. 1174(c)*, (d), *12 Summary* (10th), *Real Property*, §741.)

Except with respect to enforcement of a money judgment, a writ of possession issued in an unlawful detainer action must be enforced without delay, notwithstanding receipt of notice that the judgment debtor has filed for bankruptcy. However, this provision does not apply to a writ issued for possession of a mobilehome, manufactured home, real property in a mobilehome park, or a manufactured housing community. (*C.C.P. 715.050*; see *Lee v. Baca* (1999) 73 *C.A.4th* 1116, 1119, 86 *C.R.2d* 913 [11 *U.S.C.*, §362(a), providing that bankruptcy petition operates as stay of enforcement proceedings, does not preempt *C.C.P. 715.050*; automatic stay does not enjoin landlord from regaining possession of residential premises from bankruptcy debtor/tenant, as long as landlord seeks only to repossess property].)

SUPPLEMENT: [This section is current through the latest supplement]



166 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

C. Judgment for Possession of Real Property.

2. Execution of Writ of Possession.

8 *Within Cal. Proc. Enf Judgm § 333*

[§ 333] Execution of Writ of Possession.

(1) *By Levying Officer.* The levying officer must execute a writ of possession of real property by serving a copy of the writ on an occupant of the property. The officer may leave the copy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found on the property who is either the occupant's employee or agent or a member of the occupant's household. (*C.C.P. 715.020(a)*.) If an occupant cannot be served at the time service is attempted, the levying officer must execute the writ by posting a copy in a conspicuous place on the property and serving a copy, personally or by mail, on the judgment debtor. If the debtor's address is not known, the copy may be mailed to the address of the property. (*C.C.P. 715.020(b)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.156; Rutter Group, 2 Enforcing Judgments and Debts §6:1752 et seq.)

(2) *By Registered Process Server.* If a proper writ of possession is delivered to the levying officer and the officer does not execute the writ within 3 days from the date of delivery, a registered process server may execute the writ as provided by *C.C.P. 715.020(a)* or (b). (*C.C.P. 715.040(a)*.) The levying officer must perform all other duties under the writ and return the writ to the court. (*C.C.P. 715.040(c)*.) (See Legislative Com. Comment (Assembly) to *C.C.P. 715.040* [noting that registered process server has no power to remove occupants under *C.C.P. 715.020(c)*, *infra*, §336].)

Within 5 days after executing the writ, the registered process server must file with the levying officer (a) the writ of possession, (b) an affidavit stating the manner in which the writ was executed, (c) proof of service of the writ, and (d) written instructions required by *C.C.P. 687.010* (see *supra*, §29). (*C.C.P. 715.040(b)*.) (On liability of registered process server, see *supra*, §103.)

(3) *Fees.* The fee for serving a writ of possession on the occupant or for posting and serving a copy on the judgment debtor is \$75. The additional fee for removing the occupant and putting another in possession is \$ 50. (*Govt.C. 26733.5*.)

The fees of a registered process server may, in the court's discretion, be recoverable on a motion for costs under *C.C.P. 685.080* (see *supra*, §48). If allowed, the fee is determined by *C.C.P. 1033.5*, governing recoverable costs for service (see 3 *Cal. Proc. (5th), Actions*, §999). (*C.C.P. 715.040(d)*.)

West's Key Number Digest, Execution 80

SUPPLEMENT: [This section is current through the latest supplement]



167 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

C. Judgment for Possession of Real Property.

3. Postjudgment Claim of Right to Possession.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 334

[§ 334] In General.

(1) *Occupant's Right To Object to Enforcement of Judgment.* Unless a prejudgment claim of right to possession has been served on occupants in accordance with *C.C.P. 415.46* (see 12 *Summary* (10th), *Real Property*, §729), an occupant *not named in the judgment of possession* who occupied the premises on the date an unlawful detainer action was filed may object to enforcement of the judgment by filing a claim of right to possession. The claim may be filed any time after service or posting of the writ of possession under *C.C.P. 715.020* (see *supra*, §333), up to and including the time at which the levying officer returns to effect the eviction of those named in the judgment of possession. (*C.C.P. 1174.3(a)*; on eviction of persons not named in writ of possession, see *infra*, §336.) An occupant may object to eviction to the levying officer at his or her office or at the premises at the time of eviction. (*C.C.P. 1174.3(b)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1765 et seq.)

An occupant or tenant who is *named in the action* is not required to file a claim to protect his or her right to possession. (*C.C.P. 1174.3(a)*; cf. *Cardenas v. Noren* (1991) 235 *C.A.3d* 1344, 1347, 1 *C.R.2d* 367 [holding, under former law, that cotenant who was named in unlawful detainer complaint but not in judgment or writ was required to file claim of right to possession to prevent eviction].)

(2) *Manner of Making Claim.* A mandatory form for claiming a right to possession is set forth in *C.C.P. 1174.3(h)* and must be served or posted with the writ of possession, unless a summons, complaint, and prejudgment claim of right of possession were served on the occupants in accordance with *C.C.P. 415.46*. (*C.C.P. 715.010(c)*, *supra*, §332.) The Judicial Council has issued a form that satisfies the statutory requirements. (See Judicial Council Form No. CP-10 [Claim of Right to Possession and Notice of Hearing (Miscellaneous)].) The claim is effected in one of the following ways:

(a) By presenting a completed form in person with identification to the levying officer and delivering 15 days' rent together with the required fee or form for proceeding in forma pauperis to the court within 2 court days. The officer must mark the date and time of receipt on the claim, deliver the original to the court and a copy to the claimant, and notify the plaintiff that a claim has been presented. On receipt of the rent and the appropriate fee or form, the court must file the claim and mail an endorsed copy with notice of the hearing date to the plaintiff and the claimant. The court must

set and hold a hearing on the claim not less than 5 nor more than 15 days after the claim is filed with the court. (*C.C.P. 1174.3(c)(1)*.)

(b) By presenting a completed form in person with identification to the levying officer and delivering the required fee or form for proceeding in forma pauperis to the court within 2 court days, *without* delivering 15 days' rent. The officer must mark the date and time of receipt on the claim, deliver the original to the court and a copy to the claimant, and notify the plaintiff that a claim has been presented. The court must set and hold a hearing on the fifth day after the filing is completed. The court must notify the claimant of the hearing at the time of filing and notify the plaintiff of the hearing date by mail. (*C.C.P. 1174.3(c)(2)*.)

(3) *Fee*. The fee for filing a claim is the fee provided by *Govt.C. 70614* for filing the first paper by a party other than the plaintiff (\$ 180 if the amount demanded is \$ 10,000 or less and \$ 300 if the amount demanded is over \$ 10,000). (*C.C.P. 1174.3(a)*.) However, a claimant may proceed in forma pauperis. (*C.C.P. 1174.3(a), (c)*.) If a claim is made without delivery of the appropriate fee or a form for proceeding in forma pauperis, the claim is deemed denied and the court must so order, delivering a copy of the order to the officer and mailing copies to the claimant and the plaintiff. (*C.C.P. 1174.3(f)*.)

(4) *Effect of Filing Claim*. Filing a claim constitutes a general appearance. (*C.C.P. 1174.3(a)*); for discussion of general appearance, see 2 *Cal. Proc. (5th), Jurisdiction*, §192 et seq.) After a completed form is presented to the levying officer, the officer must stop the eviction of occupants at the premises, provide a receipt or copy of the claim to the claimant, and deliver the original to the court issuing the writ of possession of the real property. (*C.C.P. 1174.3(b)*.)

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(3) *Fee*. *Govt.C. 70614* was amended in 2008 and 2009. The fees are now \$ 205 if the amount demanded is \$ 10,000 or less and \$ 330 if the amount demanded is over \$ 10,000.



168 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

C. Judgment for Possession of Real Property.

3. Postjudgment Claim of Right to Possession.

b. Hearing and Determination.

8 *Witkin Cal. Proc. Enf Judgm* § 335

[§ 335] Hearing and Determination.

(1) *In General.* The court must set a date for a hearing to determine the validity of objections to enforcement of the judgment of possession. (*C.C.P. 1174.3(b).*) At the hearing, the court must determine whether there is a valid claim of possession, taking into consideration evidence produced at the hearing, including information set forth in the claim. The court may determine the claim to be valid or invalid. A claim is invalid if the claimant is an invitee, licensee, guest, or trespasser. (*C.C.P. 1174.3(d).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1767 et seq.)

(2) *Disposition: Valid Claim.* If the claim is valid, the unlawful detainer is based on a curable breach, and the claimant was not previously served with proper notice, the claimant may be served at the hearing or thereafter. If the breach is not cured within the required time, the plaintiff may proceed against the claimant in the same action by filing and serving a supplemental complaint. Service of the notice or complaint may be by mail, addressed to the claimant at the property or to the claimant's attorney, in accordance with *C.C.P. 1013*. Further proceedings on the merits of the claimant's continued right to possession must be conducted pursuant to *C.C.P. 1159* et seq. (*C.C.P. 1174.3(e)(1)*; see *19 Pacific L. J. 527*.) In all other cases, if the claim is valid, the summons and complaint in the action are deemed amended to include the claimant as a defendant and may be served at the hearing or thereafter. The claimant must answer or otherwise respond within 5 days of service. (*C.C.P. 1174.3(e)(2).*)

(3) *Disposition: Claim Denied or Invalid.* If the claim is denied for nonpayment of the fee or failure to deliver a form for proceeding in forma pauperis, if the claim is determined not to be valid, or if the claimant does not appear or does not prevail on a trial on the merits of the action, the court must order the levying officer to proceed with enforcement of the writ of possession within a reasonable time not exceeding 5 days. The officer must enforce the writ against *any occupant*. (*C.C.P. 1174.3(g).*)

(4) *Disposition of Rental Payment.* If the claimant has deposited 15 days' rent under *C.C.P. 1174.3(c)* (see *supra*, §334), and the claim is valid, the deposit must be returned to the claimant. If the claim is invalid, the landlord is entitled to a pro rata amount of the deposit for each day the enforcement of the judgment was delayed by reason of the claim being made, and the residue is returned to the claimant. (*C.C.P. 1174.3(d).*)

SUPPLEMENT: [This section is current through the latest supplement]



169 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

C. Judgment for Possession of Real Property.

4. Failure To Vacate Property.

8 *Witkin Cal. Proc. Enf Judgm* § 336

[§ 336] Failure To Vacate Property.

(1) *In General.* If a judgment debtor, members of the debtor's household, and any other occupants holding under the debtor do not vacate the property within 5 days after a writ of possession of real property is served under *C.C.P. 715.020* (see *supra*, §333), the levying officer must remove the occupants and place the judgment creditor in possession. The 5-day period is not subject to the extension for service provided by *C.C.P. 684.120* (see *supra*, §27). (*C.C.P. 715.020(c)*.) Prior to entering a house pursuant to a writ of possession, the officer must give notice of his or her authority and purpose in a manner similar to that required under P.C. 844 and P.C. 1531 (see 4 *Cal. Crim. Law (3d), Illegally Obtained Evidence*, §162 et seq.). (*People v. Jackson (1981) 117 C.A.3d 654, 658, 172 C.R. 856.*) (See Rutter Group, 2 Enforcing Judgments and Debts §6:1759 et seq.)

(2) *Removal of Persons Not Named in Writ: Due Process.* Notwithstanding *C.C.P. 715.020(c)*, the levying officer may not remove a person who is not named in the writ and who either claims a right of possession accruing *before* commencement of an unlawful detainer action or claims to have been in possession *on the date* the action was filed. (*C.C.P. 715.020(d)*; on postjudgment claim of right to possession by occupant not named in judgment of possession, see *supra*, §§334, 335.) However, if the summons, complaint, and prejudgment claim of right to possession were served on the occupants under *C.C.P. 415.46* (see 12 *Summary (10th), Real Property*, §729), no occupant, whether named in the judgment of possession or not, may object to its enforcement. (*C.C.P. 715.020(d)*; see 23 *Pacific L. J. 558.*) Further, all persons who enter the property under the tenant *after* commencement of the action are bound by the judgment. (*C.C.P. 1164.*)

The procedure set forth in *C.C.P. 715.020* codifies that approved in *Arrieta v. Mahon (1982) 31 C.3d 381, 182 C.R. 770, 644 P.2d 1249*. (See 16 *Cal. Law Rev. Com. Reports*, p. 1158.) In *Arrieta*, tenant A was not given notice of an unlawful detainer action until a writ of execution and a notice to vacate were posted on her apartment door. The tenant named in the action had assisted A in obtaining the apartment and had paid the first month's rent, but had moved away before the writ was issued; A had thereafter made rental payments. A sought declaratory and injunctive relief, and the trial judge granted the relief by an order (a) barring removal of any adult not named in a writ of execution who claimed a right of possession and had entered the premises before commencement of the unlawful detainer action, and (b) requiring that the notice to vacate include a statement directing such a person to contact the marshal's office. *Held*, affirmed.

(a) The eviction of persons not named in the writ of execution was a violation of due process, for it denied them the right to a hearing at which to interpose any valid defenses to eviction. (*31 C.3d 389.*)

(b) *C.C.P. 1164*, to the extent it provides that no person other than the tenant and subtenant in the actual occupation of the premises when the complaint is filed need be made parties defendant in an unlawful detainer action, is only intended as a rule of nonjoinder to permit such actions to go forward in the absence of individuals who, but for the rule, might be considered indispensable parties. The statute does not suggest that the rights of persons not joined may be determined in their absence. (*31 C.3d 391.*)

(c) The judge's order did not bar eviction of unnamed tenants; it merely required that a postjudgment order be obtained by the landlord directing those tenants to show cause why they should not be evicted. Landlords could avoid this burden by naming all adults on the premises in the writ of execution. (*31 C.3d 393.*)

SUPPLEMENT: [This section is current through the latest supplement]



170 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

C. Judgment for Possession of Real Property.

5. Disposition of Personal Property.

8 *Witkin Cal. Proc. Enf Judgm* § 337

[§ 337] Disposition of Personal Property.

(1) *Governing Law.* After a judgment creditor is placed in possession of real property under a writ of possession, disposition of personal property remaining on the real property is governed by *C.C.P. 1174(e)-(m)*. References to "landlord" and "tenant" in *C.C.P. 1174* are deemed to be references to the judgment creditor and the judgment debtor or other occupant, respectively. (*C.C.P. 715.030*; see *C.C.P. 1174(m)* [incorporating definitions of "owner," "premises," and "reasonable belief" set forth in C.C. 1980]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1768 et seq.)

(2) *Procedure.* The statute provides the following procedure:

(a) Personal property that the judgment creditor reasonably believes to be lost must be disposed of under C.C. 2080 et seq. (see 13 *Summary* (10th), *Personal Property*, §§119, 120), governing lost and unclaimed property. If the appropriate law enforcement department refuses to accept the property, it is deemed not to have been lost. (*C.C.P. 1174(e).*)

(b) Unless the procedure for surrender of property under C.C. 1965 (see 12 *Summary* (10th), *Real Property*, §754) has been initiated or completed, the judgment creditor must give notice under C.C. 1983 (see 12 *Summary* (10th), *Real Property*, §750) to any person other than the judgment debtor whom the creditor reasonably believes to be the owner of the property. (*C.C.P. 1174(f).*) (For form of notice, see C.C. 1984.)

(c) The judgment creditor must store the property in a place of safekeeping until it is released or disposed of. (*C.C.P. 1174(g).*)

(d) The judgment creditor must release the property pursuant to C.C. 1965, release it to the judgment debtor, or release it to a person the creditor reasonably believes to be the owner if the debtor or other person pays the storage costs as provided by C.C. 1990 and claims the property not later than the date specified in the writ of possession or the notice to the owner. (*C.C.P. 1174(h).*) Property not released following this procedure must be disposed of pursuant to C.C. 1988 (see 12 *Summary* (10th), *Real Property*, §752), governing the disposition of abandoned personal property. (*C.C.P. 1174(i).*)

(3) *Judgment Creditor's Liability*. Generally, the judgment creditor is not liable to any person for the disposition of property in accordance with the statutory procedures. However, where property is released to a person (other than the judgment debtor) reasonably believed to be the owner under *C.C.P. 1174(h)* or is disposed of pursuant to C.C. 1988, the creditor may be liable to a person, other than the debtor, who has not received notice under *C.C.P. 1174(f)* if the person proves that, prior to releasing or disposing of the property, (a) the creditor believed that the person had an interest in the property, and (b) knew the person's address. (See *C.C.P. 1174(e), (j), (k), (l)*.)

SUPPLEMENT: [This section is current through the latest supplement]



171 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

D. Judgment for Sale of Property.

1. Writ of Sale.

8 *Witkin Cal. Proc. Enf Judgm* § 338

[§ 338] Writ of Sale.

(1) *Nature and Contents.* A judgment for the sale of real or personal property may be enforced by a writ of sale issued pursuant to *C.C.P. 712.010* (see supra, §326). (*C.C.P. 716.010(a)*.) In addition to the information required by *C.C.P. 712.020* (see supra, §326), a writ of sale must describe the property to be sold to satisfy the judgment. (*C.C.P. 716.010(b)*.)

(2) *Fee.* The fee for issuing the writ is \$ 15. (*Govt.C. 70626(a)(1)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §§6.155, 6.156; Rutter Group, 2 Enforcing Judgments and Debts §6:1770 et seq.)

(3) *Delivery to Levying Officer.* A writ of sale and a certified copy of the judgment for sale must be delivered to the levying officer. (*C.C.P. 716.010(c)*.)

(4) *Execution.* To execute a writ of sale, the levying officer must (a) levy on the property in the manner provided by *C.C.P. 700.010* et seq. (supra, §117 et seq.), (b) unless otherwise ordered by the court, give notice and sell the property as provided by *C.C.P. 701.510* et seq. (supra, §144 et seq.), and (c) apply the proceeds of the sale in conformity with the judgment of sale. (*C.C.P. 716.020*.)

West's Key Number Digest, Judicial Sales 5

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Fee.* *Govt.C. 70626* was amended in 2009. The fee for issuing the writ is \$ 25 until July 1, 2017. (*Govt.C. 70626(a)(1)*, (e).)



172 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

D. Judgment for Sale of Property.

2. Turnover Order.

8 *Witkin Cal. Proc. Enf Judgm* § 339

[§ 339] Turnover Order.

(1) *Application.* Where a writ of sale is issued, the judgment creditor may apply ex parte, or on noticed motion if the court so directs or a court rule requires, for an order directing the judgment debtor to transfer to the levying officer (a) possession of the property if the prescribed method of levy is by taking the property into custody, and (b) possession of any documentary evidence of title. (*C.C.P. 716.030(a)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.160; Rutter Group, 2 Enforcing Judgments and Debts §6:1772 et seq.; for a comparable provision applicable to a writ of execution, see *C.C.P. 699.040*, supra, §101.)

(2) *Issuance.* The order may be issued on a showing of need. (*C.C.P. 716.030(b)*.)

(3) *Service.* The order must be personally served on the judgment debtor and must notify the debtor that failure to comply may subject the debtor to contempt of court. (*C.C.P. 716.030(c)*.) An order directing transfer of documentary evidence of title may be served when the property is levied on or thereafter. (*C.C.P. 716.030(a)(2)*.)

SUPPLEMENT: [This section is current through the latest supplement]



173 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

1. In General.

a. Nature and Scope of Power.

8 *Witkin Cal. Proc. Enf Judgm* § 340

[§ 340] Nature and Scope of Power.

(1) *In General.* A judgment not otherwise enforceable under the Enforcement of Judgments Law may be enforced by personally serving a certified copy of the judgment on the person required to obey it and invoking the power of the court to punish for contempt. (*C.C.P. 717.010.*) Under the general contempt statutes, disobedience of a valid judgment or order is punishable as a civil contempt. (*C.C.P. 1209(a)(5)*; see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §§6.165, 6.166; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1779; Cal. Civil Practice, 4 Procedure, §30:74 et seq.; *100 A.L.R.3d* 889 [oral court order implementing prior written order or decree as independent basis of charge of contempt within contempt proceedings based on violation of written order].) (On contempts during trial, see *7 Cal. Proc. (5th), Trial*, §168 et seq.; on contempt by witness, see *2 Cal. Evidence (4th), Witnesses*, §28 et seq.; on disobedience of court order as misdemeanor, see P.C. 166, *2 Cal. Crim. Law (3d), Crimes Against Governmental Authority*, §30.)

(2) *Grounds for Contempt Order.* The court may exercise its contempt power when the person against whom the judgment or order is rendered has notice or knowledge of the judgment and the ability to comply, but wilfully refuses to do so. (*Board of Supervisors v. Superior Court (1995)* 33 C.A.4th 1724, 1736, 39 C.R.2d 906; on requirements of affidavit of contempt, see *infra*, §343.) Punishment for contempt must rest on a clear, intentional violation of a specific, narrowly drawn order. (*Wilson v. Superior Court (1987)* 194 C.A.3d 1259, 1273, 240 C.R. 131; *Board of Supervisors v. Superior Court, supra*, 33 C.A.4th 1737.)

(3) *Jurisdiction To Exercise Power.* The power is exclusively in the particular court the order of which is violated. (See *Parker v. Superior Court (1926)* 79 C.A. 618, 620, 250 P. 587 [Los Angeles superior court had no jurisdiction to punish for violation of child support order of Kern superior court].) It is possible, however, to overcome the effect of this jurisdictional rule by bringing an action on the judgment in the new county. (See *Thomas v. Thomas (1939)* 14 C.2d 355, 358, 94 P.2d 810.)

(4) *Extent of Power.* Contempt is a drastic remedy that should be used only when necessary to maintain law and order. It should rarely be used to settle differences of opinion between conscientious officials regarding close questions of civil law. (See *Board of Supervisors v. Superior Court, supra*, 33 C.A.4th 1742 [insufficient evidence that county

board of supervisors wilfully disobeyed consent decree placing limit on population of detention facility by failing to provide sheriff with prisoners' necessities].)

(5) *Limitation on Contempt Orders Against County Governments.* No order of contempt may be made affecting a county government or a member of its governing body acting pursuant to lawful authority unless the court finds, after an evidentiary hearing, that either of the following conditions exist: (a) The county has the resources necessary to comply with the court's order. (b) The county has the authority to generate the necessary resources without recourse to voter approval, without incurring additional indebtedness, without exposing itself or county officers to liability for failure to perform constitutional or statutory duties, and without depriving itself of resources necessary for its reasonable support and maintenance. (*C.C.P. 128(f).*)

(6) *Violation of Support and Other Family Code Orders: Limitation of Action.* The period of limitations for commencing a contempt action for failure to pay child, family, or spousal support is 3 years from the date that the payment was due. The period of limitations for enforcement of other orders under the Family Code is 2 years from the time that the alleged contempt occurred. (*C.C.P. 1218.5(b)*); on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

West's Key Number Digest, Contempt 30 et seq.

SUPPLEMENT: [This section is current through the latest supplement]



174 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

1. In General.

b. Action by District Attorney.

8 *Witkin Cal. Proc. Enf Judgm* § 341

[§ 341] Action by District Attorney.

(1) *General Rule: No Action.* In *Safer v. Superior Court* (1975) 15 C.3d 230, 124 C.R. 174, 540 P.2d 14, United Farm Workers, a labor union, picketed several growers. The growers obtained a temporary restraining order limiting the spacing and number of pickets. The next day the sheriff arrested a number of union members for alleged violation of the order. They were charged with the misdemeanor of wilful disobedience of a lawful court order, pleaded not guilty, and requested jury trials. On the date set for the trials the judge required the personal attendance of defendants at a proceeding which the district attorney stated would be a motion for dismissal. When defendants appeared, however, he served them with orders to show cause in contempt proceedings under *C.C.P. 1209* (see supra, §340), and then procured dismissal of the criminal charges "in furtherance of justice," on the ground that the defendants had become subject to the contempt proceedings. "In this manner the district attorney sought to convert a misdemeanor proceeding, in which defendants had the protection of a jury trial and other statutory safeguards, into a contempt proceeding, in which defendants would be stripped of these protections." (15 C.3d 234.) *Held*, prohibition granted.

(a) *Legislative intent.* The Legislature has indicated by specific enactments that the district attorney may exercise his or her power only in such civil litigation as it has found essential; and even where specifically authorized the district attorney enjoys neither plenary power nor unbridled discretion. (15 C.3d 236.) "The intervention of the district attorney in these proceedings, springing from a civil suit is, indeed, the introduction of the government itself on one side of the litigation, casting the whole issue into a different framework. The weight of government tends naturally to tilt the scales of justice in favor of the party whom the government sponsors. Moreover, in cases like this the intrusion of the district attorney exposes the disadvantaged litigant to a special danger; the district attorney undertakes to bring about nothing less than his incarceration." (15 C.3d 238.)

(b) *District attorney's interest in administration of justice.* The argument that disobedience of a court order is an affront to the court and the People, such as to authorize the district attorney's appearance on the plaintiff's behalf, is unconvincing. The district attorney's authority respecting contempt is limited to institution of a criminal proceeding under P.C. 166 (see 2 *Cal. Crim. Law* (3d), *Crimes Against Governmental Authority*, §30), in which the defendant has the right of trial by jury. (15 C.3d 240.)

The court added some strong words on the policy involved: "This case presents a disturbing instance of intervention by a public authority in an acrimonious labor dispute. By imposing the weight of his office and the advantages of a public purse on the side of management, the district attorney at one stroke relieves one of the civil litigants of the necessity of financing his half of the battle, deprives defendants of the right to jury trial which they enjoyed in the previous criminal prosecution, and simultaneously suggests that public order necessitates management success in this private civil dispute. From such acts, even when well-intentioned, spring some of the bitterest chapters in the social history of our nation. The Legislature of this state has wisely refrained from empowering the public officer in question to play this role." (15 C.3d 242.)

Two justices dissented, arguing that public policy supports contempt actions by the district attorney. (15 C.3d 247.)

(2) *Exception: Noncompliance With Order Under Domestic Violence Prevention Act.* The Legislature subsequently enacted an exception to the general rule, permitting a district attorney or city attorney to initiate and pursue a court action for contempt against a party for failing to comply with a court order entered under the Domestic Violence Prevention Act (see 11 *Summary* (10th), *Husband and Wife*, §373 et seq.). Attorneys' fees and costs ordered against the party are to be paid to the Office of Emergency Services for funding domestic violence shelter service providers. (C.C.P. 1218(d).)

SUPPLEMENT: [This section is current through the latest supplement]



175 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

1. In General.

c. Enforceable Judgments and Orders.

8 *Witkin Cal. Proc. Enf Judgm* § 342

[§ 342] Enforceable Judgments and Orders.

The following judgments and orders are illustrative of those that are enforceable by contempt:

(1) *Injunctions*. Injunctions, including temporary restraining orders, preliminary injunctions, and permanent injunctions. (See Cal. Civil Practice, 2 Procedure, §16:90; C.E.B., 2 Debt Collection Practice 2d, §8.49 et seq.; 17 *Am.Jur.2d* (2004 ed.), *Contempt* §117; 30 *Am.Jur.2d* (2005 ed.), *Executions and Enforcement of Judgments* §617 et seq.; 6 *Cal. Proc.* (5th), *Provisional Remedies*, §396.)

(2) *Orders in examination proceedings*. (See *C.C.P.* 708.140(a)(1), supra, §284; *C.C.P.* 708.170(a)(1)(A), supra, §288; *Hustead v. Superior Court* (1969) 2 *C.A.3d* 780, 791, 83 *C.R.* 26 [contempt against garnishee failing to pay amount due judgment debtor to judgment creditor pursuant to order in examination proceedings]; C.E.B., 2 Debt Collection Practice §8.31 et seq.; 30 *Am.Jur.2d* (2005 ed.), *Executions and Enforcement of Judgments* §617 et seq.)

(3) *Child custody orders*. (See *Smith v. Smith* (1953) 120 *C.A.2d* 474, 479, 261 *P.2d* 567; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

(4) *Support orders*. Orders for child, family, or spousal support, including orders to pay attorneys' fees or costs. (*Family C.* 290, 4500; see *In re Hendricks* (1970) 5 *C.A.3d* 793, 796, 85 *C.R.* 220 [contempt to enforce order to make support payments]; C.E.B. 3d, 1 Marital Settlement and Other Family Law Agreements §§3.8, 4.4, 16.20; 8C *Am.Jur.* P.P. Forms (2006 ed.), *Divorce and Separation* §382 et seq.; 11 *Summary* (10th), *Husband and Wife*, §§205, 258 et seq.)

A judgment requiring a parent to reimburse a county for public assistance payments (see 11 *Summary* (10th), *Husband and Wife*, §343), without any underlying child support order, is a money judgment in a civil action for debt rather than a child support order. Hence, due to the constitutional prohibition of imprisonment for debt (see 7 *Summary* (10th), *Constitutional Law*, §200), it may not be enforced by contempt. (*Crider v. Superior Court* (1993) 15 *C.A.4th* 227, 234, 18 *C.R.2d* 757.)

(5) *Marital property orders*. Property settlement agreements and division of community property. The

constitutional prohibition of imprisonment for debt restricts the extent to which these agreements may be enforced by contempt proceedings:

(a) Orders adjudging property rights and dividing the property may require payment of money as part of the division. The obligation to make the payment is a "debt." Thus, contempt will not lie. (*In re Fontana* (1972) 24 C.A.3d 1008, 1011, 101 C.R. 465; 11 Summary (10th), *Husband and Wife*, §362.)

(b) Provisions for support, even though incorporated in an integrated property settlement agreement, are not "debts" and are enforceable by contempt. (*Family C. 290*, 11 Summary (10th), *Husband and Wife*, §362; see *Tilghman v. Superior Court* (1974) 40 C.A.3d 599, 606, 610, 613, 115 C.R. 195 [construing former provisions].)

(c) Where community property retirement rights are involved, the spouse is not a simple money judgment creditor but a partial owner of a special fund; hence, the other spouse's obligation to pay that share is not a debt and contempt will lie to enforce it. (*In re Marriage of Fithian* (1977) 74 C.A.3d 397, 404, 141 C.R. 506; *Verner v. Verner* (1978) 77 C.A.3d 718, 729, 143 C.R. 826.)

SUPPLEMENT: [This section is current through the latest supplement]



176 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

2. Affidavit.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 343*

[§ 343] In General.

(1) *Necessity for Affidavit or Statement of Facts.* When the contempt is not committed in the immediate view and presence of the court, or of the judge in chambers, an *affidavit* to the court or judge of the facts constituting the contempt, or a *statement of the facts* by the referee, arbitrator, or other judicial officer must be presented. (*C.C.P. 1211(a)*; see *In re Larrabee* (1938) 29 C.A.2d 240, 243, 84 P.2d 224 [affidavit may be made by any person in possession of facts, including attorney]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.166; 17 *Am.Jur.2d* (2004 ed.), *Contempt* §§155, 156; 61 *A.L.R.2d* 1083 [who may institute civil contempt proceedings]; 1 West L.A. L. Rev. 21 [comprehensive treatment of civil contempt affidavits]; 79 *A.L.R.2d* 657 [use of affidavits to establish contempt]; on distinction between direct and indirect contempt, see 7 *Cal. Proc.* (5th), *Trial*, §175 et seq.)

(2) *Contents of Affidavit.* Except where child support orders are involved, the affidavit should state facts showing each of the following: (a) the making of the order; (b) knowledge of the order by the person charged; (c) ability of the person charged to comply with it; and (d) wilful disobedience of the order by the person charged. (See *Warner v. Superior Court* (1954) 126 C.A.2d 821, 824, 273 P.2d 89; *In re Liu* (1969) 273 C.A.2d 135, 140, 78 C.R. 85; *Board of Supervisors v. Superior Court* (1995) 33 C.A.4th 1724, 1736, 39 C.R.2d 906; 1 West L.A. L. Rev. 21; 53 *A.L.R.2d* 600 [pleading ability to comply with support order].)

A prima facie case of contempt of a child support order is established by (a) a showing that the order was made, filed, and *served* on the parent, or that the parent was present in court when the order was pronounced, and (b) proof of noncompliance. (*C.C.P. 1209.5*, *infra*, §350.) Thus, the ordinary requirement that the petitioner, in the affidavit, anticipate the defense of inability to pay by setting forth facts to show ability does not apply. (See *Lyons v. Municipal Court* (1977) 75 C.A.3d 829, 838, 142 C.R. 449, 2 *Cal. Proc.* (5th), *Jurisdiction*, §450; on constitutionality of *C.C.P. 1209.5*, see *infra*, §350.)

(3) *Forms.* The Judicial Council has adopted a mandatory form for an order to show cause and affidavit for contempt in Family Code proceedings. (See Judicial Council Form No. FL-410 [Order to Show Cause and Affidavit for Contempt].) Filing of this form constitutes compliance with *C.C.P. 1211* in family law matters. (*C.C.P. 1211(b)*); for related mandatory forms, see Judicial Council Form No. FL-411 [Affidavit of Facts Constituting Contempt]; Judicial

Council Form No. FL-412 [Affidavit of Facts Constituting Contempt (Domestic Violence/Custody and Visitation)]; for forms of affidavits generally, see Cal. Civil Practice, 4 Procedure, §30:85; C.E.B., 2 Debt Collection Practice 2d, §8.52; 7 Am.Jur. P.P. Forms (2002 ed.), Contempt §42 et seq.; 8C Am.Jur. P.P. Forms (2006 ed.), Divorce and Separation §389 et seq.; 10 Am.Jur. P.P. Forms (2005 ed.), Executions §365 et seq.; on order to show cause, see *infra*, §346.)

SUPPLEMENT: [This section is current through the latest supplement]



177 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

2. Affidavit.

b. Illustrations of Sufficient and Insufficient Affidavits.

8 *Witkin Cal. Proc. Enf Judgm* § 344

[§ 344] Illustrations of Sufficient and Insufficient Affidavits.

The following cases illustrate sufficient and insufficient affidavits:

(1) *Injunction Cases: Affidavits Held Sufficient.* (See *Wutchumna Water Co. v. Superior Court* (1932) 215 C. 734, 740, 12 P.2d 1033 [combined effect of several affidavits]; *Vernon v. Superior Court* (1952) 38 C.2d 509, 513, 515, 241 P.2d 243 [affidavit need not show intent to disobey injunction; sufficient to state disobedience, knowledge of injunction, and ability to comply]; *In re Morford* (1934) 137 C.A. 662, 664, 31 P.2d 406 [no requirement that persons charged be defendants in injunction action where affidavit alleged that they conspired with defendants to violate injunction]; *In re Wenzler* (1937) 23 C.A.2d 726, 729, 74 P.2d 297 [trial court's resolution of conflict between affidavit and averments of person charged was controlling]; *Clear Lake Water Co. v. Superior Court* (1939) 33 C.A.2d 710, 714, 92 P.2d 921 [affidavit set forth terms of decree, knowledge, and violation; nothing further was required]; *Sorrell v. Superior Court* (1946) 73 C.A.2d 194, 199, 166 P.2d 80 [reference to acts charged in other affidavits].)

(2) *Injunction Cases: Affidavits Held Insufficient.* (See *Berger v. Superior Court* (1917) 175 C. 719, 720, 167 P. 143 [failure to show that alleged contemnor was bound by injunction order or that he acted as agent for or in concert with persons bound]; *In re McDonald* (1932) 217 C. 29, 31, 16 P.2d 995 [after appeal from decree enjoining J, "her successors or assigns," affidavit by T charging K with violating decree failed to state that K had knowledge of appeal and final termination in favor of T and that K was "successor" or "assign" of J]; *Groves v. Superior Court* (1944) 62 C.A.2d 559, 567, 145 P.2d 355 [insufficient allegation that contract was still alive where party was charged with violating judgment enjoining him from committing certain acts "during the life of the contract"]; *Doyle v. Superior Court* (1952) 113 C.A.2d 880, 881, 249 P.2d 298 [failure to affirmatively allege that, prior to alleged violation of injunctive order, party charged had been served with notice of judgment].)

(3) *Support and Custody Cases: Affidavits Held Sufficient.* (See *Ballentine v. Superior Court* (1945) 26 C.2d 254, 257, 158 P.2d 14 [allegations relating to obligor's ability to pay, i.e., allegations concerning earnings and employment, were sufficient even though made on information and belief]; *In re Ellery* (1937) 22 C.A.2d 274, 275, 276, 70 P.2d 690 [allegations that "defendant knew of and was familiar with the terms and provisions" of alimony order and that he "has been and now is able and capable of complying with said order" were sufficient allegations that husband had knowledge

of order and ability to pay].)

(4) *Support and Custody Cases: Affidavits Held Insufficient.* (See *Mery v. Superior Court* (1937) 9 C.2d 379, 380, 70 P.2d 932 [no statement of facts showing obligor's ability to pay other than that he was employed]; *Phillips v. Superior Court* (1943) 22 C.2d 256, 257, 137 P.2d 838 [failure to include allegation that party charged had been served with notice of order, or that she had actual knowledge of its terms, or was present in court when it was made]; *Gideon v. Superior Court* (1956) 141 C.A.2d 640, 642, 642, 297 P.2d 84 [affidavit referred to order for judgment instead of actual judgment].)

SUPPLEMENT: [This section is current through the latest supplement]



178 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

2. Affidavit.

c. Construction, Amendment, and Review.

8 *Witkin Cal. Proc. Enf Judgm* § 345

[§ 345] Construction, Amendment, and Review.

It was formerly held that a sufficient affidavit was a jurisdictional basis of the contempt order. (See *Frowley v. Superior Court* (1910) 158 C. 220, 222, 110 P. 817; *Freeman v. Superior Court* (1955) 44 C.2d 533, 537, 282 P.2d 857; *Palm Springs Alpine Estates v. Superior Court* (1967) 255 C.A.2d 883, 888, 63 C.R. 618.) However, in 1970, the Legislature enacted *C.C.P. 1211.5*, with the intent that contempt proceedings be adjudicated and reviewed on the merits and that contempt judgments not be set aside because of technical defects in an initiating affidavit. (See *Reliable Enterprises v. Superior Court* (1984) 158 C.A.3d 604, 617, 204 C.R. 786.)

The statute establishes liberalized rules governing the construction, amendment, and review of the affidavit or statement of facts, applicable at all stages of the contempt proceedings:

(1) *Construction*. If there is no objection to the sufficiency of the affidavit or statement at the hearing, "jurisdiction of the subject matter shall not depend on the averments" of the affidavit or statement, "but may be established by the facts found by the trial court," and the affidavit or statement must be amended to conform to proof. (*C.C.P. 1211.5(a)*.) (See *Reliable Enterprises v. Superior Court*, *supra*, 158 C.A.3d 617 [insufficiency of declarations did not preclude jurisdiction].)

(2) *Amendment*. The court may order or permit amendment at any stage of the proceedings for any defect or insufficiency, "unless substantial rights" of the accused "would be prejudiced." In that event, a reasonable continuance, "not longer than the ends of justice require," may be granted. (*C.C.P. 1211.5(b)*.) (See *Mossman v. Superior Court* (1972) 22 C.A.3d 706, 710, 99 C.R. 638 [holding amendment proper].)

(3) *Review*. No affidavit or statement is insufficient, nor can the proceedings be affected by reason of any defect or imperfection in a matter of form that does not prejudice a substantial right of the person accused on the merits. Further, a contempt order may not be set aside, or a new trial granted, for a pleading error in the affidavit or statement unless, after an examination of the entire cause, including the evidence, the court believes that the error has resulted in a miscarriage of justice. (*C.C.P. 1211.5(c)*); for constitutional doctrine that error is not reversible in absence of miscarriage of justice, see 9 *Cal. Proc.* (5th), *Appeal*, §416.)

In *Reliable Enterprises v. Superior Court*, *supra*, petitioners R Corp. and D, its officer, were adjudged in contempt for eight violations of a preliminary injunction against permitting lewd acts on the premises of their Adult World Bookstore. The police officer's affidavits in support of the order to show cause set forth five lewd acts witnessed on October 7; but at the hearing, testimony was admitted, without amendment of the affidavits, of three lewd acts witnessed on November 24. *Held*, contempt adjudications affirmed as to the October acts and annulled as to the November acts.

(a) Petitioners' first challenge to the affidavits was based on the failure of the affidavits to state that petitioners had the ability to comply with the injunction or that any violation was wilful. However, under *C.C.P. 1211.5(a)*, if no objection is made to the sufficiency of an affidavit, the jurisdiction of the court may be established by facts found to have been proved at the hearing. (*158 C.A.3d 617, 618.*) And the failure of the court to amend the affidavits was not prejudicial and therefore was not reversible under *C.C.P. 1211.5(c)*. (*158 C.A.3d 618.*)

(b) The second challenge was that the charges of the November 24 acts improperly added new offenses that were not set forth in the affidavit originally or by amendment. This challenge was good: "Due process requires that an accused be given reasonably clear notice of whether he is being charged with criminal conduct. Here, the failure to amend the affidavit resulted in prejudicial uncertainty as to the purpose for which the November 24 evidence was admitted. Because petitioners were not given reasonably clear notice of the charges relating to November 24, their constitutional rights to due process of law were violated." (*158 C.A.3d 620.*) And, assuming that the error is not reversible per se but rather is subject to the *Chapman* test (see *6 Cal. Crim. Law* (3d), *Reversible Error*, §10), it did constitute a miscarriage of justice: "Because the ambiguity in notice of the charges was not resolved until the conclusion of the hearing, we have no way to gauge the effect of defective notice on petitioners' ability to defend against the charges." (*158 C.A.3d 620.*)

West's Key Number Digest, Injunction 230(2)

SUPPLEMENT: [This section is current through the latest supplement]



179 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

3. Order To Show Cause.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 346

[§ 346] In General.

(1) *Issuance.* On filing of an affidavit of facts constituting a contempt (see *supra*, §343), an ex parte order to show cause ordinarily issues. (See *C.C.P. 1212* [also authorizing issuance of warrant of attachment to bring party charged to answer]; on order to show cause generally, see C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §6.166; *Cal. Civil Practice*, 2 Procedure, §30:77; 6 *Cal. Proc.* (5th), *Proceedings Without Trial*, §60 et seq.)

(2) *Forms.* The Judicial Council has adopted a mandatory form for an order to show cause and affidavit for contempt in Family Code proceedings. (See Judicial Council Form No. FL-410 [Order to Show Cause and Affidavit for Contempt].) (For forms of orders to show cause generally, see *Cal. Civil Practice*, 4 Procedure, §30:86; C.E.B., 2 *Debt Collection Practice* 2d, §8.51; 7 *Am.Jur. P.P. Forms* (2002 ed.), Contempt §67 et seq.; 8C *Am.Jur. P.P. Forms* (2006 ed.), *Divorce and Separation* §399 et seq.; 10 *Am.Jur. P.P. Forms* (2005 ed.), *Executions* §§369, 370; for forms of affidavits, see *supra*, §343.)

SUPPLEMENT: [This section is current through the latest supplement]



180 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

3. Order To Show Cause.

b. Service.

8 *Witkin Cal. Proc. Enf Judgm § 347*

[§ 347] Service.

(1) *Jurisdictional Requirement.* Personal service of the order to show cause on the party charged is a jurisdictional requirement for a contempt order. (See *In re Meyer* (1933) 131 C.A. 41, 43, 20 P.2d 732; *Kroneberger v. Superior Court* (1961) 196 C.A.2d 206, 210, 16 C.R. 339; *Cedars-Sinai Imaging Med. Group v. Superior Court* (2000) 83 C.A.4th 1281, 1286, 100 C.R.2d 320, citing the text; 17 *Am.Jur.2d* (2004 ed.), *Contempt* §159 et seq.; but see *Leonis v. Superior Court* (1952) 38 C.2d 527, 531, 241 P.2d 253 [voluntary appearance by counsel was waiver of lack of service].)

(2) *When Substituted Service Is Proper.* An exception to the requirement of personal service on the party charged has been recognized in the case of concealment. *Smith v. Smith* (1953) 120 C.A.2d 474, 261 P.2d 567 distinguished *In re Meyer, supra*, and followed *Shibley v. Superior Court* (1927) 202 C. 738, 262 P. 332:

(a) "[W]here a party conceals himself in California to avoid service of a contempt citation, substituted service upon his attorney may be had. ... These concealments within the state cases are predicated upon the theory that every court possesses inherent jurisdiction to punish for contempt ... and that such jurisdiction cannot be defeated by the party concealing himself to avoid service." (120 C.A.2d 485.)

(b) In *Shibley*, the defendant was a California resident who left the state to avoid service; here, defendant had become a resident of Utah. But this factual difference is not significant. "The fundamental concept behind the so-called concealment cases is that a party cannot defeat the jurisdiction of courts by hiding out and evading service. That concept applies whether or not the guilty party is a resident of California or of some other state, and whether he conceals himself within or without this state." (120 C.A.2d 486.)

SUPPLEMENT: [This section is current through the latest supplement]



181 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

4. Hearing.

8 *Witkin Cal. Proc. Enf Judgm* § 348

[§ 348] Hearing.

(1) *Right to Hearing.* The party charged with contempt is entitled to a hearing at which, by affidavits or witnesses or both, that party may present defenses. (*C.C.P. 1217*; see *Hotaling v. Superior Court* (1923) 191 C. 501, 505, 217 P. 73 [competent evidence must be produced at hearing]; *Collins v. Superior Court* (1956) 145 C.A.2d 588, 594, 302 P.2d 805, 2 Cal. Proc. (5th), *Jurisdiction*, §308 [refusal to allow evidence of defenses is denial of due process]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.166; 73 *Harv. L. Rev.* 353 [procedures for trying contempts in federal courts]; on defenses, see *infra*, §349 et seq.; on disqualification and challenge of judge, see 2 Cal. Proc. (5th), *Courts*, §§97, 154.)

(2) *Effect of Participation.* Even though the contempt proceeding is usually commenced by an affidavit filed in the main action, the contempt proceeding is separate and distinct. Hence, participation in a contempt proceeding is not a general appearance in the main action. (*Bank of America v. Carr* (1956) 138 C.A.2d 727, 733, 292 P.2d 587.)

(3) *Affidavits as Complaint and Answer.* In a civil contempt proceeding, the affidavits on which the citation is issued constitute the complaint and the affidavits of the defendant constitute the answer or plea. The issues of fact are framed by the respective affidavits serving as pleadings, and the hearing must be had on these issues. (*Hotaling v. Superior Court*, *supra*; *Freeman v. Superior Court* (1955) 44 C.2d 533, 537, 282 P.2d 857; *In re Von Gerzabek* (1922) 58 C.A. 230, 232, 208 P. 318; *Groves v. Superior Court* (1944) 62 C.A.2d 559, 145 P.2d 355; for forms of counteraffidavits, see Cal. Civil Practice, 4 Procedure, §30:87 et seq.)

(4) *Quasi-Criminal Proceeding.* Because the proceeding is criminal in nature (see 3 Cal. Proc. (5th), *Actions*, §69), the party charged may not be compelled to give testimony against himself or herself. (See *Oliver v. Superior Court* (1961) 197 C.A.2d 237, 240, 17 C.R. 474, *infra*, §350; 2 Cal. Evidence (4th), *Witnesses*, §367.) And a verified answer to the affidavit is not a waiver of the right to refuse to testify; it is similar in effect to a plea of not guilty in a criminal case. (*In re Ferguson* (1954) 123 C.A.2d 799, 801, 268 P.2d 71.) The proceeding is governed by the criminal trial standard of proof beyond a reasonable doubt. But there is no requirement that the record show that the judge followed that standard; the presumption that an official duty has been performed applies. (*Ross v. Superior Court* (1977) 19 C.3d 899, 913, 141 C.R. 133, 569 P.2d 727.)

(5) *No Right to Jury Trial.* There is no right to a jury trial in a civil contempt proceeding. (*United Farm Workers Organizing Committee, AFL-CIO v. Superior Court* (1968) 265 C.A.2d 212, 214, 71 C.R. 513; *Pacific Tel. & Tel. Co. v. Superior Court* (1968) 265 C.A.2d 370, 373, 72 C.R. 177.)

(6) *Right to Counsel.* The party charged has the right to be represented by counsel, but the right may be waived either expressly or by implication. (*In re Shelley* (1961) 197 C.A.2d 199, 202, 16 C.R. 916 [right expressly waived]; see 52 A.L.R.3d 1002 [right to counsel in contempt proceedings].) An indigent accused whose potential punishment includes a jail sentence has the right to appointed counsel. (*Santa Clara v. Superior Court* (1992) 2 C.A.4th 1686, 1688, 5 C.R.2d 7, 11 Summary (10th), *Husband and Wife*, §258; see 32 A.L.R.5th 31 [right to appointment of counsel in contempt proceedings].)

(7) *Continuance Does Not Create Double Jeopardy.* In *Mulvany v. Superior Court* (1986) 184 C.A.3d 906, 229 C.R. 334, plaintiff sought to enforce an award of attorneys' fees by contempt. At the hearing on the order to show cause, no evidence was taken, the matter was continued, and it was subsequently taken off calendar. At a later hearing on a new order to show cause, the trial judge ruled that removal from the calendar amounted to a dismissal, because "to conclude otherwise in a quasi-criminal action could subject a citee to multiple actions" in violation of the doctrine of double jeopardy. (184 C.A.3d 908.) *Held*, reversed. Trials of civil contempt enforcement matters are subject to the provisions of the Code of Civil Procedure, and double jeopardy principles are not involved. (184 C.A.3d 908.) Here, no witnesses were sworn and no testimony was offered. C.C.P. 581 (see 6 Cal. Proc. (5th), *Proceedings Without Trial*, §293) permits dismissal of an action anytime before the actual commencement of trial. By analogy, the contempt citation could have been dismissed and refiled. It follows that the action could also have been taken off calendar and then replaced. (184 C.A.3d 909.)

West's Key Number Digest, Contempt 61(1) et seq.

SUPPLEMENT: [This section is current through the latest supplement]



182 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

5. Defenses.

a. Order Violated Is Invalid or Ineffective.

8 *Witkin Cal. Proc. Enf Judgm* § 349

[§ 349] Order Violated Is Invalid or Ineffective.

(1) *Invalidity of Order.* A contempt adjudication cannot be upheld if the order violated was itself fatally defective. The principal examples are invalid injunctions:

(a) Injunction void for lack of jurisdiction of the subject matter or person, or for being in excess of jurisdiction. (See *Fortenbury v. Superior Court* (1940) 16 C.2d 405, 410, 106 P.2d 411 [injunction against lawful picketing]; *Harlan v. Superior Court* (1949) 94 C.A.2d 902, 905, 211 P.2d 942 [temporary injunction not based on requisite verified complaint or affidavits showing grounds]; *Brady v. Superior Court* (1962) 200 C.A.2d 69, 73, 19 C.R. 242, 2 *Cal. Proc.* (5th), *Jurisdiction*, §296, citing the text; *In re Elias* (1962) 209 C.A.2d 262, 269, 25 C.R. 739 [void order to deposit money in court]; *Board of Med. Examiners v. Terminal-Hudson Electronics* (1977) 73 C.A.3d 376, 388, 140 C.R. 757; 12 *A.L.R.2d* 1059 [order was either beyond power or jurisdiction of court or merely erroneous]; 6 *Cal. Proc.* (5th), *Provisional Remedies*, §410 et seq.)

(b) Injunction fatally uncertain, so that punishment for violation of the order would constitute a denial of due process. (See *Brunton v. Superior Court* (1942) 20 C.2d 202, 205, 124 P.2d 831; *Weber v. Superior Court* (1945) 26 C.2d 144, 148, 156 P.2d 923; *Mattos v. Superior Court* (1939) 30 C.A.2d 641, 649, 86 P.2d 1056; *Gottlieb v. Superior Court* (1959) 168 C.A.2d 309, 312, 335 P.2d 714.)

The same rule applies to any other uncertain order, but uncertainty may sometimes be removed by construction. *In re Gideon* (1958) 157 C.A.2d 133, 320 P.2d 599, a divorce case, is an illustration. The trial judge on July 7 announced a decision for the wife and directed the husband to vacate the family home on or before July 20. The decree was not entered until October 7, but contained the order to vacate. On December 4, the husband was committed for contempt for failure to obey. *Held*, the adjudication was proper. Construing the judgment to effect its obvious intention and to render it operative instead of void, the court disregarded the words "on or before July 20" (an impossibility where the judgment was entered October 7), and treated it as a continuing order to vacate, effective forthwith on the entry of the decree.

(2) *Ineffectiveness of Order.* Contempt is not available in the absence of an effective order. (See *In re Blaze* (1969) 271 C.A.2d 210, 214, 216, 76 C.R. 551 [neither appellate record nor trial court file contained order alleged to have been

violated; adjudication of contempt resting on nonexistent order was nullity]; *In re Marcus* (2006) 138 C.A.4th 1009, 1015, 41 C.R.3d 861 [contempt did not lie for violation of family court's oral order modifying child custody arrangement; finding of indirect contempt (i.e., outside presence of court) must be based on written order]; 84 A.L.R.3d 1047 [violation of compromise and settlement where terms approved by court but not incorporated in order or judgment]; 36 A.L.R.4th 978 [violation of court order where another court has issued contrary order].)

In *Ketscher v. Superior Court* (1970) 9 C.A.3d 601, 88 C.R. 357, two brothers were engaged in a violent dispute over land. Their counsel entered into a stipulation for judgment, and the judge said from the bench: "If either party attacks the other, I will consider this to be contempt of court, and I will punish accordingly." (9 C.A.3d 603.) Two days later the brothers got into an argument and petitioner threw a rock. The judge held him in contempt and imposed a fine and jail sentence. *Held*, prohibition issued; there was no punishable contempt. (a) There was no effective order, because it was neither written and filed nor entered in the minutes (see 7 Cal. Proc. (5th), *Judgment*, §54). (b) The statement was uncertain: The judge merely warned the parties as to his future action, and did not directly enjoin the provocative acts. (9 C.A.3d 604.)

An injunction that, though valid, is not enforceable at the time of the alleged violation; e.g., where a mandatory injunction was stayed by the taking of an appeal, cannot be the basis for a contempt adjudication. (See *Clute v. Superior Court* (1908) 155 C. 15, 18, 99 P. 362; 6 Cal. Proc. (5th), *Provisional Remedies*, §403; 9 Cal. Proc. (5th), *Appeal*, §270.)

West's Key Number Digest, Injunction 219

SUPPLEMENT: [This section is current through the latest supplement]



183 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

5. Defenses.

b. No Notice or Knowledge.

8 *Witkin Cal. Proc. Enf Judgm* § 350

[§ 350] No Notice or Knowledge.

(1) *General Rule.* A party who had neither knowledge nor notice of an order may not be held in contempt for violation of the order; e.g., where the party was not present in court when it was made and was not served with a copy of it. (*Phillips v. Superior Court* (1943) 22 C.2d 256, 257, 137 P.2d 838; *Bryant v. Superior Court* (1939) 30 C.A.2d 509, 510, 86 P.2d 837; *Smith v. Smith* (1953) 120 C.A.2d 474, 486, 261 P.2d 567; *International Molders & Allied Workers Union v. Superior Court* (1977) 70 C.A.3d 395, 410, 138 C.R. 794, citing the text; *Farace v. Superior Court* (1983) 148 C.A.3d 915, 917, 196 C.R. 297 [court erred in holding contempt hearing where contemnor did not appear and there was no finding of valid service and voluntary absence].)

In re Felthoven (1946) 75 C.A.2d 465, 171 P.2d 47, applies this rule with great strictness: A pendente lite order in a divorce action provided for support of minor children and attorneys' fees. It was never served on the husband, but 2 days later almost identical provisions were included in an interlocutory decree of divorce, which was served. After an adjudication of contempt for violation, the husband was released on habeas corpus because the affidavit relied on the date of the pendente lite order instead of the other order of which he had knowledge. (75 C.A.2d 469.)

(2) *Child Support Cases.* Proof that a child support order was made, filed, and served on the parent, or proof that the parent was present in court at the time the order was pronounced, coupled with proof of noncompliance, is prima facie evidence of contempt. (C.C.P. 1209.5.) (See *Martin v. Superior Court* (1971) 17 C.A.3d 412, 414, 95 C.R. 110 [C.C.P. 1209.5 is constitutional; presumption is not arbitrary and does not deny due process]; *Lyons v. Municipal Court* (1977) 75 C.A.3d 829, 838, 142 C.R. 449, 2 Cal. Proc. (5th), *Jurisdiction*, §450, citing the text; *In re Feiock* (1989) 215 C.A.3d 141, 147, 263 C.R. 437, 10 Summary (10th), *Parent and Child*, §437 [C.C.P. 1209.5 is constitutional; ability to pay is affirmative defense, not presumption, under statute]; on defense of inability to pay, see *infra*, §351; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

This statute merely shifts the burden of producing evidence (see 1 Cal. Evidence (4th), *Burden of Proof and Presumptions*, §2); the burden of proof still remains on the party prosecuting the order to show cause. In *Oliver v. Superior Court* (1961) 197 C.A.2d 237, 17 C.R. 474, defendant husband was called to the stand as an adverse witness under Ev.C. 776 (see 3 Cal. Evidence (4th), *Presentation at Trial*, §202), and the judge advised him that, although he

could refuse to testify, *C.C.P. 1209.5* made failure to pay sufficient evidence to find him guilty. *Held*, contempt order annulled. In this quasi-criminal proceeding, a defendant cannot be examined under *Ev.C. 776*, and the judge's statement was coercive and prejudicial. (*197 C.A.2d 241.*)

(3) *Knowledge of Attorney*. Under the agency rule that an agent's knowledge is imputable to the principal (see 3 *Summary* (10th), *Agency and Employment*, §150), knowledge of the order by the party charged may be established by proof that that party's attorney had knowledge of the order. (See *Freeman v. Superior Court (1955) 44 C.2d 533, 537, 282 P.2d 857* [proof that order was served on contemnor's attorney raised rebuttable presumption that attorney informed contemnor of order, and was sufficient to support finding of knowledge despite contemnor's denial]; *Mossman v. Superior Court (1972) 22 C.A.3d 706, 711, 99 C.R. 638* [in contempt proceeding, evidence of attorney's knowledge of order creates rebuttable presumption of knowledge by party charged].)

SUPPLEMENT: [This section is current through the latest supplement]



184 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

5. Defenses.

c. Support Orders: Inability To Pay.

8 *Witkin Cal. Proc. Enf Judgm § 351*

[§ 351] Support Orders: Inability To Pay.

(1) *General Rule.* In contempt proceedings to enforce orders for support, inability to pay is a frequent defense. The varying circumstances raise difficult questions of fact, and the defense may be either that the party charged with contempt is actually unable to pay, or, in the case of orders for the support of a spouse, that the affidavit does not sufficiently allege ability. (See *Bailey v. Superior Court* (1932) 215 C. 548, 553, 11 P.2d 865; *Mery v. Superior Court* (1937) 9 C.2d 379, 70 P.2d 932; *Ballentine v. Superior Court* (1945) 26 C.2d 254, 257, 158 P.2d 14; *Merritt v. Superior Court* (1928) 93 C.A. 177, 181, 269 P. 547; *In re Leet* (1929) 99 C.A. 788, 279 P. 466; *In re Lande* (1950) 96 C.A.2d 926, 928, 216 P.2d 909; *Mossman v. Superior Court* (1972) 22 C.A.3d 706, 712, 99 C.R. 638; 11 *Summary* (10th), *Husband and Wife*, §261; on pleading in child support cases, see *supra*, §§343, 350; on inability to comply with orders other than those for support, see *infra*, §352; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

(2) *Burden of Proof.* The party charged with contempt has the burden of proving inability to pay. The trial court order for payment of support determines the issue of ability to pay, and inability to comply with the order is not an element of contempt but rather an affirmative defense for the party charged to prove. (*Moss v. Superior Court* (1998) 17 C.4th 396, 428, 71 C.R.2d 215, 950 P.2d 59, 10 *Summary* (10th), *Parent and Child*, §437 [disapproving *In re Feiock* (1989) 215 C.A.3d 141, 147, 263 C.R. 437]; *In re Ivey* (2000) 85 C.A.4th 793, 798, 102 C.R.2d 447 [following *Moss*].)

In *Moss*, a child support action, the mother sought a contempt order against the father for failure to make payments. The order was based on the earning capacity of the father, who was unemployed at the time the support order was entered. Finding that the burden of proving inability to comply lay with the father, who had presented no evidence of inability to work, the trial court held the father guilty of contempt. The Court of Appeal annulled the judgment of contempt, determining that the evidence was insufficient to prove the ability to pay, and that the father could not be adjudged in contempt based only on his ability to earn. *Held*, a parent who fails to comply with a child support order, and whose financial inability to comply is the result of the wilful failure to seek and accept available employment, is subject to contempt if he or she fails to prove the affirmative defense of inability to pay by a preponderance of the evidence.

(a) The constitutional prohibitions on involuntary servitude and imprisonment for debt do not preclude punishment by contempt for a wilful failure to seek and accept employment to meet a child support obligation. (17 C.4th 422.) Also, various statutes express a clear intent that a parent who defaults on a child support obligation be compelled to seek employment when necessary to meet that obligation, and no further legislative action is necessary to authorize the court to impose contempt sanctions for failure to comply with a child support order. (17 C.4th 423.)

(b) Nevertheless, the decision of the Court of Appeal must be upheld because it relied on established precedents holding that the court lacks power to punish a person for failing to seek and obtain employment in order to pay spousal support and that the petitioner has the burden of proving the nonsupporting parent's inability to pay. The disapproval of those precedents may be seen as both an unanticipated expansion of the law of contempt in the child support context and a change in the evidentiary burden of which the father had no notice at the time of trial. Thus, the new rules set forth by the Supreme Court may not be applied retroactively without violating due process. (17 C.4th 428.) (See 29 Southwestern U. L. Rev. 529 [Moss]; for full discussion of case, see 10 Summary (10th), *Parent and Child*, §437.)

(3) *Findings*. Findings of ability to pay have been constantly challenged, and the following rules have emerged:

(a) A general finding that the party charged had the ability to comply was originally thought to be an objectionable conclusion of law. (See *In re Cardella* (1941) 47 C.A.2d 329, 117 P.2d 908.) Later cases, however, sanctioned it as a finding of ultimate fact. (See *In re Hadley* (1943) 57 C.A.2d 700, 702, 135 P.2d 381 [disapproving *Cardella*]; *Darden v. Superior Court* (1965) 235 C.A.2d 80, 84, 45 C.R. 44 [following *Hadley*].)

(b) A finding that the defendant had the ability when he or she wilfully disobeyed the order is sufficient, without a further finding of present ability. (*Sorell v. Superior Court* (1967) 248 C.A.2d 157, 161, 56 C.R. 222; but see *Noorthoek v. Superior Court* (1969) 269 C.A.2d 600, 609, 75 C.R. 61 [proof that contemnor had ability to make monthly payments as they accrued was not proof that he had present ability to pay all arrearages in lump sum].)

(c) A finding of partial ability to pay, if sufficiently certain, will support a contempt adjudication. In *Lyon v. Superior Court* (1968) 68 C.2d 446, 67 C.R. 265, 439 P.2d 1, the wife was granted a divorce and the husband was ordered to pay \$ 200 a month for the support of each of two children. He defaulted, and at the order to show cause hearing the judge found that he had the ability to pay at least \$ 75 on each of the six dates specified and that he wilfully failed to do so. *Held*, contempt order affirmed. The court distinguished cases in which findings of "partial ability," or ability to pay a "substantial sum" or "to a greater extent," were held fatally uncertain. (68 C.2d 450.) (See *Powers v. Superior Court* (1967) 253 C.A.2d 617, 619, 61 C.R. 433 [finding that defendant had ability to comply "in a much more substantial way than he actually did" was insufficient].)

SUPPLEMENT: [This section is current through the latest supplement]



185 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

5. Defenses.

d. Other Orders: Inability To Comply.

8 *Witkin Cal. Proc. Enf Judgm* § 352

[§ 352] Other Orders: Inability To Comply.

Inability to comply may also be asserted as a defense to contempt for the violation of orders other than those for support (see *supra*, §351). (See *Van Hoosear v. Railroad Com. of Calif.* (1922) 189 C. 228, 233, 207 P. 903 [order of Public Utilities Commission requiring certain service]; *Myers v. Superior Court* (1920) 46 C.A. 206, 209, 189 P. 109 [order in supplemental proceeding to turn over property]; *In re Johnson* (1935) 9 C.A.2d 473, 50 P.2d 452 [order to pay money to statutory liquidator of insolvent company]; *In re Moulton* (1950) 100 C.A.2d 559, 562, 224 P.2d 76 [order to deliver custody of children]; *In re McCausland* (1955) 130 C.A.2d 708, 709, 279 P.2d 820 [judgment directing payment of money to referee and receiver]; *Coursey v. Superior Court* (1987) 194 C.A.3d 147, 154, 155, 239 C.R. 365 [mother lacked ability to compel 14-year-old daughter to visit father pursuant to marital dissolution visitation order]; *Anderson v. Superior Court* (1998) 68 C.A.4th 1240, 1245, 80 C.R.2d 891 [statute divested Director of Department of Social Services of authority to comply with order relating to method of determining eligibility for federal foster care payments]; 17 *Am.Jur.2d* (2004 ed.), *Contempt* §§141, 142.)

SUPPLEMENT: [This section is current through the latest supplement]



186 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

5. Defenses.

e. Good Faith.

8 *Witkin Cal. Proc. Enf Judgm* § 353

[§ 353] Good Faith.

(1) *In General.* Distinct in form, but closely related to inability to pay or otherwise comply (see *supra*, §§351, 352), are the defenses of lack of intent to violate the order and willingness to perform at the time of the contempt hearing.

In *Uhler v. Superior Court* (1953) 117 C.A.2d 147, 154, 255 P.2d 29, 256 P.2d 90, contemnor, a county auditor, failed to draw a warrant to pay for certain services after being advised by the county counsel that there was some doubt about the validity of an item. On certiorari, his contempt conviction was annulled where it appeared that (a) he had in good faith, as a public officer, temporarily delayed payment pending an investigation of the validity of the claim, and (b) at the contempt hearing, when the court expressly ordered him to pay, he had immediately drawn the warrant. (See *In re Donovan* (1949) 94 C.A.2d 399, 402, 210 P.2d 860 [habeas corpus was granted where petitioner believed in good faith that injunction had been stayed by appeal].)

(2) *Support Orders.* In contempt proceedings to enforce orders for support, even though the violation is clearly established, it is a common and desirable practice to allow the defendant a short time to raise the funds with which to pay and purge himself or herself of contempt. (See *Ballentine v. Superior Court* (1945) 26 C.2d 254, 257, 158 P.2d 14.) As the court said in *Warner v. Superior Court* (1954) 126 C.A.2d 821, 273 P.2d 89: "Where the party cited asserts his ability and willingness to pay whatever is found due, the long established practice of our courts is to fix a time within which payment must be made and not to send the delinquent to jail forthwith. Although the record discloses a history of extended litigation and incessant court proceedings between these parties, attendant upon and following their divorce, any annoyance they may have caused the courts does not warrant the employment of informal or irregular procedure in the exercise of the court's powers to punish for contempt." (126 C.A.2d 827.) (On enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



187 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

6. Contempt Order.

8 *Witkin Cal. Proc. Enf Judgm* § 354

[§ 354] Contempt Order.

(1) *Findings of Fact Are Required.* An order adjudging a party guilty of contempt must recite as facts all of the matters necessary for jurisdiction; i.e., it must contain express findings of fact that, as a matter of law, support the conclusion that the defendant was guilty of a contempt. (See *Ross v. Superior Court* (1977) 19 C.3d 899, 904, footnote 4, 141 C.R. 133, 569 P.2d 727, citing the text [oral statement from the bench was sufficient recital of facts]; *Harlan v. Superior Court* (1949) 94 C.A.2d 902, 905, 211 P.2d 942 [no findings]; *In re Scroggin* (1951) 103 C.A.2d 281, 283, 229 P.2d 489 [findings that defendant, more than 3 months prior to commitment, had \$ 1,400, and that he had present ability to pay "a substantial amount," were not sufficient findings of present ability to pay \$ 1,200]; *In re McCausland* (1955) 130 C.A.2d 708, 709, 279 P.2d 820 [failure to contain finding of ability to pay]; *Martin v. Superior Court* (1962) 199 C.A.2d 730, 738, 18 C.R. 773 [failure to find knowledge and ability to pay]; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.166; Cal. Civil Practice, 4 Procedure, §30:93; 17 *Am.Jur.2d* (2004 ed.), *Contempt* §188 et seq.; 7 *Am.Jur. P.P. Forms* (2002 ed.), *Contempt* §105 et seq.; 8C *Am.Jur. P.P. Forms* (2006 ed.), *Divorce and Separation* §410 et seq.; 10 *Am.Jur. P.P. Forms* (2005 ed.), *Executions* §§371, 372; on sufficiency of findings of ability to pay, see *supra*, §351.)

(2) *Order for Imprisonment Until Performance.* If the order is for imprisonment until performance, under *C.C.P. 1219* (see *infra*, §356), the order must additionally specify the particular act that the defendant must perform in order to be purged of contempt, and must expressly find that he or she is able to perform. (*In re Wells* (1946) 29 C.2d 200, 202, 173 P.2d 811; *In re Vallindras* (1950) 35 C.2d 594, 595, 220 P.2d 1; *In re Scroggin*, *supra*; *In re Liu* (1969) 273 C.A.2d 135, 142, 78 C.R. 85; *Lake v. Superior Court* (1977) 67 C.A.3d 815, 817, 136 C.R. 830.)

(3) *Separate Punishable Acts.* If the order imposes punishment in excess of the 5-day limit of *C.C.P. 1218* (see *infra*, §355) on the theory that there were separate punishable acts of contempt, it must specify the particular acts. (*Powers v. Superior Court* (1967) 253 C.A.2d 617, 619, 61 C.R. 433, *infra*, §361.)

(4) *Prompt Entry Is Required.* The contempt order must be promptly entered: "After an adjudication of contempt, it may not be practical for the court to prepare its written judgment the instant the defendant is committed, and we make no determination when such a judgment must be signed and entered. But eight days after a defendant is jailed is *too late*." (*In re Jones* (1975) 47 C.A.3d 879, 881, 120 C.R. 914.)

(5) *Construction of Order*. Misguided emphasis on the supposed rule that no intendments or presumptions are indulged in support of a contempt order was severely criticized in *Rosin v. Superior Court* (1960) 181 C.A.2d 486, 5 C.R. 421: "This phraseology, which has crept into numerous appellate decisions, has led to a dissecting and segmental interpretation of contempt charges to such a degree that trial courts have been well-nigh denuded of their contempt powers, a tendency which should not be fostered or furthered." (181 C.A.2d 490.) The court observed that there is of course no presumption; however, "[t]hat necessary inferences or implications (terms which ordinarily have the same meaning) are recognized as proper components of decrees and orders in contempt proceedings (as in all other cases), has been repeatedly exemplified by California decisions." (181 C.A.2d 492.)

In *Rosin*, the mother, with intent to deprive the father of his custodial and visitation rights under an interlocutory divorce decree, took the children to Florida and established a permanent home there. Her defense was that the decree did not expressly state that the children should not be removed without consent or order. *Held*, contempt order affirmed; under a proper construction of the custody provisions of the decree, her action disabled her from performing, brought the subject matter within the jurisdiction of the Florida courts, which could modify the decree, and interfered with the jurisdiction and proceedings of the California courts. (181 C.A.2d 497.) (For further discussion, see 10 *Summary* (10th), *Parent and Child*, §244.)

(6) *No Liability for Carrying Out Void Order Valid on Its Face*. An officer who carries out a void contempt order is not civilly liable to the alleged contemnor where the order appears valid on its face. (See *Vallindras v. Massachusetts Bonding & Ins. Co.* (1954) 42 C.2d 149, 151, 265 P.2d 907, 3 Cal. Proc. (5th), *Actions*, §69.)

(7) *Form*. The Judicial Council has approved an optional form for findings and an order regarding contempt in Family Code proceedings. (See Judicial Council Form No. FL-415 [Findings and Order Regarding Contempt (Family Law--Domestic Violence Prevention--Uniform Parentage--Governmental)].)

SUPPLEMENT: [This section is current through the latest supplement]



188 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

7. Punishment.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 355*

[§ 355] In General.

(1) *Fine or Imprisonment.* The punishment for contempt may be a fine not exceeding \$ 1,000, or imprisonment not exceeding 5 days, or both. (*C.C.P. 1218(a)* [fine is payable to court]; see *In re Gould (1961) 195 C.A.2d 172, 173, 15 C.R. 326* [5 days for wilful violation of order in divorce proceeding]; *C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §6.166; 39 Cal. L. Rev. 552* [standard of punishment in contempt cases]; *67 Harv. L. Rev. 889* [use of suspended sentence to enforce prohibitory injunction]; *48 Hastings L. J. 61* [ability of parties to dissolve coercive contempt fines through private settlement agreements]; *1 U.C.L.A. L. Rev. 220* [same]; *81 A.L.R.4th 1008* [contempt: state court's power to order indefinite coercive fine or imprisonment to exact promise of future compliance with court's order--anticipatory contempt].)

(2) *Attorneys' Fees and Costs.* In addition to a fine and imprisonment, a party or agent of a party adjudged guilty of contempt for violating a court order may be ordered to pay reasonable attorneys' fees and costs incurred by the party initiating the contempt proceedings. (*C.C.P. 1218(a)*; see *43 A.L.R.3d 793* [allowance of attorneys' fees in civil contempt proceedings].)

(3) *Family Law Cases: Community Service and Other Penalties.* For each count of contempt for which a party is held liable based on disobedience of a court order under the Family Code, the following punishment is prescribed:

(a) On a first finding of contempt, the court must order the contemnor to perform up to 120 hours of community service or serve up to 120 hours of imprisonment. (*C.C.P. 1218(c)(1).*)

(b) On a second finding of contempt, the court must order the contemnor to perform up to 120 hours of community service, in addition to ordering imprisonment for up to 120 hours. (*C.C.P. 1218(c)(2).*)

(c) On a third or subsequent finding of contempt, the court must order both (1) imprisonment for up to 240 hours and up to 240 hours of community service; and (2) the payment of an administrative fee by the contemnor, not to exceed the actual cost of the contemnor's administration and supervision while assigned to a community service program. (*C.C.P. 1218(c)(3).*)

The court must consider the contemnor's employment schedule when ordering community service or imprisonment. (*C.C.P. 1218(c)(4)*.) (See 25 *Pacific L. J.* 461; on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

Sentencing under *C.C.P. 1218(c)* does not preclude an award of attorneys' fees under *C.C.P. 1218(a)*; these subdivisions are not mutually exclusive. (*Goold v. Superior Court (2006) 145 C.A.4th 1, 10, 51 C.R.3d 455.*)

(4) *Additional Punishment for Nonpayment of Fine.* It has been held that additional punishment is proper for nonpayment of a fine in contempt cases. (See *Ex parte Karlson (1911) 160 C. 378, 379, 117 P. 447*; *In re Victor (1934) 220 C. 729, 730, 32 P.2d 608.*) However, under decisions of the United States Supreme Court, it is a denial of equal protection to require service of a specified time in jail in lieu of nonpayment of a fine, where the convicted defendant is an indigent and unable to pay. (See *Williams v. Illinois (1970) 399 U.S. 235, 90 S.Ct. 2018, 2021, 26 L.Ed.2d 586, 592*; *Tate v. Short (1971) 401 U.S. 395, 91 S.Ct. 668, 669, 28 L.Ed.2d 130, 133*; 3 *Cal. Crim. Law (3d), Punishment*, §94.)

(5) *Distinction Between Civil and Criminal Contempt.* In *People v. Batey (1986) 183 C.A.3d 1281, 228 C.R. 787*, the family court issued a contempt order against the wife in child custody proceedings for violation of an order awarding custody to the husband. The order imposed 5 days' consecutive custody for each count found true (with credit for jail time served), and a fine of \$ 1,000 on each of 3 counts, with execution of the fine stayed for 1 year on condition that she comply with all court orders. Thereafter the wife was brought to trial on a criminal charge of child stealing, and pleaded double jeopardy on the theory that the contempt order was criminal in nature. *Held*, the contempt proceedings were civil, and there was no double jeopardy. "The proceedings were initiated by a private plaintiff, were not prosecuted by the People, and were captioned as a civil proceeding. The fine imposed was conditioned upon future noncompliance, and served primarily to benefit [the husband] by giving [the wife] an incentive not to again violate the court's order." In addition, the jail sentence was credited against prior confinement, with the result that "the contempt order gave rise to no actual punishment." (*183 C.A.3d 1289.*) (For further discussion of distinction between civil and criminal contempt, see 3 *Cal. Proc. (5th), Actions*, §69; 7 *Cal. Proc. (5th), Trial*, §§173, 174.)

(6) *Remission of Punishment.* In unusual cases, even though a contempt judgment is sustained, if the violation was the result of an honest mistake of law, and compliance is ultimately obtained, either the trial or appellate court may grant a remission of punishment. (*Vernon v. Superior Court (1952) 39 C.2d 839, 842, 250 P.2d 241.*)

SUPPLEMENT: [This section is current through the latest supplement]



189 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

7. Punishment.

b. Imprisonment Until Performance.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 356

[§ 356] In General.

(1) *General Rule.* Generally, when the contempt consists of the "omission to perform an act which is yet in the power of the person to perform," the person may be imprisoned until he or she has performed it. The act must be specified in the warrant of commitment. (*C.C.P. 1219(a).*)

(2) *Requirement of Present Ability To Comply.* The element of present ability to comply is crucial. The order of commitment must contain such a finding (see *supra*, §354) and there must be sufficient evidence to support the finding. (See *Noorthoek v. Superior Court (1969) 269 C.A.2d 600, 608, 75 C.R. 61.*)

In re Liu (1969) 273 C.A.2d 135, 78 C.R. 85, applies this rule to a peculiar set of facts, in which the lower court mistakenly chose the wrong kind of contempt order. In a separation action, the husband was ordered not to remove the two children of the parties from the area. He violated the order, and this was obviously a contempt punishable under *C.C.P. 1218*, by fine or a limited jail term (see *supra*, §355). But the judge, purporting to act under *C.C.P. 1219*, made an order committing the husband to the county jail until compliance. The judge's theory was that the husband's violation was a continuing contempt, and that he had the ability to comply with the original order by bringing the children back. *Held*, the contempt adjudication was void. Having already removed the children, the husband could no longer comply with the order prohibiting removal, and he was in effect being sentenced to jail for an indefinite period. This conclusion rests on the early decision in *Dewey v. Superior Court (1889) 81 C. 64, 67, 22 P. 333*, that where an affirmative act is required there must be an *express affirmative order*. Thus, while the purpose of the contempt proceeding was to compel return of the children taken in defiance of the prohibitory order, a mandatory order to return them was an essential basis for a determination of the husband's ability to comply by doing so. (*273 C.A.2d 145.*)

A concurring opinion disagrees with the part of the main opinion requiring an affirmative order. (*273 C.A.2d 147.*) The justice concurred simply on the failure of the record to show present ability of the husband to return the children. (*273 C.A.2d 147.*)

(3) *No Imprisonment for Refusal To Testify by Victim of Sexual Assault or Domestic Violence.* The victim of a

sexual assault who commits contempt by refusing to testify concerning the assault may not be imprisoned. (*C.C.P. 1219(b)*; see *C.C.P. 1219(d)(1)* [definition of "sexual assault"]; *C.C.P. 128(d)* [execution of sentence must be stayed for 3 days pending filing of petition for extraordinary relief testing lawfulness of violated order].)

A victim of domestic violence who commits contempt by refusing to testify concerning the incident likewise may not be incarcerated. However, the victim may be required to attend up to 72 hours of a domestic violence program for victims, or perform up to 72 hours of community service. Also, a victim who subsequently commits contempt for refusing to testify concerning a matter arising out of the same case may be incarcerated. (*C.C.P. 1219(c)*; see *C.C.P. 1219(d)(2)* [definition of "domestic violence"].)

West's Key Number Digest, Contempt 79

SUPPLEMENT: [This section is current through the latest supplement]

(3) *No Imprisonment for Refusal To Testify by Victim of Sexual Assault or Domestic Violence.* *C.C.P. 1219* was amended in 2008 to eliminate the distinction between the treatment of a sexual assault victim and a domestic violence victim who refuses to testify. Under *C.C.P. 1219(b)*, neither type of victim can be confined for the failure to testify, and there is no option to require a domestic violence victim to attend a domestic violence program for victims or perform community service. *C.C.P. 1219(d)*, defining "sexual assault" and "domestic violence," was relettered *C.C.P. 1219(c)*.



190 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

7. Punishment.

b. Imprisonment Until Performance.

2. Necessity for Coercive Purpose.

8 *Witkin Cal. Proc. Enf Judgm* § 357

[§ 357] Necessity for Coercive Purpose.

In re Farr (1974) 36 C.A.3d 577, 111 C.R. 649, while denying a contention that imprisonment until compliance constitutes cruel and unusual punishment (see 1 *Cal. Crim. Law* (3d), *Defenses*, §103 et seq.) as contrary to precedent and as a misconstruction of the nature of these orders, nevertheless recognized certain limits on both their validity and duration. Petitioner, a newspaper reporter, was held in contempt for refusal to state which of the attorneys of record in the celebrated Manson murder case had violated the court's order prohibiting dissemination of the content of testimony involving questions of admissibility. On certiorari, the contempt judgment was held valid. (*Farr v. Superior Court* (1971) 22 C.A.3d 60, 99 C.R. 342, 2 *Cal. Evidence* (4th), *Witnesses*, §343.) Petitioner then sought habeas corpus on several grounds, one of which was the invalidity of indefinite commitment. The court, lacking any direct authority, set forth some novel conclusions:

(a) The commitment of a person until he or she complies with a valid order of court is not penal, but coercive; i.e., it is not to punish but to enforce compliance. (36 C.A.3d 583.) However, a coercive incarceration presents a special problem where disobedience is based on an "established articulated moral principle" (claim of privilege). "In such a situation, it is necessary to determine the point at which the commitment ceases to serve its coercive purpose and becomes punitive in character. When that point is reached so that the incarceration of the contemner becomes penal, its duration is limited by the five-day maximum sentence" provided by C.C.P. 1218 (see supra, §355). (36 C.A.3d 584.) The test is "the presence or absence of a substantial likelihood that ... continued commitment" will accomplish the purpose of the order. (36 C.A.3d 584.)

(b) By proper proceedings in the superior court, a determination of that issue may be made; i.e., the trial court must determine the presence or absence of a substantial likelihood that petitioner's continued commitment will serve the purpose of supplementing the Manson record on appeal and the effective discipline of the offending attorneys "within a period in which the purpose will be effective." (36 C.A.3d 584.) (See 11 *San Diego L. Rev.* 1026 [*In re Farr*].)

West's Key Number Digest, Contempt 79

SUPPLEMENT: [This section is current through the latest supplement]



191 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

7. Punishment.

c. Denial of Litigation Rights.

8 *Witkin Cal. Proc. Enf Judgm* § 358

[§ 358] Denial of Litigation Rights.

(1) *In General.* A court may refuse to hear and determine a proceeding on its merits when the plaintiff or petitioner is in contempt of the court for disobedience of a prior valid judgment or order. (See *Knackstedt v. Superior Court* (1947) 79 C.A.2d 727, 729, 180 P.2d 375 [final divorce decree refused]; *Adoption of Jacob C.* (1994) 25 C.A.4th 617, 623, 30 C.R.2d 591 [mother who had disappeared with child was barred from participating in hearing on termination of parental rights]; 2 *Cal. Proc.* (5th), *Jurisdiction*, §394; 112 *A.L.R.5th* 399 [application of "fugitive disentitlement doctrine" to civil matters].) Similarly, an appellate court may dismiss the appeal of a party in contempt. (See *MacPherson v. MacPherson* (1939) 13 C.2d 271, 277, 89 P.2d 382; *Say & Say v. Castellano* (1994) 22 C.A.4th 88, 94, 27 C.R.2d 270; 9 *Cal. Proc.* (5th), *Appeal*, §80.)

(2) *Action for Dissolution or Legal Separation.* A party in contempt of an order or judgment in an action for dissolution of marriage, dissolution of domestic partnership, or legal separation (other than a child or spousal support order) may not enforce the order or judgment by way of execution or otherwise, in the same action or in a separate action, against the other party. (*C.C.P. 1218(b)*); on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



192 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

7. Punishment.

d. Order To Destroy Property.

8 *Within Cal. Proc. Enf Judgm § 359*

[§ 359] Order To Destroy Property.

In *H.J. Heinz Co. v. Superior Court (1954) 42 C.2d 164, 266 P.2d 5*, a prior final judgment declared defendant's license invalid and enjoined it from using generators covered by plaintiff's patent. In the contempt proceeding for violation of the injunction, the court ordered that 16 generators built by defendant in violation of the injunction be destroyed. *Held*, this was supportable as a means of preventing further violations. "It would seem that if a person may be deprived of his liberty until he complies with a valid judgment or order of a court, he may be required to destroy that which he created in violation of such judgment or order." (*42 C.2d 176.*) (See *17 Am.Jur.2d (2004 ed.), Contempt §188.*)

SUPPLEMENT: [This section is current through the latest supplement]



193 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

7. Punishment.

e. No Compensatory Damages.

8 *Witkin Cal. Proc. Enf Judgm § 360*

[§ 360] No Compensatory Damages.

In *H.J. Heinz Co. v. Superior Court* (1954) 42 C.2d 164, 266 P.2d 5, petitioner violated an injunction against using generators covered by plaintiff's patent. In addition to ordering destruction of the generators (see supra, §359), the court awarded plaintiff \$ 375,934.66 as damages suffered in the past, and \$ 526 per day for continuing violations. *Held*, this was in excess of jurisdiction. *C.C.P. 1218* (see supra, §355) fixes the limits of punishment for contempt (fine or imprisonment). The court has no inherent power to award compensatory damages in a contempt proceeding. To do so would turn the proceeding into an action for damages, in which the parties are ordinarily entitled to a jury trial and appeal, neither of which is available in contempt. (42 C.2d 174.) (See 85 A.L.R.3d 895 [right of injured party to award of compensatory damages or fine in contempt proceedings].)

Heinz was followed in *Bailey v. Superior Court* (1956) 142 C.A.2d 47, 297 P.2d 795. Defendants were enjoined from interfering with the flow of water through a ditch. In violation of the injunction, they destroyed the old ditch and made a new and inadequate one. *Held*, the contempt adjudication was proper, but the trial judge had no authority to go further and provide that defendants could purge themselves of contempt by paying damages, nor could it determine the nature, location, or extent of the easement. "It cannot be that in a contempt proceeding, even by consent of the parties, a court may render judgments of a civil nature affecting the rights of the parties and this for the reasons expressed in the *Heinz* case The contempt proceeding cannot be broadened to include adjudications concerning such matters. Nothing done here was done to prevent future contempts. If petitioners here have so acted as to destroy the ditch existing when they conveyed, if it cannot be restored because innocent third parties' rights have intervened, if real parties have suffered civil damages, a civil action is the proper remedy. Contempt will not serve." (142 C.A.2d 58.)

Heinz was distinguished in *Moffat v. Moffat* (1980) 27 C.3d 645, 655, 165 C.R. 877, 612 P.2d 967. In *Heinz*, the order in excess of jurisdiction was annulled on direct attack--a review of the contempt order. In *Moffat*, the attack was collateral--in a subsequent proceeding. The court, following *Pacific Mut. Life Ins. Co. of Calif. v. McConnell* (1955) 44 C.2d 715, 285 P.2d 636, 2 Cal. Proc. (5th), *Jurisdiction*, §337, held that, where the trial court had jurisdiction of the subject matter and the parties, its order, though in excess of jurisdiction, is not subject to collateral attack. (27 C.3d 656.) (On collateral attack on contempt order generally, see *infra*, §363.)

SUPPLEMENT: [This section is current through the latest supplement]



194 of 196 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

7. Punishment.

f. Multiple Punishment for Separate Acts.

8 *Witkin Cal. Proc. Enf Judgm § 361*

[§ 361] Multiple Punishment for Separate Acts.

(1) *In General.* Separate acts in violation of an injunction, an order for payment, or another valid order, constitute separate contempts. Hence, multiple fines of the \$ 1,000 maximum may be imposed, and consecutive jail sentences of the maximum 5-day periods are also valid. (See *Donovan v. Superior Court* (1952) 39 C.2d 848, 855, 250 P.2d 246 [multiple fines]; *In re Stafford* (1958) 160 C.A.2d 110, 113, 324 P.2d 967 [multiple fines and multiple jail sentences]; *Reliable Enterprises v. Superior Court* (1984) 158 C.A.3d 604, 621, 204 C.R. 786, citing the text [multiple fines].)

(2) *Failure To Pay Support.* Each month for which a party fails to make payment in full of child, family, or spousal support is punishable as a separate count of contempt. (C.C.P. 1218.5(a); on enforcement of judgments in family law cases generally, see *infra*, §403 et seq.)

(3) *Specification of Separate Acts in Order.* The separate acts must be clearly specified in the order. In *Powers v. Superior Court* (1967) 253 C.A.2d 617, 61 C.R. 433, defendant was in arrears in alimony payments for some 3 years. The order found that he had, with ability to pay, wilfully failed to do so "on at least ten separate and distinct occasions." (253 C.A.2d 618.) The punishment was 5 days for each instance, or a total of 50 days. *Held*, order annulled. "Mathematically, it must be concluded that the court found that defendant failed to make at least 10 support payments. But which ones, over the period of three years apparently considered by the court, do not appear." (253 C.A.2d 619.)

(4) *Illustrations.* *In re Stafford, supra*, sustains an unusually harsh punishment for extremely contumacious conduct. Petitioner, after a long series of frivolous and harassing actions repeatedly denounced in appellate opinions, was enjoined by a valid judgment from asserting any claim to property adverse to certain defendants. In a condemnation action against those defendants, petitioner, though not named, filed an answer setting up his claim. This was stricken, and he filed a notice of appeal and notice of election to use a settled statement, which were stricken, and appeared and filed a memorandum asserting his claim at a pretrial conference. The court found him guilty of three separate acts of contempt and sentenced him to the maximum fine and imprisonment on each count, to run consecutively. *Held*, affirmed; every separate act of disobedience of the injunction was a separate contempt, and the court had jurisdiction to impose the maximum. (160 C.A.2d 113.)

In *Reliable Enterprises v. Superior Court*, *supra*, petitioners were adjudged in contempt for a number of acts of lewd conduct committed in violation of an injunction. They attacked the judgment on three grounds.

(a) The first contention was that several contempt adjudications could not be based on acts occurring on a single day. This is unsound. The crucial question is whether there were separate acts of disobedience, regardless of whether they occurred on the same or separate days. (*158 C.A.3d 621*, citing the text.) *In re Keller* (1975) *49 C.A.3d 663*, *123 C.R. 223*, holding that the refusal of a witness to answer six separate questions constituted only one contempt (see *2 Cal. Evidence (4th), Witnesses, §29*) is distinguishable. A questioner should not be allowed to pile contempt on contempt by asking a series of questions within an area about which the witness has already indicated an unwillingness to answer. Here, petitioners were held guilty of several contempts because they were in control and took no reasonable steps to discourage lewd acts occurring regularly on the premises. (*158 C.A.3d 622*.)

(b) The second contention was that several contempt adjudications for acts on a single day violated P.C. 654, prohibiting multiple punishment for a single act (see *3 Cal. Crim. Law (3d), Punishment, §129*). Because P.C. 654 has been applied to criminal statutes outside the Penal Code, it should apply to punishment for contempt under *C.C.P. 1218*. (*158 C.A.3d 622*.) However, under the "objective test," petitioners' conduct was not part of an indivisible transaction. The lewd acts were committed by different people; none was necessary to the commission of any other; and petitioners could have allowed one lewd act or a hundred. Hence, the punishment for five counts of contempt was not precluded by P.C. 654. (*158 C.A.3d 626*.)

(c) One of petitioners also contended that he could not be guilty of multiple contempts because he had no actual knowledge of the lewd acts that occurred on the day in question. However, where a defendant intends to cause criminal harm, the precise consequence need not have been foreseen; it is enough that he should have foreseen the possibility of some harm of the kind that might result from his act. Here, that petitioner intended that lewd acts should occur on the premises; he knew that many such acts were occurring each day, including the day in question; it was therefore readily foreseeable that his failure to discourage the lewd conduct would result in the commission of at least five lewd acts on that day; and his culpability was not lessened simply because he did not know the precise number of lewd acts that occurred on that day. (*158 C.A.3d 627*.)

SUPPLEMENT: [This section is current through the latest supplement]



195 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

8. Review by Certiorari or Habeas Corpus.

8 *Witkin Cal. Proc. Enf Judgm* § 362

[§ 362] Review by Certiorari or Habeas Corpus.

(1) *In General.* Judgments and orders in contempt proceedings are "final and conclusive." (*C.C.P.* 1222.) However, they are specifically made not appealable. (See *C.C.P.* 904.1(a)(1)(B), 9 *Cal. Proc.* (5th), *Appeal*, §147.) But this merely means that they are reviewed by certiorari or habeas corpus instead of by appeal. (On scope and method of review, see *In re Coleman* (1974) 12 *C.3d* 568, footnote 2, 572, 116 *C.R.* 381, 526 *P.2d* 533, citing the text [petition for habeas corpus improperly sought to review contempt order imposing fine; treated as petition for certiorari and order reviewed]; *In re Johnson* (1949) 92 *C.A.2d* 467, 471, 207 *P.2d* 123; *In re Lande* (1950) 96 *C.A.2d* 926, 928, 216 *P.2d* 909; *Oil Workers Int. Union, CIO v. Superior Court* (1951) 103 *C.A.2d* 512, 526, 230 *P.2d* 71; *In re McCausland* (1955) 130 *C.A.2d* 708, 709, 279 *P.2d* 820; *In re Blaze* (1969) 271 *C.A.2d* 210, 211, 76 *C.R.* 551; *In re Liu* (1969) 273 *C.A.2d* 135, 146, 78 *C.R.* 85; *Mitchell v. Superior Court* (1972) 28 *C.A.3d* 759, 762, 104 *C.R.* 921, citing the text; *Board of Supervisors v. Superior Court* (1995) 33 *C.A.4th* 1724, 1736, 1737, 39 *C.R.2d* 906; 33 *A.L.R.3d* 589 [contempt adjudication or conviction as subject to review, other than by appeal or writ of error]; 6 *Cal. Proc.* (5th), *Provisional Remedies*, §409.)

The same rule of nonappealability and review by certiorari applies where the lower court does not make a contempt order but dismisses the contempt proceeding or discharges the alleged contemnor. (See *Butler v. Butler* (1967) 255 *C.A.2d* 132, 135, 62 *C.R.* 825 [wife's appeal from order dismissing contempt proceeding against husband; appeal dismissed].)

(2) *Order Based in Part on Untenable Ground.* *In re Ferguson* (1954) 123 *C.A.2d* 799, 268 *P.2d* 71, involved an adjudication of contempt for refusing to testify at the contempt hearing (improper ground because testimony was privileged), and violation of the original valid order. The penalty, imposed without separation of the offenses, was 5 days in jail and a fine of \$ 250. *Held*, writ of habeas corpus discharged and petitioner remanded for further proceedings. The reviewing court relied on the rule in criminal proceedings that a complete discharge on habeas corpus will not be ordered if there is a valid process under which the petitioner may be held. "[T]he fact that a trial court may erroneously find a person guilty of contempt should not be grounds for releasing him from a charge of contempt of which he has properly been found guilty. The superior court here is entitled to sentence petitioner for the contempt of which he was properly found guilty, thereby disposing of him 'as the justice of the case may require.' " (123 *C.A.2d* 806.)

SUPPLEMENT: [This section is current through the latest supplement]



196 of 196 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

IX. NONMONEY JUDGMENTS

E. Other Judgments: Contempt.

9. Collateral Attack.

8 *Witkin Cal. Proc. Enf Judgm* § 363

[§ 363] Collateral Attack.

No one can be punished for disobedience of an invalid order. (See *supra*, §349.) The normal remedies of a person held in contempt in this situation are habeas corpus or certiorari; the petitioner on a direct review of the contempt proceeding collaterally attacks the underlying order (e.g., the injunction or support decree). (See *supra*, §362.)

It is also possible, in proper circumstances (see generally 8 *Cal. Proc.* (5th), *Attack on Judgment in Trial Court*, §6 et seq.), to collaterally attack the contempt adjudication. In *Elysium v. Superior Court* (1968) 266 C.A.2d 763, 765, 72 C.R. 355, C Co. obtained an injunction against E. E appealed and the judgment was reversed. However, pending the appeal, E was held in contempt for 12 violations and was ordered to pay the clerk a fine of \$ 1,200 plus a penalty assessment. E paid; then, after the reversal on appeal, E moved for an order to refund the money paid. The motion was denied and he sought mandamus. *Held*, writ granted. E did not set up the defense of a void injunction in the contempt proceeding (presumably being satisfied to challenge it on appeal); thus the contempt adjudication became final, and E satisfied it by paying the fine (presumably in order to avoid imprisonment). He was nevertheless entitled to attack the contempt adjudication to remedy the manifest injustice of a punishment illegally imposed. Although direct authority for this holding is lacking, reliance may be had on the rule in criminal cases that, on reversal of a conviction with direction of final disposition in favor of the defendant, the appellate judgment is also deemed an order that a fine theretofore paid be returned (see P.C. 1262, 6 *Cal. Crim. Law* (3d), *Criminal Appeal*, §170). (266 C.A.2d 765.) (See *Moffat v. Moffat* (1980) 27 C.3d 645, 655, 656, 165 C.R. 877, 612 P.2d 967, *supra*, §360 [where trial court had jurisdiction of subject matter and parties, contempt order, though in excess of jurisdiction, was not subject to collateral attack].)

SUPPLEMENT: [This section is current through the latest supplement]



1 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

A. In General.

1. Nature and Scope of Remedy.

8 *Witkin Cal. Proc. Enf Judgm* § 364

[§ 364] Nature and Scope of Remedy.

(1) *Nature of Remedy.* A judgment creditor may direct a levying officer to satisfy a writ of execution on property in which an interest is held by a third person, a stranger to the proceedings. The third person may not recall the writ of execution, because the writ itself is proper--it is the levy that is improper. (*Associated Oil Co. v. Mullin* (1930) 110 C.A. 385, 392, 294 P. 421.) As under former law, the Enforcement of Judgments Law provides a third-party claims procedure for determining the rights of such a third person before the property is applied to satisfaction of the judgment. (*C.C.P.* 720.010 et seq.; see 16 Cal. Law Rev. Com. Reports, p. 1144; C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.1 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1600 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49A et seq.; 14 *Pacific L. J.* 434; 9A Am.Jur. P.P. Forms (2005 ed.), Executions §399 et seq.; on prior law, see *Retailers' Credit Assn. of Sacramento v. Superior Court* (1937) 19 C.A.2d 457, 460, 65 P.2d 937 [if main action is transferred by order changing venue, incidental proceeding on third-party claim is likewise transferable]; *Peterson v. Groesbeck* (1937) 20 C.A.2d Supp. 753, 755, 64 P.2d 495 [court may determine title against third-party claimant who is debtor's trustee in bankruptcy]; *McCoy v. Justice's Court* (1937) 23 C.A.2d 99, 101, 71 P.2d 1115 [remedy is available though debtor has transferred property to another]; *Commercial & Farmers Nat. Bank v. Hetrick* (1976) 64 C.A.3d 158, 163, 134 C.R. 285 [third-party claims procedure is not available to codefendant in attachment proceeding].) (For alternative remedies, see *infra*, §365.)

(2) *Purpose of Remedy.* The purpose of the procedure is to give a quick and effectual remedy to the third person and to protect the levying officer. (*Rubin v. Barasch* (1969) 275 C.A.2d 835, 836, 80 C.R. 337 [construing prior law]; *Regency Outdoor Advertising v. Carolina Lanes* (1995) 31 C.A.4th 1323, 1329, 37 C.R.2d 552, *infra*, §367; see *Cory v. Cooper* (1931) 117 C.A. 495, 4 P.2d 581 [sheriff who retained attached property in strict compliance with statute was not liable to third-party claimant].)

(3) *Scope of Remedy.* The third-party claims procedure is available where *real property* has been levied on under a writ of attachment or under a writ of execution, and where *personal property* has been levied on under a writ of attachment, a writ of execution, a writ of sale, or a prejudgment or postjudgment writ of possession. (See *C.C.P.* 720.110, *infra*, §367 [claim of ownership or possession]; *C.C.P.* 720.210, *infra*, §372 [claim of security interest or lien].) From the standpoint of the third party, it is immaterial whether the levy occurs before or after judgment. (See 16 Cal. Law Rev. Com. Reports, p. 1152; on former third-party claims procedure in attachment cases, see 6 *Cal. Proc.*

(5th), *Provisional Remedies*, §156.) The procedure is also available in proceedings for enforcement of an innkeeper's lien. (C.C. 1861.25, 13 *Summary* (10th), *Personal Property*, §227.)

The procedure applies, with certain exceptions, to third-party claims filed when a local child support agency levies on property to enforce a support obligation. (See *C.C.P. 689.030(a)(2)*, *infra*, §405.)

(4) *Definitions*. The following definitions apply to the third-party claims procedure unless the provision or context otherwise requires (*C.C.P. 720.010*):

(a) "Creditor" means the judgment creditor or, in the case of a levy under a writ of attachment or prejudgment writ of possession of personal property, the plaintiff. (*C.C.P. 720.020*; for definition of "judgment creditor," see *C.C.P. 680.240*, *supra*, §21.)

(b) "Debtor" means the judgment debtor or, in the case of a levy under a writ of attachment or prejudgment writ of possession of personal property, the defendant. (*C.C.P. 720.030*; for definition of "judgment debtor," see *C.C.P. 680.250*, *supra*, §21.)

(5) *Equitable Right to Property*. The third-party claims procedure is available when the claimant has an equitable right to the property. (See *Gintel v. Green (1958) 165 C.A.2d 723, 725, 332 P.2d 298* [equitable assignment of merchandise by judgment debtor to third person; decided under prior law]; *Canal-Randolph Anaheim v. Wilkoski (1980) 103 C.A.3d 282, 294, 163 C.R. 30* [third person asserted equitable title to property under resulting trust; decided under prior law].)

(6) *False Claims*. A person who files a false third-party claim may be liable to the creditor for conversion, independently of whether the claimant acted in good faith. (*Service v. Trombetta (1963) 212 C.A.2d 313, 316, 28 C.R. 68*; but see *Glasband v. Sun State Music Distributors (1968) 265 C.A.2d 413, 416, 71 C.R. 482* [summary judgment for creditor was reversed where claimant's declaration setting forth debtor's bankruptcy and referee's voiding of creditor's lien raised triable issue of fact as to amount of damage, if any, suffered by creditor].)

West's Key Number Digest, Attachment 280 et seq.; Execution 178 et seq.; Judicial Sales 5

SUPPLEMENT: [This section is current through the latest supplement]



2 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

A. In General.

2. Alternative Remedies.

8 *Witkin Cal. Proc. Enf Judgm* § 365

[§ 365] Alternative Remedies.

In addition to filing a third-party claim, a third person whose property is improperly levied on may pursue the following remedies:

(1) An action to quiet title. (See *First Nat. Bank of Santa Ana v. Kinslow* (1937) 8 C.2d 339, 345, 65 P.2d 796; *Regency Outdoor Advertising v. Carolina Lanes* (1995) 31 C.A.4th 1323, 1331, 1332, 1329, 37 C.R.2d 552, *infra*, §367; Law Rev. Com. Comment to C.C.P. 720.110; 5 *Cal. Proc.* (5th), *Pleading*, §654 et seq.)

(2) An action to enjoin a sale of real property that would cast a cloud on the owner's title. (See *Einstein v. Bank of Calif.* (1902) 137 C. 47, 49, 69 P. 616; *Austin v. Union Paving & Contracting Co.* (1906) 4 C.A. 610, 613, 88 P. 731.)

(3) An action for the specific recovery of personal property. (See *Taylor v. Bernheim* (1922) 58 C.A. 404, 408, 209 P. 55; 5 *Cal. Proc.* (5th), *Pleading*, §692 et seq.)

(4) An action for damages for conversion against the creditor and the sureties on the creditor's undertaking. (See *Cory v. Cooper* (1931) 117 C.A. 495, 497, 4 P.2d 581.)

(5) An action for declaratory relief. (See *Torrance v. Castner* (1975) 46 C.A.3d 76, 80, 120 C.R. 23; *Regency Outdoor Advertising v. Carolina Lanes*, *supra*.)

(6) Intervention in an examination proceeding. (See C.C.P. 708.190, *supra*, §283.)

SUPPLEMENT: [This section is current through the latest supplement]



3 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

A. In General.

3. General Rules Governing Undertakings.

8 *Within Cal. Proc. Enf Judgm § 366*

[§ 366] General Rules Governing Undertakings.

Undertakings are often employed in third-party claims proceedings. (See *infra*, §§370, 375, 385.)

(1) *Bond and Undertaking Law Is Applicable.* The Bond and Undertaking Law (*C.C.P. 995.010 et seq.*, 6 *Cal. Proc.* (5th), *Provisional Remedies*, §8 et seq.) applies to bonds under the Enforcement of Judgments Law, except to the extent that the Enforcement of Judgments Law prescribes a different rule or is inconsistent. (*C.C.P. 720.710.*) (See C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §8.53 et seq.; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1714 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.49G.)

(2) *Objections.* A copy of a notice of motion objecting to an undertaking must be filed with the levying officer (*C.C.P. 720.760*) within 10 days after service of the undertaking (*C.C.P. 995.930*).

(3) *Hearing.* Unless the parties otherwise agree, a hearing on an objection to an undertaking must be held not less than 10 or more than 15 days after service of notice of the motion objecting to the undertaking. The court may decrease the amount of the undertaking below the amount prescribed by *C.C.P. 720.160* (see *infra*, §370) or *C.C.P. 720.260* (see *infra*, §375) for creditors' undertakings if that amount exceeds the beneficiary's probable recovery in the event the beneficiary prevails in a proceeding to enforce liability on the undertaking. (*C.C.P. 720.770.*)

(4) *Filing.* If an undertaking has been filed with the levying officer under the third-party claims procedure and remains in the officer's possession when the writ is to be returned, the officer must file the undertaking with the court at the time the writ is returned. (*C.C.P. 720.800.*)

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4 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

B. Third-Party Claim of Ownership or Possession.

1. Right To File Claim.

8 *Witkin Cal. Proc. Enf Judgm* § 367

[§ 367] Right To File Claim.

(1) *In General.* A third person who has a claim of ownership or a right to possession in property that is superior to a judgment creditor's lien may file a third-party claim in two situations: (a) after levy on *real property* under a writ of attachment or a writ of execution, or (b) after levy on *personal property* under a writ of attachment, a writ of execution, a writ of sale, or a prejudgment or postjudgment writ of possession. (*C.C.P.* 720.110.) The claims procedure is in addition to other remedies and does not preclude the use of a quiet title action. (Law Rev. Com. Comment to *C.C.P.* 720.110.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.4 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1616 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49B.)

(2) *Claim Denied Where Third Party's Interest Is Undisputed.* A third-party claim will be denied where the third party's interest in the property is not disputed by the judgment creditor. Thus, in *Regency Outdoor Advertising v. Carolina Lanes* (1995) 31 *C.A.4th* 1323, 1330, 37 *C.R.2d* 552, a judgment creditor obtained a writ of execution against the judgment debtor's interest in real property as a lessee, and a sublessee filed a third-party claim. The trial judge properly denied the third-party claim, because the notice of levy simply described the property to be levied on as the judgment debtor's "leasehold interest" in the real property, making no mention of the sublease, and the judgment creditor conceded that it was not seeking to deprive the sublessee of possession of the subleased property, or of possession of personal property located there.

West's Key Number Digest, Attachment 280 et seq.; Execution 178 et seq.; Judicial Sales 5

SUPPLEMENT: [This section is current through the latest supplement]



5 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

B. Third-Party Claim of Ownership or Possession.

2. Time and Manner of Making Claim.

8 *Witkin Cal. Proc. Enf Judgm* § 368

[§ 368] Time and Manner of Making Claim.

(1) *Filing Claim.* A person making a third-party claim of ownership or possession must file the claim, together with two copies, with the levying officer after levy on the property but before the officer sells the property, delivers possession of the property to the judgment creditor, or pays the proceeds of collection to the creditor. (*C.C.P.* 720.120, 720.130(b); see Law Rev. Com. Comment to *C.C.P.* 720.120 [two copies are required to be filed so that one may be served on debtor and one on creditor]; *Employment Dev. Dept. v. Union Bank* (1986) 182 C.A.3d 542, 544, 227 C.R. 159 [time limit for filing claim was not extended merely because state was creditor and levy involved cash].) The claim must be executed under oath. (*C.C.P.* 720.130(a).) Under former law, no technical form for the claim was required and a claim in the form of an affidavit was sufficient. (See *Duncan v. Standard Acc. Ins. Co.* (1934) 1 C.2d 385, 388, 35 P.2d 523; *McCaffey Canning Co. v. Bank of America* (1930) 109 C.A. 415, 420, 294 P. 45.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.6 et seq.; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1617 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.49B.)

(2) *Contents.* The claim must contain all of the following:

(a) The third party's name and address in California where service by mail may be made. (*C.C.P.* 720.130(a)(1).)

(b) A description of the property in which an interest is claimed. (*C.C.P.* 720.130(a)(2).)

(c) A description of the interest claimed, including a statement of facts on which the claim is based. (*C.C.P.* 720.130(a)(3); see *Arena v. Bank of Italy* (1924) 194 C. 195, 203, 228 P. 441, 251 P. 338 [third-party claim was defective for failure to set forth *on its face* right to possession of property; decided under prior law]; *Palmquist v. Palmquist* (1964) 228 C.A.2d 789, 793, 39 C.R. 871 [same; attaching creditor did not have sufficient interest to support claim].)

(d) An estimate of the market value of the interest claimed. (*C.C.P.* 720.130(a)(4).)

A copy of any writing on which the claim is based must be attached to the claim. (*C.C.P.* 720.130(b).)

(3) *Service.* Not later than 5 days after the claim is filed with the levying officer, the officer must serve the

judgment creditor and the judgment debtor, personally or by mail, with the following:

(a) A copy of the claim. (*C.C.P. 720.140(a)(1)*, (c).)

(b) A statement whether the third person has filed an undertaking to release the property under *C.C.P. 720.610* et seq. (see *infra*, §§385, 386). (*C.C.P. 720.140(a)(2)*, (c).)

(c) If the third person has filed an undertaking, a notice that the property will be released unless, within 10 days after being served with the claim, the creditor objects to the third person's undertaking to release the property. (*C.C.P. 720.140(a)(3)*, (b), (c).)

(d) If the third person has not filed an undertaking, a notice that the property will be released unless, within 10 days after being served with the claim, the creditor files an undertaking under *C.C.P. 720.160* (see *infra*, §370). (*C.C.P. 720.140(a)(4)*, (b), (c).)

The levying officer may serve these papers notwithstanding any defect, informality, or insufficiency of the claim. (*C.C.P. 720.140(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



6 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

B. Third-Party Claim of Ownership or Possession.

3. Effect of Filing or Not Filing Claim.

8 *Within Cal. Proc. Enf Judgm § 369*

[§ 369] Effect of Filing or Not Filing Claim.

(1) *Timely Filing*. Except as otherwise provided by statute, where a third-party claim is timely filed, the levying officer may not sell the property, deliver possession of the property to the judgment creditor, or pay the proceeds of collection to the creditor. (*C.C.P. 720.150(a)*.) (For provisions authorizing sale or disposition in particular circumstances, see *C.C.P. 699.070* [disposition of perishable property; *supra*, §102]; *C.C.P. 720.160* [effect of filing undertaking; *infra*, §370]; *C.C.P. 720.430* [satisfaction from released property after hearing; *infra*, §382].) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.9; Rutter Group, 2 Enforcing Judgments and Debts §§6:1606, 6:1620 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49B.)

(2) *Failure To File*. A third person's interest in property is not affected by failure to file a third-party claim. (*C.C.P. 720.150(b)*); see *Regency Outdoor Advertising v. Carolina Lanes (1995) 31 C.A.4th 1323, 1329, 37 C.R.2d 552* [third-party claims procedure is optional and third party does not waive superior interest in property levied on by failure to make claim].) This principle is consistent with the general rule that a judgment or levy reaches only the interest of the judgment debtor in the property. (Legislative Com. Comment (Assembly) to *C.C.P. 720.150*.)

SUPPLEMENT: [This section is current through the latest supplement]



7 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

B. Third-Party Claim of Ownership or Possession.

4. Creditor's Undertaking.

8 *Within Cal. Proc. Enf Judgm § 370*

[§ 370] Creditor's Undertaking.

(1) *Effect.* If a judgment creditor files an undertaking within the 10-day period allowed by *C.C.P. 720.140(b)* (see *supra*, §368), the levying officer must execute the writ unless the third person files an undertaking to release the property under *C.C.P. 720.610* et seq. (see *infra*, §§385, 386). After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims of the third person for which the creditor has given the undertaking. (*C.C.P. 720.160(a)*.) (For general rules governing undertakings, see *supra*, §366.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.10 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1624 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49B.)

(2) *Contents.* The creditor's undertaking must (a) be made in favor of the third person; (b) indemnify the third person against losses caused by the enforcement proceedings; and (c) be conditioned on a final judgment affirming the third person's ownership or right to possession of the property. (*C.C.P. 720.160(c)*.)

(3) *Amount.* The creditor's undertaking must be the lesser of \$ 10,000 or twice the amount of an execution lien on the date of levy or another enforcement lien on the date it was created. (*C.C.P. 720.160(b)*.) However, the court may order the undertaking decreased below the minimum amount pursuant to *C.C.P. 720.770* (see *supra*, §366) or order an increased undertaking if the bond is insufficient pursuant to *C.C.P. 996.010* (see 6 *Cal. Proc. (5th), Provisional Remedies*, §29), and a creditor may also elect to file an undertaking in a larger amount. (*C.C.P. 720.160(b)*.)

(4) *Notice of Opposition by Public Entity.* If the creditor is a public entity exempt from giving an undertaking, it may, in lieu of filing the undertaking, file a notice with the levying officer stating that the entity opposes the third person's claim. The notice is deemed to satisfy the requirement that an undertaking be filed. (*C.C.P. 720.160(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



8 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

B. Third-Party Claim of Ownership or Possession.

5. Release of Property.

8 *Witkin Cal. Proc. Enf Judgm* § 371

[§ 371] Release of Property.

(1) *Release in Absence of Undertaking.* Where the third person has not filed an undertaking to release the property under *C.C.P. 720.610* et seq. (see *infra*, §§385, 386) and the judgment creditor does not file a timely undertaking under *C.C.P. 720.160* (see *supra*, §370), the levying officer must release the property unless it is to be held under another lien or unless otherwise ordered by the court. (*C.C.P. 720.170(a)*; see *Cowsert v. Stewart (1925) 72 C.A. 255, 257, 236 P. 940* [levying officer who improperly released property after creditor furnished undertaking was liable to creditor; decided under prior law].) (See *C.J.E.R.*, *Judges Benchbook: Civil Proceedings--After Trial* §8.15; *Rutter Group, 2 Enforcing Judgments and Debts* §§6:1621, 6:1622, 6:1639.)

The release is governed by *C.C.P. 699.060*, respecting release generally (see *supra*, §106), except that, if personal property to be released is not claimed by the judgment debtor within 10 days after notice is served under *C.C.P. 699.060*, the levying officer must release the property to the third person. (*C.C.P. 720.170(b), (c)*.)

(2) *Hearing Notwithstanding Release.* A hearing on the third person's claim may be held under *C.C.P. 720.310* et seq. (see *infra*, §378 et seq.) notwithstanding the release of the property. (*C.C.P. 720.170(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



9 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

C. Third-Party Claim of Security Interest or Lien.

1. Right To File Claim.

8 Witkin Cal. Proc. Enf Judgm § 372

[§ 372] Right To File Claim.

Where personal property (including fixtures) has been levied on under a writ of attachment, a writ of execution, a writ of sale, or a prejudgment or postjudgment writ of possession, a person claiming a security interest or lien superior to the judgment creditor's lien may file a third-party claim under *C.C.P. 720.210* et seq. (*C.C.P. 720.210*; see *Peck v. Hagen* (1989) 215 C.A.3d 602, 607, 263 C.R. 198, citing the text [claim under *C.C.P. 720.210* et seq., rather than quashing of levy, is proper mechanism for resolving priority of liens].) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.16 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1603; C.E.B., 2 Debt Collection Practice 2d, §9.49C.)

West's Key Number Digest, Attachment 280 et seq.; Execution 178 et seq.

SUPPLEMENT: [This section is current through the latest supplement]



10 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

C. Third-Party Claim of Security Interest or Lien.

2. Time and Manner of Making Claim.

8 *Witkin Cal. Proc. Enf Judgm* § 373

[§ 373] Time and Manner of Making Claim.

(1) *Filing Claim.* A person making a third-party claim of a security interest or lien must file the claim, together with two copies, with the levying officer after levy on the property but before the officer sells the property, delivers possession to the judgment creditor, or pays the proceeds of collection to the creditor. (*C.C.P.* 720.220; see Law Rev. Com. Comment to *C.C.P.* 720.220 [two copies are required to be filed so that one may be served on debtor and one on creditor].) The claim must be executed under oath. (*C.C.P.* 720.230(a).) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.18 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1641 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49C.)

(2) *Contents.* The claim must contain the following:

(a) The name and California address of the secured party or lienholder where service may be made by mail. (*C.C.P.* 720.230(a)(1).)

(b) A description of the personal property in which the security interest or lien is claimed. (*C.C.P.* 720.230(a)(2).)

(c) A detailed description of the security interest or lien claimed, including a statement of facts on which the claim is based. (*C.C.P.* 720.230(a)(3).)

(d) A statement of the total amount due, or to accrue, under the security interest or lien and the applicable interest rate. (*C.C.P.* 720.230(a)(4).)

(3) *Attachments.* In the case of a security interest, a copy of the security agreement and any financing statement or, in the case of a lien, a copy of any writing on which the claim is based, must be attached to the claim. (*C.C.P.* 720.230(b).)

(4) *Service.* Not later than 5 days after a third-party claim is filed with the levying officer, the officer must serve the judgment creditor and the judgment debtor, personally or by mail, with the following:

(a) A copy of the claim. (*C.C.P.* 720.240(a)(1), (c).)

(b) A statement whether the third person has filed an undertaking to release the property under *C.C.P. 720.610* et seq. (see infra, §§385, 386). (*C.C.P. 720.240(a)(2)*, (c).)

(c) If the third person has filed an undertaking, a notice that the property will be released unless, within 10 days after being served with the claim, the creditor objects to the third person's undertaking to release the property. (*C.C.P. 720.240(a)(3)*, (b), (c).)

(d) If the third person has not filed an undertaking, a notice that the property will be released unless, within 10 days after being served with the claim, the creditor either deposits the amount claimed plus interest or files an undertaking and statement attacking the validity or priority of the security interest or the amount claimed under *C.C.P. 720.260* and *720.280* (see infra, §375). (*C.C.P. 720.240(a)(4)*, (b), (c).)

The levying officer may serve these papers notwithstanding any defect, informality, or insufficiency of the claim. (*C.C.P. 720.240(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



11 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

C. Third-Party Claim of Security Interest or Lien.

3. Effect of Filing or Not Filing Claim.

8 *Within Cal. Proc. Enf Judgm § 374*

[§ 374] Effect of Filing or Not Filing Claim.

(1) *Timely Filing*. Except as otherwise provided by statute, where a third-party claim is timely filed, the levying officer may not sell the property, deliver possession to the judgment creditor, or pay the proceeds of collection to the creditor. (*C.C.P. 720.250(a)*.) (For provisions authorizing sale or disposition in particular circumstances, see *C.C.P. 699.070* [disposition of perishable property; supra, §102]; *C.C.P. 720.260* [effect of filing undertaking; infra, §375]; *C.C.P. 720.430* [satisfaction from released property after hearing; infra, §382].) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.21; Rutter Group, 2 Enforcing Judgments and Debts §§6:1606, 6:1645; C.E.B., 2 Debt Collection Practice 2d, §9.49C.)

(2) *Failure To File*. The interest of a secured party or lienholder in property levied on is not affected by failure to file a third-party claim. (*C.C.P. 720.250(b)*); on comparable provision relating to claim of ownership or possession, see supra, §369.)

SUPPLEMENT: [This section is current through the latest supplement]



12 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

C. Third-Party Claim of Security Interest or Lien.

4. Creditor's Undertaking.

8 *Witkin Cal. Proc. Enf Judgm* § 375

[§ 375] Creditor's Undertaking.

(1) *Effect.* If the judgment creditor either deposits with the levying officer the amount claimed under *C.C.P.* 720.230 (see *supra*, §373), or within the 10-day period provided by *C.C.P.* 720.240(b) (see *supra*, §373) files an undertaking and a statement challenging the security interest, the levying officer must execute the writ unless, in a case where the creditor has filed an undertaking, the secured party or lienholder files an undertaking to release the property under *C.C.P.* 720.610 et seq. (see *infra*, §§385, 386). After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims or liens of the secured party or lienholder for which the creditor has given the undertaking or made the deposit. (*C.C.P.* 720.260(a).) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.22 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §§6:1650, 6:1659 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49C.) (For general rules governing undertakings, see *supra*, §366.)

(2) *Contents.* The creditor's undertaking must (a) be made in favor of the secured party or lienholder; (b) indemnify the secured party or lienholder against losses incurred by reason of the enforcement proceedings; and (c) be conditioned on a final judgment affirming the priority of the third person's security interest or lien over the creditor's lien. (*C.C.P.* 720.260(c).)

(3) *Amount.* The creditor's undertaking must be the lesser of \$ 10,000 or twice the amount of an execution lien on the date of levy or another enforcement lien on the date it was created. However, the court may order the undertaking decreased below the minimum amount pursuant to *C.C.P.* 720.770 (see *supra*, §366) or order an increased undertaking if the bond is insufficient pursuant to *C.C.P.* 996.010 (see 6 *Cal. Proc.* (5th), *Provisional Remedies*, §29), and a creditor may also elect to file an undertaking in a larger amount. (*C.C.P.* 720.260(b).)

(4) *Statement Challenging Security Interest.* A creditor filing an undertaking in response to a third person's claim must also file a statement executed under oath that the security interest is invalid, that the security interest is not entitled to priority over the creditor's lien, or that the amount demanded in the claim exceeds the amount to which the secured party is entitled, for reasons specified in the statement, and must serve a copy of the statement, personally or by mail, on the secured party and on the judgment debtor. (*C.C.P.* 720.280.)

(5) *Notice of Opposition by Public Entity.* If the creditor is a public entity exempt from giving an undertaking, it

may, in lieu of filing the undertaking, file a notice stating that the entity opposes the claim of the third person. The notice is deemed to satisfy the requirement that an undertaking be filed. (*C.C.P. 720.260(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



13 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

C. Third-Party Claim of Security Interest or Lien.

5. Release of Property.

8 *Witkin Cal. Proc. Enf Judgm* § 376

[§ 376] Release of Property.

(1) *In General.* Where the third person has not filed an undertaking to release the property under *C.C.P. 720.610* et seq. (see *infra*, §§385, 386) and the judgment creditor neither timely deposits the amount claimed nor timely files an undertaking and statement under *C.C.P. 720.260* and *720.280* (see *supra*, §375), the levying officer must release the personal property unless it is to be held under another lien or unless otherwise ordered by the court. (*C.C.P. 720.270(a)*); see *Stoehr v. Superior Court (1948) 87 C.A.2d 850, 852, 197 P.2d 779* [third person claiming chattel mortgage subject to levy was entitled to release of chattels in absence of appropriate response by creditor; decided under prior law].) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.28; Rutter Group, 2 Enforcing Judgments and Debts §§6:16549 et seq.)

The release is governed by *C.C.P. 699.060*, requiring the release of property levied on under execution in specified circumstances (see *supra*, §106), except that, if property is to be released to the judgment debtor and the debtor has not claimed the property within 10 days after notice was served under *C.C.P. 699.060*, the levying officer must release the property to the secured party or lienholder. (*C.C.P. 720.270(b), (c)*.)

(2) *Hearing Notwithstanding Release.* A hearing on the third person's claim may be held under *C.C.P. 720.310* et seq. (see *infra*, §378 et seq.), notwithstanding the release of the property. (*C.C.P. 720.270(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



14 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

C. Third-Party Claim of Security Interest or Lien.

6. Payment to Secured Party or Lienholder.

8 *Witkin Cal. Proc. Enf Judgm § 377*

[§ 377] Payment to Secured Party or Lienholder.

(1) *Creditor's Deposit.* On receiving a sufficient deposit from a judgment creditor, the levying officer must promptly tender or pay the deposit to the secured party or lienholder, after a reasonable delay for allowing checks to clear. (*C.C.P.* 720.290(a).) (See Rutter Group, 2 Enforcing Judgments and Debts §6:1664; for general rules governing undertakings, see *supra*, §366.)

(2) *Acceptance of Tender.* If tender is accepted, the interest of the secured party or lienholder passes to the creditor. On distribution of any proceeds from an execution sale under *C.C.P.* 701.810 (see *supra*, §158), the creditor is entitled to the proceeds to the extent of the deposit in the priority of the interest for which the deposit is made. (*C.C.P.* 720.290(b).)

(3) *Refusal of Tender.* If the tender is refused, the amount must be deposited with the county treasurer payable to the order of the secured party or the lienholder. (*C.C.P.* 720.290(c).)

SUPPLEMENT: [This section is current through the latest supplement]



15 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

D. Hearing on Third-Party Claim.

1. Application and Notice.

8 *Witkin Cal. Proc. Enf Judgm* § 378

[§ 378] Application and Notice.

(1) *Application*. Within 15 days after a third-party claim is filed with the levying officer under *C.C.P. 720.120* (see *supra*, §368) or *C.C.P. 720.220* (see *supra*, §373), or within 15 days after an undertaking to release the property is filed under *C.C.P. 720.610* et seq. (see *infra*, §§385, 386), either the judgment creditor or the third person may petition the court for a hearing to determine the validity of the claim and the proper disposition of the property. (*C.C.P. 720.310(a)*; see *Ballagh v. Williams* (1942) 50 *C.A.2d* 303, 304, 122 *P.2d* 919 [holding under prior law that time limit was jurisdictional]; *Commercial Credit Plan v. Gomez* (1969) 276 *C.A.2d Supp.* 831, 833, 80 *C.R.* 534 [failure to seek hearing under former statute did not affect liabilities of sureties on creditor's undertaking]; C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §8.30 et seq.; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1671 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.49D; 14 *Pacific L. J.* 436.)

(2) *Notice*. At the time prescribed in *C.C.P. 1005(b)* for giving notice of motion (see 6 *Cal. Proc.* (5th), *Proceedings Without Trial*, §15 et seq.), the petitioner must serve a notice of hearing on the creditor or the third person (whichever is not the petitioner) and on the judgment debtor, personally or by mail, and must file a copy of the notice with the levying officer. The notice must state the time and place of the hearing, and that the purpose of the hearing is to determine the validity of the third-party claim and the proper disposition of the property. (*C.C.P. 720.320*.) The requirement of notice to the debtor avoids a misapplication of funds that might otherwise occur. (See *Law Rev. Com. Comment to C.C.P. 720.320*.) (On time of hearing, see *C.C.P. 720.310(c)*, *infra*, §381.)

West's Key Number Digest, Attachment 296

SUPPLEMENT: [This section is current through the latest supplement]



16 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

D. Hearing on Third-Party Claim.

2. Papers Filed by Levying Officer.

8 *Within Cal. Proc. Enf Judgm § 379*

[§ 379] Papers Filed by Levying Officer.

Promptly after receipt of notice of a hearing on a third-party claim, the levying officer must file the following papers with the court:

- (1) The claim filed with the officer under *C.C.P. 720.120* (see supra, §368) or *C.C.P. 720.220* (see supra, §373). (*C.C.P. 720.330(a)*.)
- (2) Any statement by the judgment creditor pursuant to *C.C.P. 720.280* (see supra, §375) in opposition to the claim of a secured party. (*C.C.P. 720.330(b)*.)
- (3) Any undertaking filed by the creditor under *C.C.P. 720.160* (see supra, §370) or *C.C.P. 720.260* (see supra, §375). (*C.C.P. 720.330(c)*.)
- (4) Any undertaking filed by the third person under *C.C.P. 720.610* et seq. (see infra, §§385, 386). (*C.C.P. 720.330(d)*.)
- (5) Any notice of opposition filed by a public entity pursuant to *C.C.P. 720.160* (see supra, §370) or *C.C.P. 720.260* (see supra, §365). (*C.C.P. 720.330(e)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.33; Rutter Group, 2 Enforcing Judgments and Debts §6:1681.)

An undertaking in the levying officer's possession that is not filed with the court pursuant to this statute should be filed pursuant to *C.C.P. 720.800* (see supra, §366). (See Law Rev. Com. Comment to *C.C.P. 720.330*.)

SUPPLEMENT: [This section is current through the latest supplement]



17 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

D. Hearing on Third-Party Claim.

3. Creditor's Statement Opposing Claim of Secured Party.

8 Within Cal. Proc. Enf Judgm § 380

[§ 380] Creditor's Statement Opposing Claim of Secured Party.

Where either the judgment creditor or the third party has petitioned for a hearing on a third-party claim by a secured party and the creditor has not filed a statement opposing the claim pursuant to *C.C.P. 720.280* (see supra, §375), the creditor must file the statement with the court and serve a copy of the statement on the secured party. Where the creditor petitions for the hearing, the statement must be filed at the time the petition is filed, and the copy must be served with the notice of hearing under *C.C.P. 720.320* (see supra, §378). Where the secured party petitions for the hearing, the creditor must file the statement and serve the copy, personally or by mail, not later than 5 days before the date set for the hearing. (*C.C.P. 720.340.*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.34; Rutter Group, 2 Enforcing Judgments and Debts §6:1676 et seq.; on time of hearing, see *C.C.P. 720.310(c)*, infra, §381.)

SUPPLEMENT: [This section is current through the latest supplement]



18 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

D. Hearing on Third-Party Claim.

4. Proceedings and Determination.

8 *Witkin Cal. Proc. Enf Judgm* § 381

[§ 381] Proceedings and Determination.

(1) *Conditions for Hearing.* The hearing on a disputed claim may be held whether or not an undertaking has been filed, but not if a deposit has been made under *C.C.P. 720.260* (see *supra*, §375). (*C.C.P. 720.310(b)*.) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.35 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §§6:1665, 6:1674 et seq., 6:1685 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49D.)

(2) *Time for Hearing.* The hearing must be held within 20 days after the petition for hearing is filed unless continued by the court for good cause. (*C.C.P. 720.310(c)*.) (On time for filing petition, see *C.C.P. 720.310(a)*, *supra*, §378.)

(3) *No Right to Discovery.* Discovery is not available in third-party claim proceedings. Generally, there is no opportunity for discovery in these proceedings, because of the requirement of a hearing within 20 days after the petition is filed. Moreover, there is no provision in the Civil Discovery Act that would allow a third-party claimant to pursue discovery. (*Whitehouse v. Six Corp. (1995) 40 C.A.4th 527, 535, 48 C.R.2d 600* [citing former *C.C.P. 2016(c)* (now *C.C.P. 2016.070*), providing that Civil Discovery Act applies to discovery in aid of enforcement of judgment only to extent provided in *C.C.P. 708.010* et seq. (*supra*, §275 et seq.)].)

(4) *Pleadings.* The third-party claim constitutes the claimant's pleading, and the judgment creditor's statement opposing a claim by a secured party constitutes the creditor's pleading. However, the court may permit an amendment in the interest of justice. (*C.C.P. 720.350(a)*.) A third party's claim of ownership, right to possession, or lien must be deemed controverted by the creditor. (*C.C.P. 720.350(b)*.)

(5) *Evidence.* A copy of any writing on which a claim is based, including any security agreement and any financing statement, must be attached to a third party's claim. (See *supra*, §§368, 373.) At the hearing, the court has discretion to exclude any writing not so attached. (*C.C.P. 720.130(b)*, *720.230(b)*.)

(6) *Burden of Proof.* At the hearing on the claim, the third person has the burden of proof. (*C.C.P. 720.360*; see *Beverly Hills Thrift & Loan v. Western Dredging & Const. Co. (1961) 190 C.A.2d 298, 302, 12 C.R. 107* [third-party claimant failed to sustain burden; decided under prior law]; *14 Hastings L. J. 69*.) However, a creditor who resists a

third-party claim by asserting that the property has been fraudulently transferred to the third person has the burden of proving the allegation by a preponderance of the evidence. The third-party claimant does not waive the legal requirements of a particular theory the creditor advances to resist the claim. (See *Whitehouse v. Six Corp.*, *supra*, 40 C.A.4th 533.)

(7) *Restriction on Dismissal*. Neither the petition for hearing nor the proceedings under the petition may be dismissed without the consent of (a) the creditor, if the third person petitioned for hearing, or (b) the third person, if the creditor petitioned for hearing. (C.C.P. 720.370.)

(8) *No Right to Jury Trial*. There is no right to a jury trial in a hearing on a third-party claim. (C.C.P. 720.410; see *Whitehouse v. Six Corp.*, *supra*, 40 C.A.4th 535 [creditor's assertion that third-party claimants had obtained property fraudulently did not change nature of third-party claim proceeding so as to entitle claimants to jury trial].)

(9) *Stay or Injunction Pending Determination*. Notwithstanding any other provision of the Enforcement of Judgments Law, the court may stay the sale of the property or enjoin the transfer or other disposition of the property until a third-party claim is determined. It may require an undertaking as a condition for making the order. (C.C.P. 720.380(a).) After a third-party claim has been filed, the judgment creditor, the judgment debtor, or the third person may apply for the order ex parte, or on noticed motion if the court so directs or a court rule requires, even if the creditor has previously filed an undertaking requiring the levying officer to execute the writ under C.C.P. 720.160 (see *supra*, §370) or C.C.P. 720.260 (see *supra*, §375). (C.C.P. 720.380(b).) The order may be modified or vacated at any time prior to termination of the proceedings upon "just" terms. (C.C.P. 720.380(c).)

(10) *Perishable Property*. In addition, a third-party claimant may apply for an order to preserve the value of perishable property under C.C.P. 699.070 (see *supra*, §102). (C.C.P. 699.070(a).)

(11) *Judgment*. At the conclusion of the hearing, the court must give judgment determining the validity of the claim and may order disposition of the property or its proceeds in accordance with the respective interests of the parties. Subject to appeal under C.C.P. 720.420, the judgment is conclusive between the parties to the proceeding. (C.C.P. 720.390; see *Embree Uranium Co. v. Liebel* (1959) 169 C.A.2d 256, 258, 337 P.2d 159 [judgment under former statute was appealable and res judicata in any new proceeding].) Findings are not required. (C.C.P. 720.400.) The successful party is entitled to costs. (*Exchange Nat. Bank of Tulsa v. Ransom* (1942) 52 C.A.2d 544, 546, 126 P.2d 620; *Maguire v. Corbett* (1953) 119 C.A.2d 244, 252, 259 P.2d 507.)

(12) *Appeal*. The judgment determining the validity of the claim may be appealed. (C.C.P. 720.420; see *Wilson v. Dunbar* (1939) 36 C.A.2d 144, 145, 97 P.2d 262 [complete and specific provision in former statute granting right of appeal precluded motion for new trial].) (On stay pending appeal, see *Fulton v. Webb* (1937) 9 C.2d 726, 728, 72 P.2d 744 [propriety of requiring undertaking]; *Jensen v. Hugh Evans & Co.* (1939) 13 C.2d 401, 404, 90 P.2d 72 [same]; 9 Cal. Proc. (5th), *Appeal*, §221 et seq.)

(13) *Constitutionality of Procedure*. The notice and hearing provisions of the former statute were held to satisfy the constitutional requirements of procedural due process. (See *McCoy v. Justice's Court* (1937) 23 C.A.2d 99, 101, 71 P.2d 1115.) Of course, the proceedings must be in fact conducted in a manner that provides the parties with these constitutional protections. (See *Cassel v. Kolb* (1999) 72 C.A.4th 568, 579, 84 C.R.2d 878 [trial court erred in denying third-party claimant opportunity to respond to creditor's objection that claim was not based on declarant's personal knowledge, where claim facially complied with requirement that it be signed under oath].) A summary decision without allowing each party the opportunity to present his or her case is reversible error. (See *National Auto. Ins. Co. v. Fraties* (1941) 46 C.A.2d 431, 432, 115 P.2d 997 [trial judge, outraged at what he thought was fraudulent transfer, denied claim after listening only to creditor and debtor]; *Johnston v. Cunningham* (1970) 12 C.A.3d 123, 128, 90 C.R. 487 [judge entered order allowing claim without taking or considering evidence of title; citing *Fraties*].)

SUPPLEMENT: [This section is current through the latest supplement]



19 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

D. Hearing on Third-Party Claim.

5. Satisfaction From Released Property.

8 Within Cal. Proc. Enf Judgm § 382

[§ 382] Satisfaction From Released Property.

If property has been released by reason of the third person's filing of an undertaking under *C.C.P. 720.660* (see *infra*, §386) or by reason of the judgment creditor's failure to file an undertaking under *C.C.P. 720.170* (see *supra*, §371) or *C.C.P. 720.270* (see *supra*, §376), the property may be applied to the satisfaction of the judgment only if it is determined in the hearing on the third-party claim that the judgment debtor has an interest in the property that may be levied on or otherwise applied to the satisfaction of the judgment. (*C.C.P. 720.430.*) (See Rutter Group, 2 Enforcing Judgments and Debts §§6:1639, 6:1668; on satisfaction of judgment generally, see *infra*, §387 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



20 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

E. Creditor's Demand That Third Party File Claim.

1. Filing and Service of Demand.

8 *Within Cal. Proc. Enf Judgm § 383*

[§ 383] Filing and Service of Demand.

(1) *In General.* A judgment creditor may demand that a secured party or lienholder file a third-party claim to personal property that has been levied on under a writ of attachment or a writ of execution. (*C.C.P. 720.510.*) The creditor must file the demand and a copy with the levying officer after the property has been levied on but before the officer sells the property or pays the proceeds of collection to the creditor. (*C.C.P. 720.520(a).*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.42 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1689 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49E.)

(2) *Contents.* The demand must contain the following:

(a) The names and addresses of the secured party or lienholder and the creditor. (*C.C.P. 720.530(a), (b).*)

(b) A detailed description of the property and the date of levy. (*C.C.P. 720.530(c).*)

(c) A statement that the secured party or lienholder will be deemed to have waived any priority the security interest or lien has over the creditor's lien if a third-party claim is not filed within 30 days after service of the demand, unless the property levied on is released from the creditor's lien. (*C.C.P. 720.530(d).*)

(d) A statement that the secured party or lienholder may have a right to share in any excess proceeds of an execution sale as provided by *C.C.P. 701.810* (see supra, §158) if any priority is waived. (*C.C.P. 720.530(e).*)

(3) *Service by Levying Officer.* Promptly after the creditor's demand is filed, the levying officer must personally serve it on the secured party or lienholder. Service must be attested by a certificate of service filed in the action promptly after service. (*C.C.P. 720.520(b).*) Service may be made by the levying officer who levied on the property or by another officer whose office is closer to the place of service. (*C.C.P. 720.520(c)* [other officer's costs are payable from costs prepaid to levying officer].)

(4) *Restriction on Disposition of Property.* The levying officer may not release, sell, or otherwise dispose of the property described in the demand for 30 days after service of the demand on the secured party or lienholder, except as otherwise provided by statute. (*C.C.P. 720.540.*) (On earlier disposition of perishable property, see *C.C.P. 699.070*,

supra, §102; on earlier release pursuant to claim of secured party on whom demand served or of other third person, see *C.C.P. 720.170*, supra, §371, and *C.C.P. 720.270*, supra, §376.)

SUPPLEMENT: [This section is current through the latest supplement]



21 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

E. Creditor's Demand That Third Party File Claim.

2. Effect of Failure To Make Claim.

8 *Witkin Cal. Proc. Enf Judgm* § 384

[§ 384] Effect of Failure To Make Claim.

(1) *Waiver of Priority*. If a secured party or lienholder does not file a timely third-party claim after a demand to file the claim has been made (see *supra*, §383), the secured party or lienholder is deemed to have waived any priority the security interest or lien had over the judgment creditor's lien on the personal property levied on, and the property may be applied toward the satisfaction of the judgment free of the security interest or lien. (*C.C.P. 720.550(a)*; see Law Rev. Com. Comment to *C.C.P. 720.550* [noting that secured party or lienholder loses only priority over creditor's lien, while under former law all rights in property levied on or its proceeds were forfeited].) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.45; Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1696 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §9.49E.)

(2) *Restoration of Priority*. However, if priority is deemed waived and the creditor's lien on the property is then released (e.g., by voluntary payment of the debt or resort to other property), the security interest or lien is restored to its former position of priority. (*C.C.P. 720.550(b)*; Law Rev. Com. Comment to *C.C.P. 720.550*.)

SUPPLEMENT: [This section is current through the latest supplement]



22 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

F. Third-Party Undertaking To Release Property.

1. Nature of Undertaking.

8 *Witkin Cal. Proc. Enf Judgm* § 385

[§ 385] Nature of Undertaking.

(1) *Conditions for Issuance.* An undertaking to release property may be given by a third person in the following cases:

(a) The third person claims ownership or the right to possession of real property under a writ of attachment or a writ of execution. (*C.C.P. 720.610(a).*)

(b) The third person claims ownership or the right to possession of personal property levied on under a writ of attachment, a writ of execution, or a writ of sale. (*C.C.P. 720.610(b).*)

(c) The third person claims a security interest or lien in personal property levied on under a writ of attachment, a writ of execution, or a writ of sale. (*C.C.P. 720.610(c).*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §8.46 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1699 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49F; 14 *Pacific L. J.* 437; for general rules governing undertakings, see supra, §366.)

(2) *Amount.* If the judgment creditor has given an undertaking in response to the third person's claim under *C.C.P. 720.160* (see supra, §370) or *C.C.P. 720.260* (see supra, §375), the third person's undertaking must be in the same amount as the creditor's undertaking. (*C.C.P. 720.630(d).*) In other cases, unless the third person elects to file an undertaking in a larger amount, the undertaking must be the lesser of twice the market value of the property or twice the amount of the creditor's lien on the property. (*C.C.P. 720.630(c).*)

(3) *Contents.* The third person's undertaking to release the property must describe the property and the interest of the third person. (*C.C.P. 720.630(a).*) It must be in favor of the creditor and must provide that, if the judgment debtor is finally adjudged to have an interest in the property, the third person will pay the creditor the lesser of the amount required to satisfy the judgment against the debtor or the market value of the debtor's interest in the property. (*C.C.P. 720.630(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



23 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

F. Third-Party Undertaking To Release Property.

2. Filing and Service of Undertaking and Release of Property.

8 *Within Cal. Proc. Enf Judgm § 386*

[§ 386] Filing and Service of Undertaking and Release of Property.

(1) *Filing.* A third person's undertaking to release the property and two copies must be filed with the levying officer at the time the third person files a third-party claim under *C.C.P. 720.110* et seq. (see supra, §367 et seq.) or *C.C.P. 720.210* et seq. (see supra, §372 et seq.) or, if the third person has previously filed a claim, at any time before the officer sells the property, delivers possession of the property to the judgment creditor, or pays the proceeds of collection to the creditor. (*C.C.P. 720.620.*) (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §§8.49, 8.50; Rutter Group, 2 Enforcing Judgments and Debts §6:1701 et seq.; C.E.B., 2 Debt Collection Practice 2d, §9.49F.)

(2) *Service.* If the undertaking is filed with the levying officer at the time the third-party claim is filed, the officer must serve a copy of the undertaking on the creditor and on the judgment debtor with the notice of the third-party claim served under *C.C.P. 720.140* (see supra, §368) or *C.C.P. 720.240* (see supra, §373). (*C.C.P. 720.640(a).*)

If the undertaking is filed with the levying officer after the third-party claim is filed, the officer must serve a copy of the undertaking on the creditor and on the debtor, either personally or by mail, not later than 5 days after the undertaking is filed. The officer must also serve notice that the property will be released unless, within the time specified in the notice, the creditor objects to the undertaking. (*C.C.P. 720.640(b).*)

(3) *Release of Property.* Unless the creditor has timely filed a notice of motion objecting to the undertaking under *C.C.P. 720.760* (see supra, §366), the levying officer must release the property described in the undertaking as provided by *C.C.P. 720.170* (see supra, §371). (*C.C.P. 720.660.*)

(4) *Effective Date of Undertaking.* The undertaking becomes effective when the property is released. (*C.C.P. 720.650.*) (See Law Rev. Com. Comment to *C.C.P. 720.650* [noting that time for making objection will have expired by time undertaking is effective].) (On time for objection, see *C.C.P. 995.930*, supra, §366.)

SUPPLEMENT: [This section is current through the latest supplement]



24 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XI. SATISFACTION OF JUDGMENT

A. Satisfaction in Full.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 387

[§ 387] In General.

(1) *Methods of Satisfaction.* A money judgment may be satisfied by payment of the full amount required to satisfy the judgment or by acceptance by the judgment creditor of a lesser sum in full satisfaction of the judgment. (*C.C.P.* 724.010(a); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §9.2 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1875 et seq.; C.E.B., 1 Debt Collection Practice 2d, §7.74 et seq.; Cal. Civil Practice, 4 Procedure, §28:40 et seq.) This provision does not foreclose the use of other methods of satisfying a money judgment, e.g., a judgment offset. (Legislative Com. Comment (Assembly) to *C.C.P.* 724.010 [noting statutes and cases providing for satisfaction by other methods].) (On discharge of judgment, see *infra*, §507 et seq.)

(2) *Entry by Clerk.* The court clerk must enter satisfaction of the judgment in the register of actions when (a) the court so orders; (b) a writ is returned satisfied for the full amount of a lump sum judgment; or (c) an acknowledgment of satisfaction is filed with the court. (*C.C.P.* 724.020.) (On acknowledgment of satisfaction, see *infra*, §388 et seq.)

(3) *Payment by Check.* *Long v. Cuttle Const. Co.* (1998) 60 C.A.4th 834, 70 C.R.2d 698, involved a payment by check. Defendant judgment debtor sent checks to plaintiff judgment creditors' counsel to defray the judgment debt. The checks were deposited in counsel's bank but the bank placed a 5-day hold on their payment. The trial court found that interest continued to run on the judgment during the 5-day period and denied defendant's motion to enter satisfaction of judgment. *Held*, reversed. Interest on the judgment ceased running on the day the checks were delivered. If a judgment creditor accepts a check, the time of payment is governed by the rules pertaining to commercial transactions generally. The rule is that once a check is paid, the payment of the underlying debt becomes absolute and relates back to the date of the delivery of the check. This rule is supported by U.C.C. 3310 (see 4 *Summary* (10th), *Negotiable Instruments*, §18), which provides that, when an uncertified check is taken for an obligation, the obligation is suspended to the same extent as if payment were made in money. If payment were made in money, interest would cease to accrue. Under U.C.C. 3310, subsequent payment of the check results in discharge of the obligation. No interest accrues during the suspension of the obligation, which extends until the point of discharge. Hence, no further interest is due, and the discharge relates back to the time of acceptance of the check. (60 C.A.4th 836.)

(4) *Preservation of Remedies.* The damages recoverable pursuant to the provisions of the Enforcement of Judgments Law governing satisfaction of judgment (see *C.C.P.* 724.010 et seq.) are not in derogation of any other

damages or penalties to which an aggrieved person may be entitled. (*C.C.P. 724.090.*)

(5) *Attorneys' Fees.* In an action or proceeding pursuant to *C.C.P. 724.010* et seq. the prevailing party must be awarded attorneys' fees. (*C.C.P. 724.080.*)

(6) *Small Claims Court.* Satisfaction of judgment in small claims court is governed by *C.C.P. 116.840* et seq. (see 2 *Cal. Proc. (5th), Courts, §304* et seq.).

West's Key Number Digest, Judgment 875

SUPPLEMENT: [This section is current through the latest supplement]



25 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XI. SATISFACTION OF JUDGMENT

A. Satisfaction in Full.

2. Acknowledgment of Satisfaction.

a. Creditor's Duty.

8 *Witkin Cal. Proc. Enf Judgm* § 388

[§ 388] Creditor's Duty.

(1) *Filing Generally.* Immediately after a money judgment is satisfied, the judgment creditor must file an acknowledgment of satisfaction with the court, unless the judgment is satisfied in full pursuant to a writ (*C.C.P.* 724.030), in which case the clerk enters satisfaction of the writ (*C.C.P.* 724.020, *supra*, §387). (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §9.4 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1877 et seq.; C.E.B., 1 Debt Collection Practice 2d, §7.74.) Where a money judgment is satisfied by levy, the creditor is required to file an acknowledgment of satisfaction only when the creditor has received the full amount required to satisfy the judgment from the levying officer. (*C.C.P.* 724.010(b).) Where a money judgment is satisfied by payment by a check or other form of noncash payment to be honored on presentation by the creditor for payment, the creditor must file an acknowledgment of satisfaction only when the payment has been presented and honored. (*C.C.P.* 724.010(c).)

(2) *Filing and Service Where Abstract of Judgment Is Recorded.* Where an abstract of a money judgment has been recorded with the recorder of any county (i.e., to create a lien on real property; see *C.C.P.* 697.310, *supra*, §69) and the judgment is satisfied, the creditor must immediately not only file an acknowledgment of satisfaction of judgment with the court, but also serve the judgment debtor, personally or by mail, with an acknowledgment of satisfaction of judgment. (*C.C.P.* 724.040; Legislative Com. Comment (Assembly) to *C.C.P.* 724.030.) The purpose of the service is to give the debtor (a) a list of counties in which an abstract of the judgment has been recorded, and (b) notice that an acknowledgment of satisfaction of judgment or a certificate of satisfaction of judgment (see *C.C.P.* 724.100, *infra*, §391) must be recorded in each of these counties in order to release the judgment lien. (Legislative Com. Comment (Assembly) to *C.C.P.* 724.040.)

(3) *Liability for Requiring Additional Performance or Payment.* Generally, a judgment creditor who intentionally conditions delivery of an acknowledgment of satisfaction of judgment on the performance of an act or the payment of an amount in excess of that to which the creditor is entitled under the judgment is liable to the judgment debtor for the greater of all damages caused by that action or \$ 250. However, the creditor may agree to deliver an acknowledgment of satisfaction of judgment to the judgment debtor before full satisfaction in consideration for the debtor's agreement either to furnish security or execute a promissory note, the amount of which does not exceed the amount to which the creditor is entitled under the judgment. (*C.C.P.* 724.070.) (On creditor's liability for other damages or for attorneys' fees, see

supra, §387.)

SUPPLEMENT: [This section is current through the latest supplement]



26 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XI. SATISFACTION OF JUDGMENT

A. Satisfaction in Full.

2. Acknowledgment of Satisfaction.

b. Demand for Acknowledgment.

8 *Witkin Cal. Proc. Enf Judgm* § 389

[§ 389] Demand for Acknowledgment.

(1) *In General.* If a money judgment has been satisfied, the judgment debtor, the owner of property subject to a judgment lien created under the judgment, or a person holding a security interest or lien on personal property subject to a judgment lien created on the judgment may serve the judgment creditor, personally or by mail, with a written demand that the creditor file an acknowledgment of satisfaction of judgment with the court or execute, acknowledge, and deliver an acknowledgment of satisfaction of judgment to the person who made the demand, or both. (*C.C.P.* 724.050(a); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §9.13 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1884 et seq.; C.E.B., 1 Debt Collection Practice 2d, §7.75; 14 *Pacific L. J.* 438; for wording of warning of consequences of failure to comply that must be included in demand, see *C.C.P.* 724.050(b); for form of demand, see Cal. Civil Practice, 4 Procedure, §28:58.)

(2) *Time for Compliance.* If the judgment has been satisfied, the creditor must comply with the demand within 15 days after actual receipt of the demand. (*C.C.P.* 724.050(c).)

(3) *Order To Require Compliance.* If the judgment creditor does not timely comply with the demand, the demanding party may apply on noticed motion for an order requiring the creditor to comply. The notice of motion must be served, personally or by mail, on the creditor. If the court determines that the judgment has been satisfied and the creditor has not complied with the demand, the court must either order the creditor to comply or order the court clerk to enter satisfaction of the judgment. (*C.C.P.* 724.050(d); see *Taliaferro v. Taliaferro* (1956) 144 C.A.2d 109, 113, 300 P.2d 726 [motion to compel acknowledgment is adequate remedy at law precluding equitable relief for failure to give satisfaction; decided under prior law]; *Quintana v. Gibson* (2003) 113 C.A.4th 89, 94, 5 C.R.3d 898 [judgment debtor's motion for entry of satisfaction of judgment was defective for failure to comply with demand requirements of *C.C.P.* 724.050].) (For form of notice of motion to compel acknowledgment, see Cal. Civil Practice, 4 Procedure, §28:61.) The creditor may be compelled to file an acknowledgment of satisfaction regardless of the means of satisfaction. (Legislative Com. Comment (Assembly) to *C.C.P.* 724.050.)

To order entry of satisfaction of a judgment under *C.C.P.* 724.050(d), the trial court must first determine whether the judgment has been satisfied *in fact*. Hence, where it could not be determined from an arbitration award whether the

award included medical damages that had already been paid, it was error for the trial judge to offset those damages against the judgment entered on the award and order entry of satisfaction of the judgment after payment of the remaining amount. (*Schumacher v. Ayerve* (1992) 9 C.A.4th 1860, 1863, 12 C.R.2d 417.)

(4) *Liability for Noncompliance.* If a judgment has been satisfied and the judgment creditor fails, without just cause, to timely comply with a demand to acknowledge satisfaction of the judgment, the creditor is liable to the person making the demand for all damages arising from failure to comply and §100. Liability may be determined in a proceeding on a motion to compel compliance under C.C.P. 724.050(d). (C.C.P. 724.050(e).) (On creditor's liability for other damages or for attorneys' fees, see *supra*, §387.)

SUPPLEMENT: [This section is current through the latest supplement]



27 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XI. SATISFACTION OF JUDGMENT

A. Satisfaction in Full.

2. Acknowledgment of Satisfaction.

c. Execution and Content of Acknowledgment.

8 *Within Cal. Proc. Enf Judgm § 390*

[§ 390] Execution and Content of Acknowledgment.

(1) *Execution.* The acknowledgment of a satisfaction of judgment must be executed and acknowledged by one of the following:

(a) The judgment creditor. (*C.C.P. 724.060(c)(1).*)

(b) The assignee of record. (*C.C.P. 724.060(c)(2).*)

(c) The attorney for the creditor or the assignee unless a revocation of the attorney's authority is filed. (*C.C.P. 724.060(c)(3).*)

(d) The local child support agency director or his or her designee where the agency has been providing child support services. (*C.C.P. 724.060(c)(4), infra, §405.*)

The acknowledgment must be made in the manner of an acknowledgment of a conveyance of real property (see 12 *Summary* (10th), *Real Property*, §283 et seq.). (*C.C.P. 724.060(b).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1892 et seq.; *Cal. Civil Practice*, 4 *Procedure*, §§28:43, 28:60; *C.E.B.*, 1 *Debt Collection Practice* 2d, §§7.74, 7.76; 15A *Am.Jur. P.P. Forms* (2005 ed.), *Judgments* §503 et seq.)

(2) *Contents.* An acknowledgment of satisfaction of judgment must contain the following information:

(a) The title of the court and the cause and number of the action. (*C.C.P. 724.060(a)(1), (a)(2).*)

(b) The names and addresses of the judgment creditor, the judgment debtor, and any assignee of record. If an abstract of judgment has been recorded in any county, the debtor's name must appear on the acknowledgment as it does on the abstract. (*C.C.P. 724.060(a)(3).*)

(c) The date of entry of the judgment and the date of any renewal, and where entered in the court records. (*C.C.P. 724.060(a)(4).*)

(d) A statement that the judgment is satisfied in full or that the creditor has accepted payment or performance other than that specified in the judgment in full satisfaction. (*C.C.P. 724.060(a)(5).*)

(e) A statement of each county, and the book and page of the county records, where an abstract of the judgment has been recorded, and a notice that an acknowledgment of satisfaction of judgment (or a clerk's certificate of satisfaction of judgment) must be recorded in each county in order to release the judgment lien on real property in that county. (*C.C.P. 724.060(a)(6).*)

(f) A statement of the file number of each notice of judgment lien filed with the Secretary of State and a notice that an acknowledgment of satisfaction of judgment (or a termination statement or a clerk's certificate of satisfaction of judgment) must be filed with the Secretary of State in order to terminate the judgment lien on personal property. (*C.C.P. 724.060(a)(7).*)

(3) *Form.* The Judicial Council has approved an optional form for an acknowledgment of satisfaction of a judgment. (See Judicial Council Form No. EJ-100 [Acknowledgment of Satisfaction of Judgment].)

West's Key Number Digest, Judgment 889

SUPPLEMENT: [This section is current through the latest supplement]



28 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XI. SATISFACTION OF JUDGMENT

A. Satisfaction in Full.

3. Certificate of Satisfaction.

8 *Witkin Cal. Proc. Enf Judgm* § 391

[§ 391] Certificate of Satisfaction.

(1) *Issuance and Purpose.* Where an acknowledgment of satisfaction of judgment cannot be obtained easily, a certificate of satisfaction of judgment may serve the same function. (Law Rev. Com. Comment to *C.C.P.* 724.100.) On application and payment of a \$ 15 fee, the court clerk must issue a certificate if satisfaction of the judgment has been entered in the register of actions. (*C.C.P.* 724.100(a); *Govt.C.* 70626(a); see C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §9.18; Rutter Group, 2 Enforcing Judgments and Debts §6:1901; 14 *Pacific L. J.* 439.)

(2) *Contents.* The certificate must contain the following information:

(a) The title of the court and the cause and number of the action. (*C.C.P.* 724.100(b)(1), (b)(2).)

(b) The names of the judgment creditor and judgment debtor. (*C.C.P.* 724.100(b)(3).)

(c) The date of entry of judgment and the date of any renewal, and where entered in the court records. (*C.C.P.* 724.100(b)(4).)

(d) The date of entry of satisfaction of the judgment, and where entered in the register of actions. (*C.C.P.* 724.100(b)(5).)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Issuance and Purpose.* *Govt.C.* 70626 was amended in 2009. The fee is \$ 25 until July 1, 2017. (*Govt.C.* 70626(a)(3), (e).)



29 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XI. SATISFACTION OF JUDGMENT

A. Satisfaction in Full.

4. Vacation or Amendment of Satisfaction.

8 *Witkin Cal. Proc. Enf Judgm* § 392

[§ 392] Vacation or Amendment of Satisfaction.

(1) *Vacation of Satisfaction.* If the entry of satisfaction is procured by fraud or mistake, or the consideration fails, the aggrieved judgment creditor may have it vacated, either by motion in the original action or by an independent action in equity. (See *Clark v. Johnston* (1920) 49 C.A. 315, 318, 193 P. 864 [arrangement between judgment debtor and nominal plaintiff in fraud of real party in interest]; *Argue v. Wilson* (1935) 3 C.A.2d 645, 646, 40 P.2d 297 [failure of consideration]; C.E.B., 1 Debt Collection Practice 2d, §7.78; 20 Cal. L. Rev. 659; 9 A.L.R.2d 553 [remedy and procedure to avoid release or satisfaction of judgment]; 47 Am.Jur.2d (2006 ed.), *Judgments* §838 et seq.; 15A Am.Jur. P.P. Forms (2005 ed.), *Judgments* §516 et seq.) (On revival of judgment in favor of purchaser who fails to get title from execution sale, see supra, §164.)

(2) *Amendment of Satisfaction.* Because a satisfaction can be wholly vacated, it is equally possible to amend or correct it without setting it aside. So, in *Cason v. Glass Bottle Blowers Assn.* (1952) 113 C.A.2d 263, 247 P.2d 931, plaintiff union officer obtained a judgment for damages for wrongful expulsion and mandamus to compel a fair hearing on his reinstatement. After negotiations with representatives of the defendant's surety company, plaintiff and his attorney signed a satisfaction of judgment reciting *payment*, believing that this would not affect the right to reinstatement. *Held*, it was proper for the court, on motion under C.C.P. 473 (see 8 Cal. Proc. (5th), *Attack on Judgment in Trial Court*, §144 et seq.), to amend the satisfaction *nunc pro tunc* to refer only to the "money judgment." (113 C.A.2d 267.)

(3) *Acknowledgment of Satisfaction by Attorney Precludes Later Attack.* Acknowledgment of satisfaction by the creditor's authorized attorney ordinarily precludes later attack by the client. (See *Wherry v. Rambo* (1950) 97 C.A.2d 569, 571, 218 P.2d 142). But if satisfaction by the attorney involves a fraud on the court, the case may be reopened. (See *Broecker v. Moxley* (1934) 136 C.A. 248, 253, 28 P.2d 409 [satisfaction given by attorney whose lack of authority was known to defendant].)

(4) *Rights of Judgment Debtor.* Because the judgment debtor is vitally interested in such a step as revival of the judgment, if it is sought on motion the judgment debtor must be given *notice*. (*Brochier v. Brochier* (1941) 17 C.2d 822, 826, 112 P.2d 602.) And if it is sought by an independent action, the debtor must be made a *party*. (*Kinnison v. Guaranty Liquidating Corp.* (1941) 18 C.2d 256, 265, 115 P.2d 450.)

West's Key Number Digest, Judgment 898

SUPPLEMENT: [This section is current through the latest supplement]



30 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XI. SATISFACTION OF JUDGMENT

B. Acknowledgment of Partial Satisfaction.

8 *Witkin Cal. Proc. Enf Judgm* § 393

[§ 393] Acknowledgment of Partial Satisfaction.

(1) *Demand for Delivery of Acknowledgment.* Either the judgment debtor or the owner of real or personal property subject to a judgment lien created under a money judgment may serve the judgment creditor, personally or by mail, with a written demand that the creditor execute, acknowledge, and deliver an acknowledgment of partial satisfaction of judgment. If the judgment has been partially satisfied, the creditor must comply within 15 days after actual receipt of the demand. (*C.C.P. 724.110(a)*; see C.J.E.R., *Judges Benchbook: Civil Proceedings--After Trial* §9.22 et seq.; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1902 et seq.; *Cal. Civil Practice*, 3 Procedure, §§28:50, 28:51, 28:60; 15A *Am.Jur. P.P. Forms* (2005 ed.), *Judgments* §§505, 506; 14 *Pacific L. J.* 439.)

(2) *Motion To Compel Compliance.* If the creditor fails to timely comply with the demand, either the debtor or the property owner may apply on noticed motion for an order requiring the creditor to comply. The notice of motion must be served, personally or by mail, on the creditor. If the court determines that the judgment has been partially satisfied and that the creditor has not complied with the demand, it must make an order determining the amount of partial satisfaction and may order the creditor to comply with the demand. (*C.C.P. 724.110(b)*; see *Kaplan v. Hacker* (1952) 113 *C.A.2d* 571, 573, 248 *P.2d* 464 [assignee of judgment who permitted plaintiff and counsel of record to represent him in dealings with defendant could not deny receipt of notice of defendant's motion to compel partial satisfaction of judgment].) Unlike the provisions for full satisfaction of judgment, the partial satisfaction statute does not contain a sanction for failing to comply with a demand (see *C.C.P. 724.050(e)*, supra, §389) or an authorization for an award of attorneys' fees to the prevailing party (see *C.C.P. 724.080*, supra, §387). (*Law Rev. Com. Comment to C.C.P. 724.110.*)

(3) *Execution and Contents of Acknowledgment.* An acknowledgment of partial satisfaction of judgment must be made in the same manner and by the same person as an acknowledgment of satisfaction of judgment (see *C.C.P. 724.060*, supra, §390). (*C.C.P. 724.120.*) It must include essentially the same information as that required for an acknowledgment of full satisfaction (see *C.C.P. 724.060*, supra, §390), as well as a statement of the amount received by the creditor in partial satisfaction of the judgment. (*C.C.P. 724.120.*)

(4) *Form.* The Judicial Council has approved an optional form for an acknowledgment of partial satisfaction of a judgment. (See Judicial Council Form No. EJ-100 [Acknowledgment of Satisfaction of Judgment].)

SUPPLEMENT: [This section is current through the latest supplement]

(5) *(New) Crediting Offset to Codebtors.* An order under *C.C.P. 724.110* directing a plaintiff to execute and deliver a partial satisfaction of judgment is the appropriate means by which a codebtor on a judgment may be credited with money received by the plaintiff in offset against the judgment. (*Jhaveri v. Teitelbaum* (2009) 176 C.A.4th 740, 752, 98 C.R.3d 268, citing the text [trial court correctly proceeded under *C.C.P. 724.110(b)* to credit judgment debtors with codebtor's postjudgment settlement with creditors].)



31 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XI. SATISFACTION OF JUDGMENT

C. Acknowledgment of Satisfaction of Matured Installments.

1. Demand for Acknowledgment.

8 *Within Cal. Proc. Enf Judgm* § 394

[§ 394] Demand for Acknowledgment.

(1) *In General.* An acknowledgment of satisfaction of matured installments under an installment judgment may be demanded under *C.C.P. 724.210* et seq. (See C.J.E.R., Judges Benchbook: Civil Proceedings--After Trial §9.26 et seq.; Rutter Group, 2 Enforcing Judgments and Debts §6:1905 et seq.; Cal. Civil Practice, 3 Procedure, §28:52 et seq.; *14 Pacific L. J. 439.*)

(2) *Definitions.* For purposes of the demand, "installment judgment" means a money judgment that will support a judgment lien on real property under *C.C.P. 697.320* (see supra, §71). (*C.C.P. 724.210(a).*) These include installment judgments for child, family, or spousal support; judgments against health care providers requiring periodic payments; and installment judgments awarding workers' compensation. (See Law Rev. Com. Comment to *C.C.P. 724.210.*) "Matured installments" means the sum of matured amounts and installments under the judgment, accrued interest on the judgment, and costs added under *C.C.P. 685.010* et seq. (see supra, §42 et seq.). (*C.C.P. 724.210(b).*)

(3) *Demand for Delivery of Acknowledgment.* If real property is subject to a judgment lien created under an installment judgment, the judgment debtor or the owner of real property subject to the lien may serve the judgment creditor, personally or by mail, with a written demand that the creditor execute, acknowledge, and deliver an acknowledgment of satisfaction of matured installments under the installment judgment. (*C.C.P. 724.220(a).*) (For statutory warning of consequences of failure to comply that is required to be included in demand, see *C.C.P. 724.220(b)*; for form of demand, see Cal. Civil Practice, 3 Procedure, §28:59.)

(4) *Motion To Compel Compliance.* If matured installments have been satisfied, the creditor must comply with the demand not less than 15 days after actual receipt of the demand. (*C.C.P. 724.220(c).*) If the creditor fails to do so, the debtor or the owner of real property subject to the judgment lien may apply to the court on noticed motion for an order requiring the creditor to comply. The notice of motion must be served on the creditor, personally or by mail. If the court determines that the matured installments have been satisfied and that the creditor has not complied with the demand, it must either order the creditor to comply with the demand or make an order determining that the matured installments have been satisfied. (*C.C.P. 724.230.*)

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32 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XI. SATISFACTION OF JUDGMENT

C. Acknowledgment of Satisfaction of Matured Installments.

2. Execution and Content of Acknowledgment.

8 *Witkin Cal. Proc. Enf Judgm* § 395

[§ 395] Execution and Content of Acknowledgment.

(1) *Execution.* An acknowledgment of satisfaction of matured installments under an installment judgment must be made in the same manner and by the same person as an acknowledgment of full satisfaction of a judgment (see *C.C.P.* 724.060, supra, §390). (*C.C.P.* 724.250(a).) However, if any amount of child or spousal support has been directed to be made to an officer designated by statute or by the court pursuant to any provision of law, and the directive to do so is set forth in the certified copy or abstract of the judgment or in an amended or supplemental order that was recorded to create the lien, the acknowledgment of satisfaction is not effective unless executed by or approved in writing by the designated officer. (*C.C.P.* 724.250(b).) (See Rutter Group, 2 Enforcing Judgments and Debts §6:1908.)

(2) *Contents.* An acknowledgment of satisfaction of matured installments must include essentially the same information as that required for an acknowledgment of full satisfaction (see *C.C.P.* 724.060, supra, §390), as well as a statement that the matured installments had been satisfied as of a specified date. (*C.C.P.* 724.250(a).)

(3) *Form.* The Judicial Council has approved an optional form for an acknowledgment of satisfaction of matured installments. (See Judicial Council Form No. EJ-100 [Acknowledgment of Satisfaction of Judgment].)

SUPPLEMENT: [This section is current through the latest supplement]



33 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XI. SATISFACTION OF JUDGMENT

C. Acknowledgment of Satisfaction of Matured Installments.

3. Liability for Failure To Comply.

8 *Witkin Cal. Proc. Enf Judgm* § 396

[§ 396] Liability for Failure To Comply.

(1) *In General.* If matured installments under an installment judgment have been satisfied on the date specified in the demand for acknowledgment (see *supra*, §394) and the judgment creditor fails, without just cause, to timely comply with the demand, the creditor is liable to the person making the demand for all damages caused by failure to comply and \$ 100. Liability may be determined in a hearing on a motion to compel compliance under *C.C.P. 724.230* (see *supra*, §394) or in an action. (*C.C.P. 724.240(a)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1907.)

(2) *Preservation of Remedies.* The damages recoverable in an action pursuant to *C.C.P. 724.240(a)* are not in derogation of any other damages or penalties to which an aggrieved person may be entitled. (*C.C.P. 724.240(b)*.)

(3) *Attorneys' Fees.* In an action or proceeding pursuant to the provisions governing acknowledgment of satisfaction of matured installments (see *C.C.P. 724.210 et seq.*), the prevailing party must be awarded attorneys' fees. (*C.C.P. 724.260*.)

SUPPLEMENT: [This section is current through the latest supplement]



34 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XI. SATISFACTION OF JUDGMENT

D. Acknowledgment of Satisfaction by Fewer Than All of Joint Debtors.

8 *Witkin Cal. Proc. Enf Judgm* § 397

[§ 397] Acknowledgment of Satisfaction by Fewer Than All of Joint Debtors.

Where several debtors are jointly obligated to a judgment creditor, an acknowledgment of satisfaction of judgment may be filed for fewer than all of them, with the judgment remaining in effect against the others. (*Bank of America v. Duer* (1941) 47 C.A.2d 100, 102, 117 P.2d 405 [acknowledgment of satisfaction may be given with respect to one joint debtor only]; *Security Pac. Nat. Bank v. Lyon* (1980) 105 C.A.3d Supp. 8, 10, footnote 1, 165 C.R. 95 [same]; see Rutter Group, 2 Enforcing Judgments and Debts §§6:1880, 6:1895.)

In *McCall v. Four Star Music Co.* (1996) 51 C.A.4th 1394, 59 C.R.2d 829, plaintiff songwriter obtained judgment against three joint tortfeasors, an individual and two business entities, in an action arising from royalty agreements. After entry of judgment, plaintiff settled with the two business entities for payment of an amount that was less than the full judgment but that constituted full settlement and satisfaction of all claims against them. Plaintiff subsequently filed an acknowledgment of satisfaction of judgment in which he acknowledged "full satisfaction of the judgment," and named the two business entities as the judgment debtors being released. One week later, he filed an application for renewal of the judgment against the individual. Some years later, the trial court entered an order granting the individual's motion to enter satisfaction of judgment. *Held*, reversed.

(a) The intent of the parties as expressed in a release is controlling. Here, the settlement agreement expressed the patent intent of the signatories to release only the settling defendants while preserving plaintiff's rights against the individual. Plaintiff's omission of the individual's name on the acknowledgment of judgment and his filing of the renewal of judgment against the individual was further evidence of that intent. This was a proper application of the procedure for satisfaction of judgments. (51 C.A.4th 1400.)

(b) An acknowledgment of satisfaction of judgment may be filed for one of several joint debtors. So long as the intent is clearly indicated, the judgment remains in effect against the remaining joint debtors (with a credit for the amount received). Thus, if satisfaction has been made by one of several joint debtors, the words "in full satisfaction of judgment debtor's pro rata liability on the judgment" should be added to the acknowledgment. Although the acknowledgment of satisfaction of judgment did not note that the judgment remained in effect against the individual, this was clearly a clerical error that did not accurately reflect the parties' intent. (51 C.A.4th 1401.)

SUPPLEMENT: [This section is current through the latest supplement]



35 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

A. Joint Debtor Proceeding.

1. Nature of Remedy.

8 *Within Cal. Proc. Enf Judgm* § 398

[§ 398] Nature of Remedy.

(1) *Summary Proceeding Available Against Unserved Joint Debtors.* A judgment may be recovered against one or more joint debtors without service on or appearance of others. (*C.C.P. 410.70*, 2 *Cal. Proc.* (5th), *Jurisdiction*, §184.) In specified circumstances, the judgment may then be enforced against the others in a summary proceeding without a new complaint. (*C.C.P. 989* et seq.; see *Kupfer v. Brawner* (1942) 19 *C.2d* 562, 563, 122 *P.2d* 268; *Hobgood v. Glass* (1958) 161 *C.A.2d* 208, 211, 326 *P.2d* 546; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1547 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §7.58 et seq.; 20A *Am.Jur. P.P. Forms* (2008 ed.), *Process* §46 et seq.) (On proceedings by one joint debtor against another for contribution, see *infra*, §508 et seq.)

(2) *Necessity for Joinder as Party and Statement of Cause of Action.* The procedure under *C.C.P. 989* et seq. only applies where the alleged joint debtor was joined as a party and a cause of action was stated against him or her. (*McRae v. Bates* (1961) 196 *C.A.2d* 510, 512, 16 *C.R.* 565; *Brenelli Amedeo, S.P.A. v. Bakara Furniture* (1994) 29 *C.A.4th* 1828, 1840, 35 *C.R.2d* 348, quoting the text [although alter ego liability may be established in joint debtor proceeding, it may also be established in separate proceeding to amend judgment or in separate action to enforce prior judgment]; *Meller & Snyder v. R & T Properties* (1998) 62 *C.A.4th* 1303, 1310, 73 *C.R.2d* 740, citing the text [alleged joint debtor who is not served with summons, who is not made party, and against whom no joint liability cause of action is stated, is entitled to order quashing joint debtor summons].)

(3) *Limitation to Liability on Contract.* Although *C.C.P. 989* refers generally to persons jointly indebted on "an obligation," it provides for a proceeding under *C.C.P. 410.70*, which only covers persons liable on contract. Thus, a joint debtor proceeding may not be brought on a judgment based on tort causes or in quasi-contract. (*Hillco v. Stein* (1978) 82 *C.A.3d* 322, 325, 147 *C.R.* 108.)

West's Key Number Digest, Judgment 855(2)

SUPPLEMENT: [This section is current through the latest supplement]



36 of 170 DOCUMENTS

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

A. Joint Debtor Proceeding.

2. Affidavit and Summons.

8 *Witkin Cal. Proc. Enf Judgm* § 399

[§ 399] Affidavit and Summons.

(1) *Affidavit*. The plaintiff commences a proceeding under *C.C.P.* 989 et seq. by filing an affidavit that the judgment or some part of the judgment is unsatisfied, specifying the amount due. (*C.C.P.* 991; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:1551 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §7.59; 20A *Am.Jur. P.P. Forms* (2008 ed.), *Process* §46.)

(2) *Summons*. On presentation of the affidavit, the clerk must issue a special summons, describing the judgment and requiring the nonappearing joint debtor to show cause why he or she should not be bound by the judgment. The summons must be served in the same manner as the original summons. (*C.C.P.* 990; see *Cal. Civil Practice*, 1 *Procedure*, §6:64; 20A *Am.Jur. P.P. Forms* (2008 ed.), *Process* §47; on summons in joint debtor proceeding generally, see 3 *Cal. Proc. (5th), Actions*, §990.) The Judicial Council has adopted a mandatory form for the summons. (See *Judicial Council Form No. SUM-120 [Summons (Joint Debtor)]*.)

(3) *Return of Summons*. The summons is returnable not later than 90 days after the time for return of the original summons (*C.C.P.* 990), thus giving a total of 3 years and 150 days (see 6 *Cal. Proc. (5th), Proceedings Without Trial*, §323).

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37 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

A. Joint Debtor Proceeding.

3. Defendant's Answer.

8 *Witkin Cal. Proc. Enf Judgm* § 400

[§ 400] Defendant's Answer.

(1) *Filing of Answer.* The defendant may file an answer within the time specified in the summons. (*C.C.P.* 992.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1554 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §7.60.)

(2) *What Constitute Pleadings.* If the defendant denies the judgment or sets up a subsequent defense, the pleadings consist of the summons, the affidavit, and the answer. If, however, the defendant denies liability on the obligation on which the judgment was recovered by reason of a defense existing at the commencement of the action, the pleadings also include a copy of the original complaint and judgment, and amendments may be allowed (see *infra*, §401). (*C.C.P.* 992, 993.) (For limitation on recovery where defendant denies liability on obligation on which judgment was rendered, see *C.C.P.* 994, *infra*, §402.)

SUPPLEMENT: [This section is current through the latest supplement]



38 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

A. Joint Debtor Proceeding.

4. Amendment of Complaint.

8 *Witkin Cal. Proc. Enf Judgm § 401*

[§ 401] Amendment of Complaint.

Where the defendant denies liability on the obligation on which the judgment was recovered, the pleadings may be amended as in other cases. (*C.C.P.* 993.) Thus, it is permissible to amend the complaint in the joint debtor proceeding to substitute the true names for persons sued in fictitious names. (*Vincent v. Grayson* (1973) 30 *C.A.3d* 899, 905, 106 *C.R.* 733; see *Meller & Snyder v. R & T Properties* (1998) 62 *C.A.4th* 1303, 1311, 73 *C.R.2d* 740 [where alleged joint debtor is sued under fictitious name, complaint must be amended after judgment to substitute its true identity, and court must determine propriety of amendment before court has power to enter judgment against it in *C.C.P.* 989 et seq. proceeding]; Rutter Group, 2 *Enforcing Judgments and Debts* §§6:1550, 6:1556; C.E.B., 1 *Debt Collection Practice* 2d, §7.60.)

However, the judgment against a joint debtor must be based on the cause of action set forth in the complaint in the main action; an attempt in the new proceeding to amend to recover on a different obligation is improper. As the court said in *Vincent v. Grayson*: "Having in mind that a joint debtor proceeding is in the nature of a summary action on the judgment, we construe section 993 to mean that the parties can amend their pleadings to cure technical defects or matters of form, such as to allow proof of compliance with the statutory requirement to file a certificate of doing business under a fictitious name, ... or to substitute the true names of parties sued as fictitious defendants, as in the case at bench, but that it does not authorize a plaintiff to amend his complaint to raise new issues of fact giving rise to a different legal obligation. ... To countenance this would be to permit a new lawsuit against a defendant without affording him the protection of the normal rules of procedure available in a plenary action. It would also render the statutory scheme for joint debtor proceedings incomprehensible in that a defendant would be summoned to show cause why a judgment which has not yet been entered should not be enforced against him." (30 *C.A.3d* 910.)

SUPPLEMENT: [This section is current through the latest supplement]



39 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

A. Joint Debtor Proceeding.

5. Trial and Determination.

8 *Witkin Cal. Proc. Enf Judgm* § 402

[§ 402] Trial and Determination.

(1) *Conduct of Trial.* The issues may be tried as in other cases. (*C.C.P.* 994; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:1555 et seq.; *C.E.B.*, 1 *Debt Collection Practice* 2d, §7.62.) When an alleged joint debtor answers and denies responsibility for the debt, due process requires that liability issues be tried on the merits. The burden rests initially on the defendant insofar as no new complaint is filed, and the defendant must answer and assert one of the statutory defenses (see *supra*, §400). However, once the defendant denies liability, the plaintiff has the burden of proving its case against that defendant. (*Meller & Snyder v. R & T Properties* (1998) 62 *C.A.4th* 1303, 1313, 73 *C.R.2d* 740.)

(2) *Limitation on Recovery.* If the defendant denies any liability on the obligation on which the judgment was rendered (see *supra*, §400), and a verdict is rendered against the defendant, the verdict cannot exceed the amount remaining unsatisfied on the original judgment, with interest. (*C.C.P.* 994.)

SUPPLEMENT: [This section is current through the latest supplement]



40 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

1. In General.

a. Available Remedies.

8 Witkin Cal. Proc. Enf Judgm § 403

[§ 403] Available Remedies.

(1) *In General.* Judgments and orders under the Family Code, primarily orders for child, family, or spousal support, may be enforced as follows:

(a) By execution. (*Family C. 290* ; see *infra*, §404.)

(b) By appointment of a receiver. (*Family C. 290*; see *supra*, §310.)

(c) By contempt. (*Family C. 290*; see *supra*, §342.)

(d) With respect to support orders, by notice of levy issued by the local child support agency (see *C.C.P. 706.030*, *supra*, §267; *Family C. 17522, 11 Summary* (10th), *Husband and Wife*, §335). (*Family C. 5100, 11 Summary* (10th), *Husband and Wife*, §262.)

(e) By appropriate orders in the court's discretion. (*Family C. 290*.) (On priorities for crediting money received in satisfaction of support judgment, see *C.C.P. 695.221*, *supra*, §54; on enforcement of support orders under the Uniform Interstate Family Support Act (*Family C. 4900 et seq.*), see *infra*, §407 et seq.; on interest on support orders, see *supra*, §45; on intercounty enforcement of support orders, see *Family C. 5600 et seq.*, *11 Summary* (10th), *Husband and Wife*, §269 et seq.; on governmental enforcement of support orders, see *C.C.P. 689.010 et seq.*, *infra*, §405, and *11 Summary* (10th), *Husband and Wife*, §308 et seq.; on regulation of private child support collectors, see *Family C. 5610 et seq.*, *supra*, §13 et seq.; for general discussion of enforcement of orders under Family Code, see *10 Summary* (10th), *Parent and Child*, §425 et seq.; *11 Summary* (10th), *Husband and Wife*, §204 et seq., 248 et seq., 308 et seq.; *11 Summary* (10th), *Community Property*, §171.)

Support orders that are enforceable in California are enforceable under the Family Code whether or not made or entered under the Family Code. (*Family C. 4500*.)

(2) *Enforcement Against Employee Benefit Plan.* A support order may be enforced against an employee benefit plan, regardless of whether the plan has been joined as a party to the proceeding in which the order was obtained. (

Family C. 5103(a), 11 Summary (10th), *Husband and Wife*, §264; on duration of execution lien created by levy on benefit plan, see supra, §92; on return of writ of execution effecting levy, see supra, §114.)

(3) *Period of Enforcement.* *Family C. 291* governs the period of enforcement as follows:

(a) A judgment or order under the Family Code for the possession or sale of property is subject to the period of enforceability and the procedure for renewal provided by *C.C.P. 683.110* et seq. (supra, §35 et seq.). (*Family C. 291*, 11 Summary (10th), *Husband and Wife*, §5; see *In re Marriage of Wilcox* (2004) 124 C.A.4th 492, 498, 21 C.R.3d 315 [money judgment in Family Code proceeding is not judgment for "possession or sale of property" within meaning of *Family C. 291* and is thus not subject to 10-year renewal requirement of *C.C.P. 683.130* (supra, §36)].) A money judgment or judgment for possession or sale of property under the Family Code, including a judgment or order for child, family, or spousal support, is enforceable until paid in full and is exempt from any requirement of renewal. (*Family C. 291(a)*, (b), (g); see *Family C. 291(c)*, 11 Summary (10th), *Husband and Wife*, §248 [providing judgment creditor with *option* to renew under *C.C.P. 683.110* et seq. (supra, §35 et seq.), if desired].)

(b) Nothing in *Family C. 291* supersedes the law governing enforcement of judgment after the death of a judgment creditor or judgment debtor. (*Family C. 291(e)*; see *Embree v. Embree* (2004) 125 C.A.4th 487, 493, 22 C.R.3d 782, 11 Summary (10th), *Husband and Wife*, Supp., §248 [former *Family C. 4502* (now *Family C. 291*) is subject to time limitations and other procedural requirements for reaching assets of support obligor after his or her death].)

(c) In an action to enforce a support judgment, the defendant may raise, and the court may consider, the defense of laches only with respect to any portion of the judgment owed to the state. (*Family C. 291(d)*, 11 Summary (10th), *Husband and Wife*, §220; see *In re Marriage of Fellows* (2006) 39 C.4th 179, 183, 46 C.R.3d 49, 138 P.3d 200, 11 Summary (10th), *Husband and Wife*, Supp., §220 [abrogation of laches defense in former *Family C. 4502(c)* (now *Family C. 291(d)*) applies retroactively].)

SUPPLEMENT: [This section is current through the latest supplement]



41 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

1. In General.

b. Enforcement by Writ of Execution.

8 *Witkin Cal. Proc. Enf Judgm § 404*

[§ 404] Enforcement by Writ of Execution.

(1) *In General.* Judgments and orders under the Family Code may be enforced by a writ of execution. (*Family C. 290, 11 Summary* (10th), *Husband and Wife*, §5; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:349 et seq.; for general discussion of enforcement of judgment by writ of execution, see *supra*, §99 et seq.)

(2) *Necessity for Court Order.* A court order is required for the issuance of a writ of execution to enforce a Family Code judgment that is not for child, spousal, or family support. (See *Bonner v. Superior Court* (1976) 63 C.A.3d 156, 167, 133 C.R. 592 [division of community property].) Prior court approval is not required to obtain a writ of execution to enforce a support order. (See *Family C. 5100*; 11 *Summary* (10th), *Husband and Wife*, §262.)

(3) *Application for Writ.* An application for the writ must be accompanied by an affidavit stating the amount due and unpaid that is authorized to be enforced by a writ of execution (see *Family C. 5100* et seq.) on the date of the application. If interest is sought, the affidavit must state the total interest and the total amount of each unpaid installment and its due date. The affidavit must be filed in the action and a copy must be served on the judgment debtor at the time the writ is served. (*Family C. 5104*, 11 *Summary* (10th), *Husband and Wife*, §262.)

West's Key Number Digest, Infants 19.3(4); Parent and Child 2(19), 3.3(9)

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42 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

1. In General.

c. Governmental Enforcement of Support Order.

8 *Witkin Cal. Proc. Enf Judgm § 405*

[§ 405] Governmental Enforcement of Support Order.

(1) *In General.* Both child and spousal support orders are subject to enforcement by the local child support agency. (See *Family C. 17400* et seq., *11 Summary* (10th), *Husband and Wife*, §310 et seq.) The manner of enforcement is set forth in the Family Code (see *Family C. 17400* et seq., *11 Summary* (10th), *Husband and Wife*, §334 et seq.) and the Enforcement of Judgments Law (see *C.C.P. 689.010* et seq.). Enforcement of support orders was formerly the responsibility of the district attorney. (See former *Welf.C. 11475.1, 11350.7.*)

(2) *Jurisdiction and Venue.* For purposes of *C.C.P. 689.010* et seq., jurisdiction is in the superior court. (*C.C.P. 689.010.*) Venue is in the county where the local child support agency enforcing the support obligation is located. (*C.C.P. 689.020(b).*)

(3) *Remedies.* If the payment of a support obligation is at least 30 days past due, the local child support agency enforcing the obligation may collect the delinquency or enforce a lien by levy on persons who possess or control credits or personal property of the support obligor, or who owe a debt to the obligor. If an amount owed pursuant to the levy is not paid when due, the agency may issue a warrant to enforce a lien and to collect amounts owed, which may be levied with the same effect as a levy pursuant to a writ of execution. (*Family C. 17522, 11 Summary* (10th), *Husband and Wife*, §335.) Except as otherwise provided, the agency may use any of the remedies available to a judgment creditor, including, but not limited to, miscellaneous creditors' remedies under *C.C.P. 708.010* et seq. (see supra, §275 et seq.). (*C.C.P. 689.020(a).*) (On enforcement of support orders by wage garnishment, see *C.C.P. 706.030* and *706.031*, supra, §266 et seq.)

(4) *Exemptions.* When the local child support agency levies on property pursuant to the warrant or notice of levy, a support obligor who is a natural person is entitled to the same exemptions to which a judgment debtor is entitled under *C.C.P. 703.010* et seq. (supra, §168 et seq.). (*C.C.P. 689.030(a)(1).*) A claim of exemption must be filed with the agency that issued the warrant or notice of levy (*C.C.P. 689.030(b)*), and must be heard and determined in the superior court in the county where the agency is located (*C.C.P. 689.010, 689.030(c)*). With these exceptions, the claim must be made, heard, and determined as provided in *C.C.P. 703.510* et seq. (see supra, §180 et seq.) in the same manner as if the property were levied on under a writ of execution. (*C.C.P. 689.030(a)(1).*)

(5) *Third-Party Claims.* A third person may claim ownership, the right to possession, a security interest, or a lien. (C.C.P. 689.030(a)(2).) A third-party claim must be filed with the local child support agency that issued the warrant or notice of levy (C.C.P. 689.030(b)), and must be heard and determined in the superior court in the county where the agency is located (C.C.P. 689.010, 689.030(c)). With these exceptions, and unless otherwise provided by statute, the third-party claim must be made, heard, and determined as provided in C.C.P. 720.010 et seq. (see supra, §364 et seq.) in the same manner as if the property were levied on under a writ of execution. (C.C.P. 689.030(a)(2).)

(6) *Local Child Support Agency's Performance of Duties of Levying Officer.* When a writ of execution has been issued under C.C.P. 699.010 et seq. (execution generally; see supra, §99 et seq.) or C.C.P. 706.010 et seq. (wage garnishment; see supra, §241 et seq.), the local child support agency may perform the duties of the levying officer, except that the agency need not give itself the notices that a levying officer is required to serve on a judgment creditor or the notices that a judgment creditor is required to give to a levying officer. (C.C.P. 689.040(a).)

Notwithstanding C.C.P. 700.140(a) (see supra, §132), if the writ of execution is for deposits, credits, or personal property in the possession or control of a bank or savings and loan association, the agency may deliver or mail the writ to a centralized location designated by the bank or association. If the writ is received at that location, it applies to all deposits and credits and personal property held by the bank or association regardless of the property's location. (C.C.P. 689.040(b).)

(7) *Execution and Recordation of Instruments.* An acknowledgment of satisfaction of judgment may be executed and acknowledged by the local child support agency director or his or her designee if the agency has been providing child support services. (C.C.P. 724.060(c)(4); on satisfaction of judgment generally, see supra, §387 et seq.) A notice of support judgment, an interstate lien, a release of lien, or any other document completed and recorded by the agency or a state agency acting pursuant to Title IV-D of the Social Security Act (42 U.S.C., §651 et seq., 11 *Summary* (10th), *Husband and Wife*, §308) may be recorded without acknowledgment, certificate of acknowledgment, or further proof. (C.C.P. 724.060(c)(4) and *Govt.C.* 27282, 12 *Summary* (10th), *Real Property*, §283.)

SUPPLEMENT: [This section is current through the latest supplement]



43 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

1. In General.

d. Enforcement of Support Order in Criminal Proceeding.

8 Witkin Cal. Proc. Enf Judgm § 406

[§ 406] Enforcement of Support Order in Criminal Proceeding.

If a defendant is convicted in a prosecution for nonsupport of a child or a spouse (see P.C. 270 et seq., 2 *Cal. Crim. Law (3d)*, *Sex Offenses and Crimes Against Decency*, §143 et seq.) but is granted probation on condition of making specified support payments, the court may do the following:

(1) Issue an execution on the order for the support payments that accrue during the time the probation order is in effect, in the same manner as on a judgment in a civil action for support payments. This remedy, however, is not available if there is an existing civil order for support reduced to judgment. (P.C. 270h(a).)

(2) Issue an earnings assignment order for support under *Family C. 5200* et seq. (see supra, §268) as a condition of probation. This remedy, however, is not available if there is an existing civil order for support on which an assignment order has been entered. (P.C. 270h(b).)

Several other Penal Code provisions are designed to secure support for a child or spouse when the obligor is convicted of a nonsupport offense. (See P.C. 270(b) [undertaking to pay obligee sum fixed by court]; P.C. 270d [defendant's fine made payable to obligee]; P.C. 273h [work by defendant sentenced to county jail; compensation paid to obligee]; on enforcement of support obligation where obligor is convicted of nonsupport offense generally, see 2 *Cal. Crim. Law (3d)*, *Sex Offenses and Crimes Against Decency*, §§146, 149; on interstate rendition of person criminally charged with nonsupport, see *Family C. 4970* et seq., infra, §428.)

West's Key Number Digest, Parent and Child 17(1), 17(2), 17(7.5)

SUPPLEMENT: [This section is current through the latest supplement]



44 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 407*

[§ 407] In General.

(1) *Former Law: URESA.* A foreign support decree is enforceable against an obligor over whom personal jurisdiction is obtained. (See 11 *Summary* (10th), *Husband and Wife*, §344.) Enforcement is accomplished by an action on the judgment. (See *infra*, §436.) Often, however, the obligor is not personally present in the state in which the obligee seeks enforcement. To overcome this jurisdictional obstacle, the Uniform Reciprocal Enforcement of Support Act (URESAs) (see 9C U.L.A. (Master Ed.), p. 89 et seq.) provided a two-state procedure, under which an initiating state requested a responding state (in which the obligor could be found) to obtain personal jurisdiction and make an award. URESA was adopted in California in 1951, and eventually incorporated in the Family Code (former Family C. 4800 et seq.).

(2) *Adoption and Revision of UIFSA.* The Uniform Interstate Family Support Act (UIFSA) was approved by the National Conference of Commissioners on Uniform State Laws in 1992 and was extensively revised in 1996. (See 9 (Part 1B) U.L.A. (Master Ed.), p. 281.) After deciding that limited changes to the former Act would be inadequate, the Commissioners determined that the Act, with a new name, would completely revise and replace the former Act. (See 9 (Part 1B) U.L.A. (Master Ed.), p. 284, Prefatory Note.) The Act was adopted in California in 1997 (see *Family C. 4900* et seq.). (See Rutter Group, 3 *Family Law* §18:725 et seq.; 5 *California Family Law Practice*, §§.177 et seq.)

The Act reflects developments in federal law that have had a major impact on state child support enforcement law, including jurisdictional requirements (see 28 *U.S.C.*, §1738B) and child support guidelines and enforcement procedures required for states to receive federal funding (see 42 *U.S.C.*, §§654(20), 666(f)).

The Uniform Act was again extensively revised in 2001. (See Uniform Interstate Family Support Act (2001), 9 (Part 1B) U.L.A. (Master Ed.), p. 159.) In 2002, the Legislature made conforming changes in the California version of the Act. (See Stats. 2002, Chap. 349.) These changes become effective on either of two specified events, whichever occurs first (Stats. 2002, Chap. 349, §47):

(a) The amendment by Congress of 42 *U.S.C.*, §666(f) "to statutorily require or authorize, in connection with the approval of state plans for purposes of federal funding," adoption of the 2001 revision of the Uniform Act.

(b) "The approval, either generally or with specific application to California, by the federal office of Child Support Enforcement or by the Secretary of Health and Human Services, of a waiver, exemption, finding, or other indicia of regulatory approval" of the 2001 revision of the Uniform Act "in connection with the approval of state plans for purposes of federal funding."

As of May 1, 2008, neither event has occurred. Therefore, the following discussion does not include any changes resulting from the revision.

(3) *Changes from URESA.* UIFSA broadly authorizes the assertion of long-arm jurisdiction in a tribunal in the home state of the supported family with the maximum possible opportunity to secure personal jurisdiction over an absent obligor. This converts what was generally a two-state proceeding under URESA into a one-state proceeding. Under URESA, the majority of support proceedings were de novo, and multiple support orders could be in effect in several states. Under UIFSA, the principle of "continuing, exclusive jurisdiction" (see *Family C. 4909(a)*) aims, so far as possible, to recognize that only one valid support order may be effective at any one time. (See *Family C. 4905 et seq.*, *infra*, §409.)

The registration process of UIFSA, while more comprehensive, is modeled after that of URESA. All judicial or administrative agency enforcement activity must begin with the registration of the existing support order in the responding state. However, the registered order continues to be the order of the issuing state; the role of the responding state is limited to enforcing that order except when modification is permitted. (See *Family C. 4950 et seq.*, *infra*, §421 *et seq.*)

UIFSA provides two direct enforcement procedures, unavailable under URESA, that do not require assistance from a court: (a) A support order may be sent directly to the obligor's employer in another state, which triggers wage withholding by the employer without a hearing, unless the employee objects. (b) A support order may be given direct administrative enforcement by the support enforcement agency of the obligor's state. (See *Family C. 4940 et seq.*, *infra*, §419.)

A number of other significant changes were made to increase the effectiveness of interstate enforcement of support orders. (See, generally, Prefatory Note to the 1996 revision of the Uniform Interstate Family Support Act (9 (Part 1B) U.L.A. (Master Ed.), p. 284).)

(4) *Cumulative Remedies.* The remedies provided by the Act are cumulative and do not affect the availability of remedies under other law. (*Family C. 4903.*)

(5) *Application and Construction of Act.* The Act must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the Act among states enacting it. (*Family C. 4975.*) Numerous defined terms govern construction of the Act. (See *Family C. 4901*, *infra*, §408.)

(6) *Severability.* To the extent that the invalidity of a provision of the Act or its application does not affect other provisions or applications that can be given effect without it, the provisions of the Act are severable. (*Family C. 4976.*)

(7) *Reciprocity.* When the Attorney General is satisfied that a foreign jurisdiction will make reciprocal provisions for establishing support orders for obligees in California, or for enforcement of support orders made in California, he or she may declare the foreign jurisdiction to be a reciprocating state for purposes of establishing and enforcing support obligations. A declaration may be revoked by the Attorney General, and may be reviewed by the court in an action to establish a support order or to enforce the order of a reciprocating jurisdiction. (*Family C. 5005*; see *Willmer v. Willmer* (2006) 144 C.A.4th 951, 956, 51 C.R.3d 10 [Germany was "reciprocating state" by virtue of California Attorney General's declaration of Germany as such, permitting enforcement of German judgment obliging divorced father to pay child and spousal support under UIFSA].)

West's Key Number Digest, Husband and Wife 403(9); Parent and Child 3.3(9)

SUPPLEMENT: [This section is current through the latest supplement]



45 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

b. Definitions.

8 *Witkin Cal. Proc. Enf Judgm § 408*

[§ 408] Definitions.

The following definitions govern construction of the Uniform Interstate Family Support Act:

(1) "Child" means an individual, whether over or under the age of majority, who is, or is alleged to be, owed a duty of support by a parent or the beneficiary of a support order directed to a parent. (*Family C. 4901(a).*)

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state. (*Family C. 4901(b).*)

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support. (*Family C. 4901(c).*)

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing a petition or comparable pleading for support (or since birth if the child is less than 6 months old). A period of temporary absence of any of them is counted as part of the 6-month or other period. (*Family C. 4901(d).*)

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under California law. (*Family C. 4901(e).*)

(6) "Income-withholding order" means an earnings assignment order for support, as defined in *Family C. 5208* (see 11 *Summary* (10th), *Husband and Wife*, §250), or any other order or other legal process directed to an obligor's employer, or other debtor, to withhold from the income of the obligor an amount owed for support. (*Family C. 4901(f).*)

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under the Act or a law or procedure substantially similar to the Act or the former Uniform Reciprocal Enforcement of Support Act. (*Family C. 4901(g).*)

(8) "Initiating tribunal" means the authorized tribunal in an initiating state. (*Family C. 4901(h).*)

- (9) "Issuing state" means the state in which a tribunal issues a support order. (*Family C. 4901(i).*)
- (10) "Issuing tribunal" means the tribunal that issues a support order. (*Family C. 4901(j).*)
- (11) "Law" includes decisional and statutory law and rules and regulations having the force of law. (*Family C. 4901(k).*)
- (12) "Obligee" means any of the following:
- (a) An individual to whom a duty of support is owed or in whose favor a support order has been issued. (*Family C. 4901(l)(1).*)
- (b) A state or political subdivision to which the rights under a support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee. (*Family C. 4901(l)(2).*)
- (c) An individual seeking a judgment determining the parentage of the individual's child. (*Family C. 4901(l)(3).*)
- (13) "Obligor" means an individual, or the estate of a decedent, who satisfies any of the following criteria:
- (a) Owes or is alleged to owe a duty of support. (*Family C. 4901(m)(1).*)
- (b) Is alleged but has not been adjudicated to be a parent of a child. (*Family C. 4901(m)(2).*)
- (c) Is liable under a support order. (*Family C. 4901(m)(3).*)
- (14) "Register" means to file a support order in the superior court in any county in which enforcement of the order is sought. (*Family C. 4901(n).*)
- (15) "Registering tribunal" means a tribunal in which a support order is registered. (*Family C. 4901(o).*)
- (16) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under the Act or a law or procedure substantially similar to the Act or the former Uniform Reciprocal Enforcement of Support Act. (*Family C. 4901(p).*)
- (17) "Responding tribunal" means the authorized tribunal in a responding state. (*Family C. 4901(q).*)
- (18) "Spousal support order" means a support order for a spouse or former spouse of the obligor. (*Family C. 4901(r).*)
- (19) "State" means:
- (a) A state of the United States. (*Family C. 4901(s).*)
- (b) The District of Columbia. (*Family C. 4901(s).*)
- (c) Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. (*Family C. 4901(s).*)
- (d) An Indian tribe. (*Family C. 4901(s)(1).*)
- (e) A foreign jurisdiction that has enacted a law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under the Act or the former Uniform Reciprocal Enforcement of Support Act. (*Family C. 4901(s)(2).*)

(20) "Support enforcement agency" means a public official or agency authorized to seek enforcement of support orders. (*Family C. 4901(t)*); on governmental enforcement of support orders, see *supra*, §405.)

(21) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, spouse, or former spouse, that provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorneys' fees, or other relief. (*Family C. 4901(u)*.)

(22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage. (*Family C. 4901(v)*.) (On superior court as "the tribunal of this state," see *Family C. 4902*, *infra*, §412.)

SUPPLEMENT: [This section is current through the latest supplement]



46 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

c. Jurisdiction.

8 *Witkin Cal. Proc. Enf Judgm § 409*

[§ 409] Jurisdiction.

(1) *Long-Arm Jurisdiction Over Nonresident.* In a proceeding under the Uniform Interstate Family Support Act to enforce a support order or to determine parentage, a California superior court may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if any of the following apply:

- (a) The individual is personally served with notice in California. (*Family C. 4905(a)(1).*)
- (b) The individual submits to the California jurisdiction by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction. (*Family C. 4905(a)(2).*)
- (c) The individual resided in California with the child. (*Family C. 4905(a)(3).*)
- (d) The individual resided in California and provided prenatal expenses or support for the child. (*Family C. 4905(a)(4).*)
- (e) The child resides in California as a result of the acts or directives of the individual. (*Family C. 4905(a)(5).*)
- (f) The individual engaged in sexual intercourse in California, and the child may have been conceived by that act of intercourse. (*Family C. 4905(a)(6).*)
- (g) The individual has filed a declaration of paternity pursuant to *Family C. 7570 et seq.* (see 10 *Summary* (10th), *Parent and Child*, §31 et seq.). (*Family C. 4905(a)(7).*)
- (h) There is any other basis consistent with the state and federal Constitutions for the exercise of personal jurisdiction. (*Family C. 4905(a)(8).*) (See Rutter Group, 1 *Family Law* §3:143 et seq.; Rutter Group, 3 *Family Law* §18:741 et seq.; 5 *California Family Law Practice*, §S.177.10 et seq.; on governing law when exercising personal jurisdiction over nonresident, see *infra*, §411; on receipt of evidence of another state when exercising personal jurisdiction over nonresident, see *infra*, §413; on obtaining discovery through tribunal of another state when exercising personal jurisdiction over nonresident, see *infra*, §414.)

Bases of personal jurisdiction under these provisions, or other California law, may not be used to acquire personal jurisdiction to modify a child support order of another state unless the requirements of *Family C. 4960* or *4964* (see *infra*, §423) are met. (*Family C. 4905(b)*.)

(2) *Simultaneous Proceedings in Other States*. If a pleading is first filed in another state, the California court may exercise jurisdiction to establish a support order only where the following conditions are satisfied:

(a) The pleading in California is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state. (*Family C. 4908(a)(1)*.)

(b) The contesting party makes a timely challenge to the exercise of jurisdiction in the other state. (*Family C. 4908(a)(2)*.)

(c) If relevant, California is the child's home state. (*Family C. 4908(a)(3)*.)

If a pleading is first filed in California, the California court may not exercise jurisdiction to establish a support order if the following conditions are satisfied:

(a) The pleading in the other state is filed before the expiration of the time allowed in California for filing a responsive pleading challenging the exercise of jurisdiction by California. (*Family C. 4908(b)(1)*.)

(b) The contesting party timely challenges the exercise of jurisdiction in California. (*Family C. 4908(b)(2)*.)

(c) If relevant, the other state is the child's home state. (*Family C. 4908(b)(3)*.)

A California court may make a spousal or child support order under *Family C. 4908* even though a dissolution action is pending or dissolution has been granted in another state and the California spouse has not challenged the jurisdiction of that state, so long as the out-of-state proceeding does not raise the support issue. (*In re Marriage of Newman (2000) 80 C.A.4th 846, 847, 848, 95 C.R.2d 691* [where husband residing in Georgia obtained dissolution of marriage there in proceeding that addressed only that issue, superior court erred in dismissing petition of wife, who resided in California, seeking dissolution of marriage and spousal support that was filed within time to file responsive pleading in Georgia].)

(3) *Continuing, Exclusive Jurisdiction Over Child Support Order*. Generally, under specified conditions, a California court that issues a child support order consistent with California law has continuing, exclusive jurisdiction over the order. (*Family C. 4909(a)*.) The court retains continuing, exclusive jurisdiction to modify the order so long as any of the parties or children in the case continues to reside in the state, unless all parties file with the California court a written consent to jurisdiction in another state having personal jurisdiction over a party. (*Family C. 4909(a)*, (b); see *Stone v. Davis (2007) 148 C.A.4th 596, 602, 55 C.R.3d 833* [jurisdiction to modify order cannot be conferred by estoppel or under forum non conveniens doctrine].) However, if the order is modified by a tribunal of another state pursuant to the Act or a substantially similar law, the court loses that jurisdiction with regard to prospective enforcement of the order. It may then only (a) enforce the modified order as to amounts accruing before the modification; (b) enforce nonmodifiable aspects of that order; and (c) provide other appropriate relief for violations that occurred before the effective date of the modification. (*Family C. 4909(c)*.) (On modification of order by another state, see 11 *Summary* (10th), *Husband and Wife*, §273.) (On receipt of evidence of another state when party is subject to continuing exclusive jurisdiction of court, see *infra*, §413; on obtaining discovery through tribunal of another state when party is subject to continuing exclusive jurisdiction of court, see *infra*, §414; on determining which of multiple child support orders controls for purposes of continuing, exclusive jurisdiction, see *infra*, §418.)

(4) *Effect of Participation*. Participation in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding. (*Family C. 4928(a)*.) Neither is a petitioner amenable to service of civil process while

physically present in California to participate in a proceeding under the Act. (*Family C. 4928(b).*) However, this immunity does not extend to civil litigation based on acts unrelated to a proceeding under the Act committed by a party while present in California to participate in the proceeding. (*Family C. 4928(c).*)

SUPPLEMENT: [This section is current through the latest supplement]



47 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

d. Proceedings.

1. In General.

8 *Within Cal. Proc. Enf Judgm § 410*

[§ 410] In General.

(1) *Filing in Either Initiating or Responding State.* An individual or a support enforcement agency may begin a proceeding under the Uniform Interstate Family Support Act either by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent. (*Family C. 4915(c)*.) (See Rutter Group, 3 Family Law §18:729 et seq.; 5 California Family Law Practice, §S.178 et seq.)

(2) *Petition and Accompanying Documents.* A petitioner seeking to establish or modify a support order or to determine parentage under the Act must verify the petition. Unless otherwise ordered under *Family C. 4926* (infra, §415), the petition or accompanying documents must provide, so far as known, the names, residential addresses, and Social Security numbers of the obligor and the obligee, and the name, sex, residential address, Social Security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect, and may include any other information that may assist in locating or identifying the respondent. (*Family C. 4925(a)*.) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use by a support enforcement agency. (*Family C. 4925(b)*.)

(3) *Summons or Order To Show Cause.* When a petition or comparable pleading under the Act is filed in a California court, the local child support agency or the petitioner may request issuance of a summons or an order to show cause. (*Family C. 5000(a)*.) If a summons is issued, the local child support agency or the petitioner must have a copy of the summons, petition, and other documents served on the respondent as required by law. (*Family C. 5000(b)*.) If an order to show cause is issued, a copy of the order to show cause, the petition, and other documents must be served on the respondent at least 15 days before the hearing. (*Family C. 5000(c)*.) The petition or comparable pleading must be accompanied by a blank responsive form that permits the respondent to answer the petition and raise defenses by checking applicable boxes and by a blank income and expense declaration or simplified financial statement together with instructions for completion of the forms. (*Family C. 5000(d)*.)

The Judicial Council has adopted the following forms:

Form No. FL-510 [Summons (UIFSA)].

Form No. FL-515 [Order To Show Cause (UIFSA)].

Form No. FL-520 [Response to Uniform Support Petition (UIFSA)].

(4) *Proposed Judgment.* In an action under the Act by the local child support agency or the Attorney General that is initiated by service of summons and a petition or comparable pleading, the respondent may also be served with a proposed judgment consistent with the relief sought. If the respondent's income or income history is unknown, the local child support agency may serve a form of proposed judgment that informs the respondent that income will be presumed to be the amount of the minimum wage, at 40 hours per week, established by the Industrial Welfare Commission pursuant to *Lab.C. 1182.11* (see 3 *Summary* (10th), *Agency and Employment*, §382) unless information concerning the respondent's income is provided to the court. The respondent must also receive notice that the proposed judgment will become effective if he or she fails to file a response within 30 days after service. (*Family C. 5002(a)*.) If the order is based on presumed income, the court may set aside that part of the judgment or order concerning the amount of child support to be paid on the grounds specified and in the manner provided in *Family C. 17432* (11 *Summary* (10th), *Husband and Wife*, §330). (*Family C. 5002(b)*.) (See Judicial Council Form No. FL-530 [Judgment Regarding Parental Obligations (UIFSA)].)

(5) *Parties and Representation.* A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child. (*Family C. 4916*.)

An individual may be represented by private counsel in proceedings under the Act. (*Family C. 4923*.)

(6) *Presence of Petitioner Is Not Necessary.* The physical presence of the petitioner in a California responding tribunal is not required for the establishment, enforcement, or modification of a support order or the rendition of a support order determining parentage. (*Family C. 4930(a)*.)

(7) *Nonparentage as Defense.* A party whose parentage of a child has been previously determined by law may not plead nonparentage as a defense to a proceeding under the Act. (*Family C. 4929*.)

(8) *Use of Interstate and Federal Forms.* All Uniform Interstate Family Support Act forms approved by either the National Conference of Commissioners on Uniform State Laws or the United States Department of Health and Human Services are adopted for use in support actions in California. (C.R.C., Rule 5.27.)

(9) *Receipt and Disbursement of Payments.* A support enforcement agency or the court must disburse promptly any amount received under a support order as directed by the order. The agency or court must furnish to a requesting party or a tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received. (*Family C. 4933*.)

West's Key Number Digest, Parent and Child 3.3(9)

SUPPLEMENT: [This section is current through the latest supplement]



48 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

d. Proceedings.

2. Governing Law.

8 *Witkin Cal. Proc. Enf Judgm § 411*

[§ 411] Governing Law.

(1) *In General.* When acting as a responding tribunal under the Uniform Interstate Family Support Act, a California court must apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in California and may exercise all powers and provide all remedies available in those proceedings. The court must also determine the duty of support and the amount payable in accordance with California law and support guidelines. (*Family C. 4917.*) (On governing law for enforcement of support order after registration, see *infra*, §421 et seq.)

(2) *Nonresident Subject to Personal Jurisdiction.* A California court exercising personal jurisdiction over a nonresident under *Family C. 4905* (see *supra*, §409) may apply *Family C. 4930* to receive evidence from another state (see *infra*, §413), and *Family C. 4932* to obtain discovery through a tribunal of another state (see *infra*, §414). In all other respects, *Family C. 4915* through *4965* do not apply and the court must apply the procedural and substantive law of California, including the rules on choice of law other than those established by the Act. (*Family C. 4906.*)

SUPPLEMENT: [This section is current through the latest supplement]



49 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

d. Proceedings.

3. Tribunals.

8 *Witkin Cal. Proc. Enf Judgm § 412*

[§ 412] Tribunals.

(1) *Function of Superior Court.* The superior court is deemed "the tribunal of this state" for purposes of the Uniform Interstate Family Support Act. (*Family C. 4902*; on what constitutes "tribunal," see supra, §408.) It may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state. (*Family C. 4907*.) It may serve as an initiating tribunal to request a tribunal of another state to enforce a child support order issued in that state. (*Family C. 4910(a)*.) If the court has continuing, exclusive jurisdiction over a support order (see supra, §409), it may act as a responding tribunal to enforce the order. (*Family C. 4910(b)*.) But a court that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state. (*Family C. 4910(c)*.)

(2) *Duties as Initiating Tribunal.* When a petition is filed under the Act, the superior court, as the initiating tribunal, must forward three copies of the petition and its accompanying documents to the responding tribunal or appropriate support enforcement agency in the responding state, or, if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged. (*Family C. 4918(a)*.) If a responding state has not enacted the Act or a substantially similar law or procedure, the court may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the court may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state. (*Family C. 4918(b)*.)

(3) *Duties As Responding Tribunal.* When the superior court receives a petition or comparable pleading from an initiating tribunal or directly pursuant to *Family C. 4915(c)* (see supra, §410), it must file the petition or pleading and notify the petitioner where and when it was filed. (*Family C. 4919(a)*.) To the extent otherwise authorized by law, the court may do one or more of the following:

(a) Enforce a support order. (*Family C. 4919(b)(1)*.)

(b) Order an obligor to comply with a support order, specifying the amount and the manner of compliance. (*Family*

C. 4919(b)(2).)

- (c) Order income withholding. (*Family C. 4919(b)(3).*)
- (d) Determine the amount of any arrearages, and specify a method of payment. (*Family C. 4919(b)(4).*)
- (e) Enforce orders by civil or criminal contempt, or both. (*Family C. 4919(b)(5).*)
- (f) Set aside property for satisfaction of the support order. (*Family C. 4919(b)(6).*)
- (g) Place liens and order execution on the obligor's property. (*Family C. 4919(b)(7).*)
- (h) Order an obligor to keep the court informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment. (*Family C. 4919(b)(8).*)
- (i) Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants. (*Family C. 4919(b)(9).*)
- (j) Order an obligor to seek appropriate employment by specified methods. (*Family C. 4919(b)(10).*)
- (k) Award reasonable attorneys' fees and other fees and costs. (*Family C. 4919(b)(11).*)
- (l) Grant any other available remedy. (*Family C. 4919(b)(12).*)

If the court issues an order, it must send copies to the petitioner and the respondent and to the initiating tribunal, if any. (*Family C. 4919(e).*) The court must include in the order, or the accompanying documents, the calculations on which the order is based. (*Family C. 4919(c).*) The court may not condition payment of the order on compliance by a party with visitation provisions. (*Family C. 4919(d).*)

(4) *Inappropriate Tribunal.* If an inappropriate California tribunal receives a petition or comparable pleading, it must forward the pleading and accompanying documents to an appropriate tribunal in California or another state and notify the petitioner where and when the pleading was sent. (*Family C. 4920.*)

(5) *Communication With Tribunals of Other States.* A California court may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A California court may furnish similar information by similar means to a tribunal of another state. (*Family C. 4931*; on what constitutes "state," see *supra*, §408.)

(6) *Transfer to Another County or State.* An action brought or order registered under the Act must generally be transferred to the proper California court or sister state jurisdiction, pursuant to prescribed procedures, where (a) the county in which the pleadings are received is not the appropriate jurisdiction for trial of the action or (b) the petitioner or respondent no longer resides in the county. Where the respondent becomes a resident of another county or jurisdiction after the action or order has been filed, however, the action may remain in the county of filing until the action is completed. (See *Family C. 5001*; Judicial Council Form No. FL-560 [Ex Parte Application for Transfer and Order (UIFSA)].)

SUPPLEMENT: [This section is current through the latest supplement]



50 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

d. Proceedings.

4. Evidence.

8 *Witkin Cal. Proc. Enf Judgm § 413*

[§ 413] Evidence.

(1) *In General. Family C. 4930* sets forth special rules of evidence governing proceedings under the Uniform Interstate Family Support Act. A court exercising personal jurisdiction over a nonresident under *Family C. 4905* (see supra, §409) may apply *Family C. 4930* to receive evidence from another state. (*Family C. 4906.*) Also, if a party subject to the continuing, exclusive jurisdiction of the court (see supra, §409) no longer resides in the state that issued the support order, the court may apply *Family C. 4930* in subsequent proceedings to receive evidence from another state. (*Family C. 4910(b).*)

(2) *Verified Petition or Affidavit.* A verified petition, an affidavit, a document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state. (*Family C. 4930(b).*)

(3) *Record of Child Support Payments.* A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of the facts asserted in it, and is admissible to show whether payments were made. (*Family C. 4930(c).*)

(4) *Health Care Bills.* Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary. (*Family C. 4930(d).*)

(5) *Electronic Transmission of Documentary Evidence.* Documentary evidence transmitted from another state to a California court by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence because of the means of transmission. (*Family C. 4930(e).*)

(6) *Taking of Deposition or Testimony by Electronic Means.* A California court may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a

designated tribunal or other location in that state. The court must cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony. (*Family C. 4930(f).*)

(7) *Adverse Inference From Refusal To Testify.* The trier of fact may draw an adverse inference from the refusal of a party who is called to testify at a civil hearing to answer on the ground that the testimony may be self-incriminating. (*Family C. 4930(g).*)

(8) *Spousal Privilege Is Not Applicable.* Any privilege against the disclosure of communications between spouses (see 2 *Cal. Evidence (4th), Witnesses, §187 et seq.*) is inapplicable. (*Family C. 4930(h).*)

(9) *Immunity Defense Is Not Applicable.* Any defense of immunity based on the relationship of husband and wife or parent and child (see 5 *Summary (10th), Torts, §27 et seq.*) is inapplicable. (*Family C. 4930(i).*)

West's Key Number Digest, Parent and Child 3.3(5)

SUPPLEMENT: [This section is current through the latest supplement]



51 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

d. Proceedings.

5. Discovery.

8 *Witkin Cal. Proc. Enf Judgm § 414*

[§ 414] Discovery.

The superior court in a proceeding under the Uniform Interstate Family Support Act may (1) request a tribunal of another state to assist in obtaining discovery, and (2) on request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state. (*Family C. 4932.*)

A court exercising personal jurisdiction over a nonresident under *Family C. 4905* (see *supra*, §409) may apply *Family C. 4932* to obtain discovery through a tribunal of another state. Also, if a party subject to the continuing, exclusive jurisdiction of the court (see *supra*, §409) no longer resides in the state that issued the support order, the court may apply *Family C. 4932* in subsequent proceedings to obtain discovery through a tribunal of another state. (*Family C. 4910(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



52 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

d. Proceedings.

6. Confidentiality of Identifying Information.

8 *Witkin Cal. Proc. Enf Judgm § 415*

[§ 415] Confidentiality of Identifying Information.

On a finding, which may be made *ex parte*, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal must order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under the Act. (*Family C. 4926*.) (See Judicial Council Form No. FL-511 [Ex Parte Application for Order for Nondisclosure of Address and Order (UIFSA)].)

The nondisclosure order must be issued on the application of a child, parent, guardian, or other caretaker of a child, or a party, signed under penalty of perjury, setting forth facts demonstrating, to the satisfaction of the court, that the health, safety, freedom of movement, or physical or emotional well-being of the applicant or the applicant's child may be put unreasonably at risk by the disclosure of the applicant's identifying information. (*Family C. 4977(a)*.)

A copy of the order must be served by first-class mail on the other party and the district attorney. The order must include a mailing address for service of process on the protected party. That party must file with the court notice of any change of the mailing address, and a copy of the notice must be sent to the other party and the district attorney. This designated address may not be the address of a governmental agency unless the agency has consented in writing to the designation. (*Family C. 4977(b)*.)

Notwithstanding any local or state rules of court, no notice is required prior to issuance of the order. (*Family C. 4977(c)*.)

The order does not expire until further order of the court, issued after a hearing on a noticed motion filed by the other party and served by first-class mail on the protected party, at that party's designated mailing address, and the district attorney. (*Family C. 4977(d)*.)

Family C. 240 et seq. (*ex parte* temporary restraining orders; see 11 *Summary* (10th), *Husband and Wife*, §7) do not apply to the issuance of the order. (*Family C. 4977(e)*.)

Nothing in *Family C. 4977* may be construed to require a party to obtain such an order before using a confidential address on court pleadings except as required by *Family C. 4925*. (*Family C. 4977(g)*.)

SUPPLEMENT: [This section is current through the latest supplement]



53 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

d. Proceedings.

7. Enforcement and Information Agencies.

8 *Within Cal. Proc. Enf Judgm § 416*

[§ 416] Enforcement and Information Agencies.

(1) *Services of Support Enforcement Agency.* On request, a California support enforcement agency (see *supra*, §408) is required to provide services to a petitioner in a proceeding under the Uniform Interstate Family Support Act. (*Family C. 4921(a).*) The Act does not create or negate an attorney-client or other fiduciary relationship between a support enforcement agency or its attorney and the individual being assisted. (*Family C. 4921(c).*) The agency providing services must do all of the following:

(a) Take all steps necessary to enable an appropriate tribunal to obtain jurisdiction over the respondent. (*Family C. 4921(b)(1).*)

(b) Request an appropriate tribunal to set a date, time, and place for a hearing. (*Family C. 4921(b)(2).*)

(c) Make a reasonable effort to obtain all relevant information, including information about the income and property of the parties. (*Family C. 4921(b)(3).*)

(d) Send a copy of a written notice from an initiating, responding, or registering tribunal to the petitioner within 14 business days after receipt of the notice. (*Family C. 4921(b)(4).*)

(e) Send a copy of a written communication from the respondent or the respondent's attorney to the petitioner within 14 business days after receipt of the communication. (*Family C. 4921(b)(5).*)

(f) Notify the petitioner if jurisdiction over the respondent cannot be obtained. (*Family C. 4921(b)(6).*)

(g) Inform the petitioner of the requirement that the pleadings contain identifying information about the petitioner and the child, including the residential address, unless an order of nondisclosure is granted pursuant to *Family C. 4926* and *4977* (see *supra*, §415). (*Family C. 4921(b)(7), 4978(a).*)

(h) Inform the petitioner of the right to seek an order of nondisclosure and provide information regarding how that

order may be obtained. (*Family C. 4921(b)(7), 4978(b).*)

(i) Inform the petitioner that the agency must seek an order of nondisclosure on behalf of the petitioner if the petitioner has previously obtained a protective or restraining order or has been granted a good cause exception from cooperation requirements pursuant to Welf.C. 11477.04 (good cause exception to duty to cooperate of public assistance applicant or recipient), and instruct the petitioner to notify the agency of any order or exception. (*Family C. 4921(b)(7), 4978(c).*)

(j) Seek an order of nondisclosure pursuant to *Family C. 4926* and *4977* if the petitioner informs the agency that he or she has obtained a protective or restraining order or has been granted a good cause exception from cooperation requirements pursuant to Welf.C. 11477.04. (*Family C. 4921(b)(7), 4978(d).*)

(2) *Services Provided by Attorney General.* If the Attorney General determines that the support enforcement agency is neglecting or refusing to provide services to an individual, he or she may order the agency to perform its duties under the Act or may provide those services directly to the individual. (*Family C. 4922.*)

(3) *State Information Agency.* The Attorney General's office is designated as the state information agency under the Act and has specified duties with regard to compiling and maintaining information relating to tribunals and support enforcement agencies, forwarding documents received from initiating tribunals and other state information agencies, and obtaining information concerning the location of the obligor and the obligor's property within California that is not exempt from execution. (*Family C. 4924.*)

SUPPLEMENT: [This section is current through the latest supplement]



54 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

d. Proceedings.

8. Fees and Costs.

8 *Witkin Cal. Proc. Enf Judgm § 417*

[§ 417] Fees and Costs.

The petitioner in a proceeding under the Uniform Interstate Family Support Act may not be required to pay a filing fee or other costs. (*Family C. 4927(a).*)

If an obligee prevails, the obligor may be assessed filing fees, reasonable attorneys' fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. Fees, costs, and expenses may not be assessed against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorneys' fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in his or her own name. Payment of support owed to the obligee has priority over fees, costs, and expenses. (*Family C. 4927(b).*)

The court must order the payment of costs and reasonable attorneys' fees if it determines that a hearing was requested primarily for delay. In a proceeding for enforcement of a support order after registration (*Family C. 4950 et seq., infra, §421 et seq.*), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change. (*Family C. 4927(c).*)

SUPPLEMENT: [This section is current through the latest supplement]



55 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

e. Reconciliation of Multiple Orders.

8 *Witkin Cal. Proc. Enf Judgm § 418*

[§ 418] Reconciliation of Multiple Orders.

(1) *Controlling Child Support Order.* If two or more child support orders have been issued for the same obligor and child, the Uniform Interstate Family Support Act establishes the basis for determining which order controls for purposes of continuing, exclusive jurisdiction (*Family C. 4911(b)*, (d)) and provides that if the obligor or the individual obligee resides in California, a party may request the superior court to make that determination (*Family C. 4911(c)*, (e)). (On continuing, exclusive jurisdiction, see *supra*, §409.) The party obtaining an order determining the identity of the controlling order must, within 30 days after issuance, file a certified copy of the order with each tribunal that issued or registered an earlier order for child support. Failure to file subjects the party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but does not affect the validity or enforceability of the controlling order. (*Family C. 4911(f)*.) (See *Lundahl v. Telford (2004) 116 C.A.4th 305, 315, 9 C.R.3d 902* [UIFSA mechanism for establishing single controlling order applies only to child support orders, not spousal support orders].)

(2) *Multiple Child Support Orders Respecting Same Obligor and Different Obligees.* In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued in another state, the superior court must enforce the orders in the same manner as if they had been issued in California. (*Family C. 4912.*)

(3) *Credit for Payments.* Amounts collected and credited for a particular period pursuant to a support order issued in another state must be credited against the amounts accruing or accrued for the same period under a support order issued in California. (*Family C. 4913.*)

SUPPLEMENT: [This section is current through the latest supplement]



56 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

f. Establishment of Support Order.

8 *Witkin Cal. Proc. Enf Judgm* § 419

[§ 419] Establishment of Support Order.

(1) *Conditions for Issuance of Support Order.* If a support order entitled to recognition under the Uniform Interstate Family Support Act has not been issued, a responding superior court may issue the order in either of the following circumstances:

- (a) The individual seeking the order resides in another state. (*Family C. 4935(a)(1).*)
- (b) The support enforcement agency seeking the order is located in another state. (*Family C. 4935(a)(2).*)

(2) *Conditions for Issuance of Temporary Support Order.* The court may issue a temporary child support order in any of the following circumstances:

- (a) The respondent has signed a verified statement acknowledging parentage. (*Family C. 4935(b)(1).*)
- (b) The respondent has been determined by law to be the parent. (*Family C. 4935(b)(2).*)
- (c) There is other clear and convincing evidence that the respondent is the child's parent. (*Family C. 4935(b)(3).*)

(3) *Issuance of Order.* After notice and an opportunity to be heard, on finding that an obligor owes a duty of support, the court must issue a support order directed to the obligor, and may issue other orders under *Family C. 4919* (supra, §412). (*Family C. 4935(c).*)

SUPPLEMENT: [This section is current through the latest supplement]



57 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

g. Enforcement of Order Without Registration.

8 *Witkin Cal. Proc. Enf Judgm* § 420

[§ 420] Enforcement of Order Without Registration.

(1) *Sending Order to Obligor's Employer.* An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's employer pursuant to *Family C. 5210* (see 11 *Summary* (10th), *Husband and Wife*, §250) without first filing a petition or comparable pleading or registering the order with a California court. (*Family C. 4940.*) (See Rutter Group, 3 *Family Law* §18:750 et seq.; 5 *California Family Law Practice*, §S.178.40.)

(2) *Employer's Duties.* On receipt of an income-withholding order, the obligor's employer must immediately provide a copy to the obligor. (*Family C. 4941(a).*) If the order appears regular on its face, the employer must treat it as if it had been issued by a California court. (*Family C. 4941(b).*)

Generally, the employer must withhold and distribute the funds as directed in the withholding order by complying with terms that specify any of the following:

(a) The duration and the amount of periodic payments of current child support, stated as a sum certain. (*Family C. 4941(c)(1).*)

(b) The person or agency designated to receive payments and the address to which the payments are to be forwarded. (*Family C. 4941(c)(2).*)

(c) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment. (*Family C. 4941(c)(3).*)

(d) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain. (*Family C. 4941(c)(4).*)

(e) The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain. (*Family C. 4941(c)(5).*)

However, the employer must comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to any of the following:

- (a) The employer's fee for processing an income-withholding order. (*Family C. 4941(d)(1).*)
- (b) The maximum amount permitted to be withheld from the obligor's income. (*Family C. 4941(d)(2).*)
- (c) The times within which the employer must implement the withholding order and forward the child support payment. (*Family C. 4941(d)(3).*)

Further, an obligor's employer who receives multiple income-withholding orders with respect to the earnings of the same obligor satisfies the terms of the multiple orders by complying with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees. (*Family C. 4942.*)

(3) *Employer's Liabilities.* An employer who complies with an income-withholding order issued in accordance with *Family C. 4940* et seq. is not subject to civil liability to any individual or agency with regard to the employer's withholding of child support from the obligor's income. (*Family C. 4943.*) However, an employer who wilfully fails to comply with the order is subject to the same penalties that may be imposed for noncompliance with an order issued by a California court. (*Family C. 4944.*)

(4) *Administrative Enforcement.* A party seeking to enforce a support or income-withholding order issued in another state may send the documents required for registering the order to a California support enforcement agency (see supra, §408). (*Family C. 4946(a).*) On receipt of the documents, the agency, without initially seeking to register the order, must consider and, if appropriate, use any authorized administrative procedure to enforce the order. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency must register the order pursuant to *Family C. 4950* et seq. (see infra, §421 et seq.). (*Family C. 4946(b).*)

(5) *Contest of Order by Obligor.* An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if it had been issued by a California court. (*Family C. 4945(a)*; see C.R.C., Rule 5.335 [hearing procedure].) The obligor must give notice of the contest to: (a) a support enforcement agency providing services to the obligee; (b) each employer that has directly received an income-withholding order; and (c) the person or agency designated to receive payments in the order or, if none is designated, to the obligee. (*Family C. 4945(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



58 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

h. Enforcement and Modification of Order After Registration.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm § 421*

[§ 421] In General.

(1) *Registration for Enforcement.* A support or income-withholding order issued in another state may be registered for enforcement in California. (*Family C. 4950.*) (See Rutter Group, 3 Family Law §18:760 et seq.; 5 California Family Law Practice, §S.178.50 et seq.) Registration is accomplished by sending the following documents and information to the appropriate California court:

(a) A letter of transmittal to the court, requesting registration and enforcement. (*Family C. 4951(a)(1).*)

(b) Two copies, including one certified copy, of all orders to be registered, including any modification of an order. (*Family C. 4951(a)(2).*)

(c) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage. (*Family C. 4951(a)(3).*)

(d) The name of the obligor and, if known, (1) the obligor's address and Social Security number; (2) the name and address of the obligor's employer and any other source of income of the obligor; and (3) a description and the location of the obligor's property in California that is not exempt from execution. (*Family C. 4951(a)(4).*)

(e) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted. (*Family C. 4951(a)(5).*)

(2) *Filing.* On receipt of a request for registration, the registering court must have the order filed as a foreign judgment, together with one copy of the documents and information, regardless of their form. (*Family C. 4951(b).*) The order "is registered when the order is filed." (*Family C. 4952(a).*) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other California law may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy. (*Family C. 4951(c).*)

(3) *Effect of Registration.* The registered order is enforceable in the same manner and is subject to the same

procedures as an order issued by a California court. (*Family C. 4952(b)*.) A California court must recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction. (*Family C. 4952(c)*.)

(4) *Governing Law*. The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order. In a proceeding for arrearages, the statute of limitations under California law or under the law of the issuing state, whichever is longer, applies. (*Family C. 4953*.) (See *Scheuerman v. Hawk (2004) 116 C.A.4th 1140, 1143, 11 C.R.3d 125* [California court may not register out-of-state support order after issuing state has judicially determined that order is no longer enforceable].)

SUPPLEMENT: [This section is current through the latest supplement]



59 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

h. Enforcement and Modification of Order After Registration.

2. Notice, Opposition, and Hearing.

8 *Witkin Cal. Proc. Enf Judgm* § 422

[§ 422] Notice, Opposition, and Hearing.

(1) *Notice to Nonregistering Party.* When a support or income-withholding order from another state is registered, the registering court must notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order. (*Family C. 4954(a).*) (See Judicial Council Form No. FL-570 [Notice of Registration of Out-of-State Support Order].)

The notice must inform the nonregistering party of the following:

(a) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a California court. (*Family C. 4954(b)(1).*)

(b) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice. (*Family C. 4954(b)(2).*)

(c) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted. (*Family C. 4954(b)(3).*)

(d) The amount of any alleged arrearages. (*Family C. 4954(b)(4).*)

(2) *Notice to Obligor's Employer.* On registration of an income-withholding order for enforcement, the court must notify the obligor's employer pursuant to *Family C. 5200 et seq.*, governing earnings assignment orders for support (see 11 *Summary* (10th), *Husband and Wife*, §249 et seq.). (*Family C. 4954(c).*)

(3) *Hearing To Contest Validity of Order.* A nonregistering party may contest the validity or enforcement of a registered order by requesting a hearing within 20 days after notice of the registration. The nonregistering party may seek to (a) vacate the registration, (b) assert any defense to an allegation of noncompliance with the registered order, or (c) contest the remedies being sought or the amount of any alleged arrearages pursuant to *Family C. 4956.* (*Family C.*

4955(a).) If a hearing is requested, the court must schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing. (*Family C. 4955(c)*.) However, if the nonregistering party fails to contest the validity or enforcement of the order in a timely manner, the order is confirmed by operation of law. (*Family C. 4955(b)*.) The Judicial Council has adopted a mandatory form for a request for a hearing. (See Judicial Council Form No. FL-575 [Request for Hearing Regarding Registration of Support Order].)

(4) *Defenses and Burden of Proof.* A party who contests the validity or enforcement of a registered order or seeks to vacate the registration has the burden of proving one or more of the following defenses:

(a) The issuing tribunal lacked personal jurisdiction over the contesting party. (*Family C. 4956(a)(1)*); see *Willmer v. Willmer (2006) 144 C.A.4th 951, 957, 51 C.R.3d 10* [father failed to meet burden that German court lacked jurisdiction to enter judgment obliging him to pay child and spousal support under UIFSA; evidence that father and mother were living in Germany when child was born, that parents and child were German citizens, and that they lived there for 2 years as family supported German authority's finding of family support jurisdiction under German law, and German court made requisite finding of service by publication under German law].)

(b) The order was obtained by fraud. (*Family C. 4956(a)(2)*.)

(c) The order has been vacated, suspended, or modified by a later order. (*Family C. 4956(a)(3)*.)

(d) The issuing tribunal has stayed the order pending appeal. (*Family C. 4956(a)(4)*.)

(e) There is a defense under California law to the remedy sought. (*Family C. 4956(a)(5)*.)

(f) Full or partial payment has been made. (*Family C. 4956(a)(6)*.)

(g) The statute of limitations under *Family C. 4953* (see *supra*, §421) precludes enforcement of some or all of the arrearages. (*Family C. 4956(a)(7)*.)

(5) *Disposition.* If a party presents evidence establishing a full or partial defense under *Family C. 4956(a)*, the court may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. The uncontested portion of the registered order may be enforced by all remedies available under California law. (*Family C. 4956(b)*.) If the contesting party does not establish a defense to the validity or enforcement of the order, the court must confirm the order. (*Family C. 4956(c)*.)

(6) *Effect of Confirmation of Order.* Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. (*Family C. 4957*.) For purposes of this provision, matters "that could have been asserted at the time of registration" are the defenses to registration listed in *Family C. 4956*. A party is not precluded from contesting other matters. (*De Leon v. Jenkins (2006) 143 C.A.4th 118, 125, 49 C.R.3d 145* [obligee spouse who failed to timely object to registration of out-of-state support order could challenge order's understatement of arrears; understatement of arrears is not included in statutory defenses to registration].)

SUPPLEMENT: [This section is current through the latest supplement]



60 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

h. Enforcement and Modification of Order After Registration.

3. Child Support Orders.

aa. Modification of Order of Another State.

8 *Witkin Cal. Proc. Enf Judgm* § 423

[§ 423] Modification of Order of Another State.

(1) *Registration for Modification.* A party or support enforcement agency seeking to modify, or modify and enforce, a child support order issued in another state must register the order in California under *Family C. 4950* et seq. (see supra, §§421, 422) if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. (*Family C. 4958.*)

(2) *Conditions for Modification.* The responding California court may modify the order only if *Family C. 4962* (infra, §425) does not apply and if it finds after notice and hearing either (a) that the child, the individual obligee, and the obligor do not reside in the issuing state; a petitioner who is a nonresident of California seeks modification; and the respondent is subject to the personal jurisdiction of the responding court, or (b) that the child or an individual party is subject to the personal jurisdiction of the responding court and all of the individual parties have filed written consents in the issuing tribunal for a California court to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established a procedure substantially similar to the Uniform Interstate Family Support Act, the consent otherwise required of an individual residing in this state is not required for the court to assume jurisdiction to modify the order. (*Family C. 4960(a)*); see *Knabe v. Brister* (2007) 154 C.A.4th 1316, 1323, 65 C.R.3d 493 [stipulation to transfer exclusive jurisdiction over child support order from Texas to California satisfied *Family C. 4960(a)* requirement of written consents by all parties, even though it was signed by parties' attorneys rather than parties themselves; making stipulation was within apparent authority of objecting party's attorney because it did not affect substantial rights but was procedural decision incidental to attorney's management of action]; for definition of "state," see supra, §408.)

Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a court of California (see 11 *Summary* (10th), *Husband and Wife*, §273 et seq.). (*Family C. 4960(b)*.) A California court may not modify an aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under *Family C. 4911* (supra, §418) establishes the

aspects of the support order that are nonmodifiable. (*Family C. 4960(c)*.) (On modification of order of foreign country or political subdivision that will not or may not modify its order pursuant to its laws, see *Family C. 4964*.)

A California court assuming jurisdiction over a registered order for purposes of modification must apply California law to determine the amount of support owed. A contrary provision in a marital support agreement does not change this result. (*In re Marriage of Crosby & Grooms (2004) 116 C.A.4th 201, 206, 10 C.R.3d 146*.)

(3) *Effect of Modification.* A California court may enforce a child support order of another state that has been registered for purposes of modification, in the same manner as if the order had been issued by a California court. (*Family C. 4959, 4960(b)*.) The order may likewise be satisfied in the same manner. (*Family C. 4960(b)*.) On issuance of an order modifying a child support order issued in another state, the California court becomes the tribunal with continuing, exclusive jurisdiction (see *supra*, §409). (*Family C. 4960(d)*.)

West's Key Number Digest, Parent and Child 3.3(1)

SUPPLEMENT: [This section is current through the latest supplement]



61 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

h. Enforcement and Modification of Order After Registration.

3. Child Support Orders.

bb. Recognition of Modification of California Order by Another State.

8 *Witkin Cal. Proc. Enf Judgm* § 424

[§ 424] Recognition of Modification of California Order by Another State.

A California court must recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act or a substantially similar law. (*Family C. 4961.*) On request, the court must:

(1) Enforce the order that was modified only as to amounts accruing before the modification. (*Family C. 4961(1).*)

(2) Enforce only nonmodifiable aspects of that order. (*Family C. 4961(2).*)

(3) Provide other appropriate relief only for violations that occurred before the effective date of the modification. (*Family C. 4961(3).*)

(4) Recognize the modifying order of the other state, on registration, for the purpose of enforcement. (*Family C. 4961(4).*)

SUPPLEMENT: [This section is current through the latest supplement]



62 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

h. Enforcement and Modification of Order After Registration.

3. Child Support Orders.

cc. Enforcement and Modification of Order Where Individual Parties Reside in California.

8 *Witkin Cal. Proc. Enf Judgm* § 425

[§ 425] Enforcement and Modification of Order Where Individual Parties Reside in California.

A California court has jurisdiction to enforce or modify another state's child support order in a proceeding under the Uniform Interstate Family Support Act to register that order even if all of the parties who are individuals reside in California. Although the child need not reside in California, he or she may not reside in the issuing state. (*Family C. 4962(a).*) The court must apply the general provisions of the Act (*Family C. 4900 et seq.*), the provisions of the Act governing jurisdiction (*Family C. 4905 et seq.*) and enforcement of an order after registration (*Family C. 4950 et seq.*), and the procedural and substantive law of California. All other provisions of the Act are inapplicable. (*Family C. 4962(b).*)

SUPPLEMENT: [This section is current through the latest supplement]



63 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

h. Enforcement and Modification of Order After Registration.

3. Child Support Orders.

dd. Notice of Modification.

8 *Witkin Cal. Proc. Enf Judgm* § 426

[§ 426] Notice of Modification.

Within 30 days after issuance of a modified child support order, the party obtaining the modification must file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction (see *supra*, §409) over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file the required certified copy is subject to appropriate sanctions by a tribunal in which the issue arises. However, the failure to file does not affect the validity or enforceability of the modified order. (*Family C. 4963.*)

SUPPLEMENT: [This section is current through the latest supplement]



64 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

i. Determination of Parentage.

8 *Witkin Cal. Proc. Enf Judgm* § 427

[§ 427] Determination of Parentage.

(1) *Proceeding To Determine Parentage.* A California superior court may serve as an initiating or responding tribunal in a proceeding brought under the Uniform Interstate Family Support Act, a substantially similar law or procedure, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner or a respondent is the parent of a particular child. (*Family C. 4965(a).*)

(2) *Applicable Law.* In a proceeding to determine parentage, a responding California court must apply the Uniform Parentage Act (*Family C. 7600 et seq., 10 Summary* (10th), *Parent and Child*, §17 et seq.), procedural and substantive law of California, and California's choice of law rules. (*Family C. 4965(b).*)

West's Key Number Digest, Parent and Child 3.3(9)

SUPPLEMENT: [This section is current through the latest supplement]



65 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

B. Enforcement of Judgments in Family Law Cases.

2. Uniform Interstate Family Support Act.

j. Interstate Rendition.

8 *Witkin Cal. Proc. Enf Judgm § 428*

[§ 428] Interstate Rendition.

(1) *In General. Family C. 4970 et seq.* concern interstate rendition (extradition) of persons charged criminally with nonsupport. (On enforcement of support orders in criminal proceedings generally, see P.C. 270h, *supra*, §406; on nonsupport offenses, see P.C. 270 et seq., 2 *Cal. Crim. Law (3d), Sex Offenses and Crimes Against Decency*, §143 et seq.)

(2) *Grounds for Rendition.* The Governor of California may:

(a) Demand that the Governor of another state surrender an individual found in that state who is charged criminally in California with having failed to provide for the support of an obligee. (*Family C. 4970(b)(1).*)

(b) On the demand of the Governor of another state, surrender an individual found in California who is charged criminally in the other state with having failed to provide for the support of an obligee. (*Family C. 4970(b)(2).*)

A provision for extradition of individuals that is not inconsistent with the Uniform Interstate Family Support Act applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed, and has not fled from that state. (*Family C. 4970(c).*)

"Governor" includes an individual performing the functions of Governor or the executive authority of a state covered by the Uniform Interstate Family Support Act. (*Family C. 4970(a).*)

(3) *Conditions of Rendition.* Before making a demand that the Governor of another state surrender an individual charged criminally in California with failure to provide for the support of an obligee, the California Governor may require a California prosecutor to demonstrate that, at least 60 days before, the obligee had initiated proceedings for support under the Act or that the proceedings would be of no avail. (*Family C. 4971(a).*)

If, under the Uniform Interstate Family Support Act, a substantially similar law, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the Governor of another state makes a demand that the California Governor surrender an individual charged criminally in that state with having

failed to provide for the support of a child or other individual to whom a duty of support is owed, the Governor may require a prosecutor to investigate the demand, and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the Governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding. (*Family C. 4971(b).*)

If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor may decline to honor the demand where the individual is complying with that order. (*Family C. 4971(c).*)

SUPPLEMENT: [This section is current through the latest supplement]



66 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

C. Claims and Judgments Against Public Entities.

1. Against State.

8 *Witkin Cal. Proc. Enf Judgm* § 429

[§ 429] Against State.

(1) *Where Sufficient Appropriation Is Available.* On allowance by the Victim Compensation and Government Claims Board of a claim, in whole or in part, for which a sufficient appropriation for payment exists, the claimant must execute and present the required documents discharging the state from liability. The board must then designate the fund from which the payment is to be made, and the state agency concerned must pay the claim from that fund. (*Govt.C. 965(a).*) The Controller must draw a warrant for payment of a final judgment or settlement against the state. (*Govt.C. 965.2.*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §§6:56.30 et seq., 6:65; C.E.B., 2 *Debt Collection Practice* 2d, §9.12.)

(2) *Where Sufficient Appropriation Is Not Available.* Generally, if a sufficient appropriation for payment of a claim is not available, the Victim Compensation and Court Claims Board must report to the Legislature with its recommendations. (*Govt.C. 912.8, 965(a).*) However, where no sufficient appropriation exists for payment of claims, settlements, or judgments when the state is represented by the Attorney General, the Attorney General must report the claims, settlements, and judgments to the chairperson of either the Senate Committee on Appropriations or the Assembly Committee on Budget, which must then cause legislation to be introduced appropriating funds for that payment. (*Govt.C. 965(b).*)

(3) *Claims Against Judiciary.* Notwithstanding *Govt.C. 965(a)* and (b), claims, settlements, or judgments arising out of the activities of a judicial branch entity or judge may be paid if the Judicial Council authorizes payment and the Administrative Director of the Courts certifies that sufficient funds exist. If sufficient funds for payment of *settlements or judgments* do not exist, the administrative director must report the settlements and judgments to the chairperson of either the Senate Committee on Appropriations or the Assembly Committee on Budget, who must cause to be introduced legislation appropriating funds for payment. If sufficient funds for payment of *claims* do not exist, the administrative director must report the claims to the Victim Compensation and Government Claims Board, which has 90 days to object to payment. The administrative director must confer with the chairperson of the board regarding any objection received during the 90-day period. If the board withdraws the objection, or if no objection is received, the administrative director must report the claims to the chairperson of either legislative committee, who must cause to be introduced legislation appropriating funds to pay the claims. The Judicial Council may authorize any of its committees or any employee of the Administrative Office of the Courts to perform its functions under these provisions, and the

administrative director may designate an executive staff member of the office to perform the administrative director's functions. (*Govt.C. 965(c)*; see *Govt.C. 900.3* and *940.3* [defining "judicial branch entity" as superior court, Court of Appeal, Supreme Court, Judicial Council, or Administrative Office of Courts].)

(4) *Duration of Enforceability.* A money judgment against the state or a state agency is enforceable for 10 years after it becomes final, and an installment judgment is enforceable for 10 years after the final installment is due. (*Govt.C. 965.5(a)*.)

(5) *Enforcement Mechanisms.* Mandamus is an appropriate remedy to compel compliance with *Govt.C. 965* et seq. (*Govt.C. 965.7, 965.8*; see *Govt.C. 942* [general right to mandamus to enforce claims against public entities].) However, notwithstanding any other provision of law, neither the state, nor any of its officers or employees, may be required to pay or offset a tort liability claim, settlement, or judgment unless the Legislature has authorized its payment or offset or it has been certified that a sufficient appropriation exists. (*Govt.C. 965.6*; on authority of Controller to offset amounts due state agencies against amounts due claimant, including tax refunds, see *Govt.C. 12419.5*; *12 Pacific L. J. 307*.) A money judgment against the state is not enforceable under the Enforcement of Judgments Law. (*C.C.P. 695.050*; *Govt.C. 965.5(b)*; see *supra*, §61.) (On enforcement by action on judgment, see *Barkley v. Blue Lake (1993) 18 C.A.4th 1745, 1750, 23 C.R.2d 315*, *infra*, §432.)

(6) *Exemption of University of California.* *Govt.C. 965* et seq. do not apply to claims, settlements, and judgments against the University of California. (*Govt.C. 965.9*.) Judgments against the Regents of the University of California may be enforced under the Enforcement of Judgment Law (*C.C.P. 680.010* et seq., *supra*, §18 et seq.; see *Cal. Civil Practice, 2 Torts*, §31:43).

SUPPLEMENT: [This section is current through the latest supplement]



67 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

C. Claims and Judgments Against Public Entities.

2. Against Local Public Entities.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 430

[§ 430] In General.

(1) *Judgments Covered.* A final judgment for the payment of money rendered against a local public entity may be enforced as provided in *Govt.C. 970* et seq. (See *Govt.C. 970(b)* [defining "judgment" for purposes of those provisions].) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:65.1 et seq.)

(2) *Duration of Enforceability.* A judgment against a local public entity is enforceable for 10 years after it becomes final and an installment judgment is enforceable for 10 years after the final installment is due. (*Govt.C. 970.1(a)*.)

(3) *Exemption of University of California.* *Govt.C. 970* et seq. do not apply to judgments against the University of California. (*Govt.C. 970(c)*.) Judgments against the Regents of the University of California are enforceable under the Enforcement of Judgment Law (*C.C.P. 680.010* et seq., supra, §18 et seq.; see Cal. Civil Practice, 2 *Torts*, §31:43).

(4) *Claims Allowed or Compromised.* Claims allowed or compromised by local entities must be paid in the same manner as if the claimant had obtained a final judgment for that amount. If the claimant agrees in writing, the claim may be paid in installments under *Govt.C. 970.6* (see infra, §431), in which case a court order authorizing installment payments is not required. The installments may be prepaid, in whole or in part. (*Govt.C. 912.6(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]



68 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

C. Claims and Judgments Against Public Entities.

2. Against Local Public Entities.

b. Payment Obligation.

8 *Witkin Cal. Proc. Enf Judgm § 431*

[§ 431] Payment Obligation.

(1) *In General.* A local public entity is required to pay judgments as provided by *Govt.C. 970* et seq. (*Govt.C. 970.2.*)

(2) *Manner of Payment.* The local entity may discharge this duty in one of three ways:

(a) *Payment in first fiscal year.* Except when installment payments are ordered, the governing body must pay any judgment, with interest, in the fiscal year in which it becomes final, out of unappropriated and unrestricted funds, or funds appropriated for that purpose. (*Govt.C. 970.4*; on definition of fiscal year, see *Govt.C. 970(a).*)

(b) *Payment in ensuing fiscal year.* Except when installment payments are ordered, if the judgment is not paid during the fiscal year in which it becomes final, it must be paid, with interest, as soon as sufficient funds are available, in the ensuing fiscal year. (*Govt.C. 970.5.*)

(c) *Payment in installments.* Generally, if the governing body finds that payment other than by installments would involve unreasonable hardship and the court finds that installment payments are necessary to avoid unreasonable hardship, the court must order the judgment to be paid, with interest, in not more than 10 equal annual installments, which may be prepaid, in whole or in part. (*Govt.C. 970.6*; on payment in installments of allowed or compromised claims, see *Govt.C. 912.6(c)*, supra, §430.)

(3) *Eminent Domain Obligation.* The installment payment option may not be available, however, in eminent domain cases. In *Community Redevelopment Agency of Hawthorne v. Force Electronics (1997) 55 C.A.4th 622, 64 C.R.2d 209*, plaintiff redevelopment agency failed to pay the full amount awarded to defendant within 30 days after the judgment, as required by *C.C.P. 1268.010(a)*. Defendant moved to have the property returned under *C.C.P. 1268.020(b)*, but the trial court granted plaintiff's motion to pay the balance in 10 annual installments pursuant to *Govt.C. 970.6* on the ground of financial hardship. *Held*, reversed.

(a) In 1980, *Govt.C. 970* et seq. were amended to apply to eminent domain judgments. At the same time, the eminent domain law was also amended to make clear that an eminent domain judgment may be enforced against a local

public entity under *Govt.C. 970* et seq. (see *C.C.P. 1268.020*, 8 *Summary* (10th), *Constitutional Law*, §1254). That remedy was added to address the situation where the plaintiff condemning agency does not pay in full but the defendant condemnee does not choose to get the property back. (55 *C.A.4th* 628.)

(b) *C.C.P. 1268.020* expressly gives the defendant the *choice of which procedures to use* and does not require the defendant to first seek Government Code remedies before seeking the return of its property. Here, plaintiff made an equitable argument that, because it could not pay the judgment in full, in the interest of fairness it should be allowed to pay the remaining amount over time. However, the trial court, in accepting this argument, acted directly contrary to the express language of *C.C.P. 1268.020*. It had no discretion to weigh the respective hardships on the parties. (55 *C.A.4th* 631.)

(c) Under eminent domain law, a condemnee is constitutionally entitled to just compensation, meaning the full and perfect equivalent of the property taken. If the government pays for condemned property only after taking and using it, the condemnee is entitled to have the full equivalent of the value of its use at the time of the taking paid *contemporaneously* with the taking. State statutory provisions must fail if they conflict with this constitutional requirement. Thus, as applied to an eminent domain judgment, *Govt.C. 970.6*, authorizing installment payments, is constitutional only because the condemnee has the *choice* to proceed under that provision or to repossess the property. Here, once the trial court ignored defendant's choice and made it an involuntary unsecured lender to plaintiff, both the statute and the constitution were violated. (55 *C.A.4th* 632.)

(4) *Powers and Duties in Meeting Obligation*. Additional provisions (a) impose a duty to budget funds to pay judgments (*Govt.C. 970.8*), (b) make statutory restrictions on maximum tax rates and debt limits inapplicable to funds raised for the purpose of paying judgments resulting from discretionary acts (*Govt.C. 971*), (c) make judgments legal investments and approved security for performance (*Govt.C. 971.2*), (d) authorize the issuance of bonds to meet judgment obligations (*Govt.C. 975* et seq.), and (e) authorize insurance coverage against specified liability (*Govt.C. 989* et seq.).

Govt.C. 970.8 and *971*, imposing an unlimited duty to provide funds to pay judgments resulting from nondiscretionary acts, focus on the involuntary nature of the original liability that results in the judgment. Judgments founded in tort and inverse condemnation are nondiscretionary. However, judgments founded in contract and eminent domain are discretionary. (*Ventura Group Ventures v. Ventura Port Dist.* (2001) 24 *C.4th* 1089, 1099, 104 *C.R.2d* 53, 16 *P.3d* 717 [port district's decisions to enter into ground lease and, subsequently, to violate implied covenant of good faith and fair dealing were discretionary, and resulting judgment was subject to statutory tax rate restrictions].)

In *Joseph v. San Francisco Housing Authority* (2005) 127 *C.A.4th* 78, 25 *C.R.3d* 179, the trial court granted mandamus to compel defendant housing authority to satisfy a judgment for plaintiffs arising from their relatives' deaths in a fire at one of defendant's housing developments. Defendant claimed that it had no funds to satisfy the judgment and that issuance of the writ would be a futile act. *Held*, affirmed. Defendant was required to pay the judgment, even though it currently lacked funds; *Govt.C. 970.8* required defendant, as a local public entity, to obtain funds for the judgment in the following year, and *Govt.C. 970.5* required it to pay the judgment with those funds as soon as they were obtained. Also, nothing in defendant's contract with the federal Department of Housing and Urban Development, or in the department's regulations, prevented defendant from using the department's grants or properties to pay the judgment. (127 *C.A.4th* 81.) (See *Mills v. Houck* (1932) 124 *C.A. 1, 2, 12 P.2d* 101 [constitutional restriction on incurring obligations in excess of year's income without two-thirds voter approval (now Cal. Const., Art. XVI, §18) does not apply to tort judgments or statutory penalties]; *F & L Farm Co. v. City Council of Lindsay* (1998) 65 *C.A.4th* 1345, 1349, 77 *C.R.2d* 360 [constitutional limitations on debt and taxation did not relieve city of duty to pay inverse condemnation judgment]; *Law Offices of Cary S. Lapidus v. Wasco* (2004) 114 *C.A.4th* 1361, 1369, 8 *C.R.3d* 680 [attorney's contingency fee agreement with city did not violate Cal. Const., Art. XVI, §18, even though contingency occurred during period when city's expenditures exceeded its revenues].)

SUPPLEMENT: [This section is current through the latest supplement]



69 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

C. Claims and Judgments Against Public Entities.

2. Against Local Public Entities.

c. Enforcement Mechanisms.

8 *Witkin Cal. Proc. Enf Judgm* § 432

[§ 432] Enforcement Mechanisms.

(1) *Enforcement of Judgments Law Is Not applicable.* A judgment against a local public entity is not enforceable under the Enforcement of Judgments Law (*C.C.P.* 680.010 et seq.). (*C.C.P.* 695.050; *Govt.C.* 970.1(b); see supra, §61; *North Bay Const. v. Petaluma* (2006) 143 *C.A.4th* 552, 560, 49 *C.R.3d* 455 [Legislature has eliminated right to execute on property owned by local public entity, even where held in proprietary rather than governmental capacity; citing *Govt.C.* 970.1(b)].)

(2) *Mandamus.* Mandamus is an appropriate remedy to compel compliance with *Govt.C.* 970 et seq. (*Govt.C.* 970.2; see *Govt.C.* 942 [general right to mandamus to enforce claims against public entities].)

(3) *Action on Judgment.* A judgment against a local public entity may be enforced by an action on the judgment (see infra, §436). In *Barkley v. Blue Lake* (1993) 18 *C.A.4th* 1745, 23 *C.R.2d* 315, the trial court denied plaintiff's motion to advance the hearing on his mandamus proceeding to enforce a money judgment against a city under *Govt.C.* 970.2 (see supra, §431), ruling that his delay in prosecution was inexcusable. Before the expiration of 10 years, plaintiff filed a new action on the judgment. After the expiration of the 10-year period, the city successfully moved for dismissal of both the mandamus action and the action on the judgment. *Held*, dismissal of the action on the judgment reversed.

(a) The law draws a distinction between statutory proceedings to "enforce" a judgment and a separate independent action "on" the judgment. (18 *C.A.4th* 1748.) In *Green v. Zissis* (1992) 5 *C.A.4th* 1219, 7 *C.R.2d* 406, and *Pratali v. Gates* (1992) 4 *C.A.4th* 632, 5 *C.R.2d* 733, the courts relied on specific statutory provisions to preserve a judgment creditor's right to bring an action on a judgment against a private defendant. By contrast, nothing in *Govt.C.* 970 et seq. specifically preserves the right to bring such an action against a local public entity. Nevertheless, the Legislature's intent to preserve that right is indicated by the Law Revision Commission Comment to *C.C.P.* 683.320. The Comment states that while *C.C.P.* 683.320 makes the renewal procedures of *C.C.P.* 683.110 et seq. (see supra, §35 et seq.) inapplicable to money judgments against public entities, *this does not affect the right to bring an action on the judgment.* (18 *C.A.4th* 1750, 1751.)

(b) Thus, because plaintiff's action on the judgment was filed within 10 years after the judgment became final, it

was timely under *C.C.P.* 337.5 (see *infra*, §436), although his mandamus proceeding was properly dismissed due to the expiration of the 10-year period for enforcing the judgment under *Govt.C.* 970.1(a) (see *supra*, §430). (*18 C.A.4th* 1751.)

SUPPLEMENT: [This section is current through the latest supplement]



70 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

C. Claims and Judgments Against Public Entities.

3. Postjudgment Settlement Conference.

8 *Within Cal. Proc. Enf Judgm § 433*

[§ 433] Postjudgment Settlement Conference.

(1) *Right to Conference.* Where the judgment against a public entity in an action for personal injury or wrongful death exceeds \$ 100,000, the entity is entitled to a mandatory settlement conference for the purpose of discussing available methods by which the judgment may be satisfied. At the conference the parties must negotiate in good faith and must review and consider structured payment plans presented by either party. (*Govt.C. 962*; see *19 Pacific L. J. 530*; *5 Summary* (10th), *Torts*, §234.)

(2) *Procedure.* The conference must be requested in writing within the time set by *C.C.P. 659* (motion for new trial; see *8 Cal. Proc. (5th), Attack on Judgment in Trial Court*, §53 et seq.) and may be noticed with a motion under *C.C.P. 659*, *Govt.C. 984* (periodic payment of judgment by public entity; see *infra*, §434) or *Govt.C. 985* (reduction in judgment for collateral source payments; see *infra*, §435). The conference must occur before the hearing on any motion pursuant to *Govt.C. 984* or *Govt.C. 985* but after the determination of any motion for a new trial, for judgment notwithstanding the verdict, for remittitur, or for additur. The Judicial Council is required to adopt rules for extending the time to appeal from the judgment to permit a request for a settlement conference and the conference itself. (*Govt.C. 962*.) No such rules have been adopted.

SUPPLEMENT: [This section is current through the latest supplement]



71 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

C. Claims and Judgments Against Public Entities.

4. Periodic Payments.

8 *Witkin Cal. Proc. Enf Judgm § 434*

[§ 434] Periodic Payments.

(1) *In General.* Under certain circumstances, tort judgments against state and local public entities may be paid in periodic payments. (*Govt.C. 984*; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:65.10 et seq.; 19 *Pacific L. J.* 530; 5 *Summary* (10th), *Torts*, §235.)

(2) *Election To Make Periodic Payments.* Public entities may *elect* to make periodic payments on tort judgments if the following requirements are met:

(a) *Claim not insured.* The public entity must be without liability insurance (or must be self-insured) with respect to the portion of the judgment to be paid in installments. (*Govt.C. 984(a)*, (b).)

(b) *Minimum amount.* The noninsured portion of the judgment, less any deduction for collateral source payments under *Govt.C. 985* (see *infra*, §435), must, as of January 1, 1996, exceed \$ 725,000. This amount is to be increased annually by 5%. (*Govt.C. 984(d)*.) On January 1, 2008, the adjusted amount was \$ 1,160,000.

(c) *Payment and duration.* Half the amount of the judgment, after any reimbursement under *Govt.C. 985*, must be paid immediately. The remainder may be paid over a period not to exceed the lesser of 10 years or the judgment creditor's life expectancy. (*Govt.C. 984(d)*.) (On election of periodic payment and hearing on that election, see C.R.C., Rule 3.1804.)

(3) *Other Bases for Periodic Payments.* The parties may agree to periodic payments or the court may order periodic payments under *C.C.P. 667.7* (future damages in medical malpractice actions; see 6 *Summary* (10th), *Torts*, §966 et seq.) or *Govt.C. 970.6* (unreasonable hardship; see *supra*, §431). (*Govt.C. 984(c)*.)

(4) *Effect of Judgment.* Payments under a judgment for periodic payments do not terminate on the judgment creditor's death. Interest accrues on the unpaid balance of the payments until the judgment is fully paid and, until that time, the public entity is liable for all payments due and the interest. The court retains jurisdiction to enforce, amend, modify, or approve the settlement of installment payments. Payments may be accelerated for unreasonable delay and may be modified to account for insolvency or uncollectibility of amounts owed by joint tortfeasors. (*Govt.C. 984(e)*.)

(5) *Time To Appeal.* Where a public entity elects to pay a judgment in periodic payments, the time to appeal from the judgment is extended. (See *Govt.C. 984(g)*; C.R.C., Rule 8.104.)

(6) *Settlement on Other Terms.* Nothing in *Govt.C. 984* prevents the parties from agreeing to settle an action on any other terms. (*Govt.C. 984(f)*.)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Election To Make Periodic Payments.*

(b) *Minimum amount.* On January 1, 2010, the adjusted amount of the noninsured portion of the judgment was \$ 1,232,500.



72 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

C. Claims and Judgments Against Public Entities.

5. Reduction of Judgment for Collateral Source Payments.

8 *Within Cal. Proc. Enf Judgm § 435*

[§ 435] Reduction of Judgment for Collateral Source Payments.

(1) *In General.* A special post-trial motion procedure exists for the reduction of personal injury and wrongful death judgments against state and local public entities for collateral source payments. (*Govt.C. 985*; see *19 Pacific L. J. 686*; *6 Summary* (10th), *Torts*, §1637 et seq.) (See *Govt.C. 985(a)* [defining "collateral source payment," "plaintiff," and "commencement of trial"].)

(2) *Right to Hearing on Reduction.* Collateral source payments paid or owed to or on behalf of a plaintiff are inadmissible in any action for personal injuries or wrongful death against a public entity. (*Govt.C. 985(b)*); on instructions to jury to ignore possible collateral source payments, see *Govt.C. 985(j)*.) However, under *Govt.C. 985(b)*, a public entity is entitled to a post-trial hearing for reduction of the judgment for collateral source payments for services or benefits provided prior to the commencement of trial if the following requirements are met:

(a) The verdict includes damages for which a collateral source payment has been made or is obligated to be made.

(b) The collateral source payments are for services or benefits provided before the commencement of trial.

(c) The total of collateral source payments exceeds \$ 5,000, increased 5% compounded annually commencing January 1, 1989. On January 1, 2008, the adjusted amount was \$ 13,266.49.

(3) *Request for Hearing.* The hearing must be requested by noticed motion within the time set by *C.C.P. 659* (motion for new trial; see *8 Cal. Proc. (5th), Attack on Judgment in Trial Court*, §53 et seq.) and may be noticed with a motion under *C.C.P. 659, Govt.C. 962* (postjudgment settlement conference on payment of judgment by public entity; see *supra*, §433) or *Govt.C. 984* (periodic payment of judgment by public entity; see *supra*, §434). The hearing may not occur until after any settlement conference under *Govt.C. 962* and after the determination of any motion for a new trial, for judgment notwithstanding the verdict, for remittitur, or for additur. (*Govt.C. 985(b)*.)

(4) *Discovery of Providers of Collateral Source Payments.* The public entity may by interrogatory or in writing at the trial setting conference discover the names of providers of collateral source payments and the amounts of the payments. (*Govt.C. 985(c)*.) If the plaintiff fails or refuses to supply the information, the public entity may, on

discovering the identity of a provider within 5 years of the judgment, request a reduction of the judgment for payment made by that source. (*Govt.C. 985(d)*.) The public entity must give notice of pretrial and post-trial settlement hearings and hearings regarding collateral source payments to providers of collateral source payments listed by the plaintiff or identified by the entity. (*Govt.C. 985(c), (e)*.)

(5) *Hearing and Determination.* At the hearing, the court must determine what portion of collateral source payments should be reimbursed from the judgment to the provider of a collateral source payment, should be deducted from the verdict, or should accrue to the benefit of the plaintiff. In doing so, the court must make adjustments for plaintiff's comparative fault, premiums paid to a provider of a collateral source payment, and the portion of the judgment paid or owed by the plaintiff as attorneys' fees and expenses. (*Govt.C. 985(f)*); on adjustment where action involves multiple defendants, see *Govt.C. 985(i)*.) However, the total amount deducted or reimbursed may not exceed half of the plaintiff's net recovery (after deducting attorneys' fees, litigation costs, and medical payments by the plaintiff). And the court may not order reimbursement or reduction if doing so would result in undue financial hardship on the person who suffered the injury. (*Govt.C. 985(g)*.) Unless otherwise ordered, 50% of any reimbursed amount is due immediately; the remainder may be paid in installments over a period not to exceed 10 years. (*Govt.C. 985(h)*.)

(6) *Extension of Time To Appeal.* The Judicial Council is required to adopt rules for extending the time to appeal from the judgment to permit a motion for the hearing and the hearing itself. (*Govt.C. 985(k)*.) No such rules have been adopted.

(7) *Procedure Does Not Apply to Pretrial Settlements.* *Govt.C. 985* does not apply to pretrial settlements. A hearing for reduction for collateral source payments may not be held without a prior trial and verdict. (See *Riddell v. California* (1996) 50 C.A.4th 1607, 1612, 58 C.R.2d 555 [trial court erred in reducing amount of Medi-Cal lien on pretrial settlement between plaintiff, who was injured in automobile accident, and defendant Department of Transportation].)

SUPPLEMENT: [This section is current through the latest supplement]

(2) *Right to Hearing on Reduction.*

(c) *Total of collateral source payments:* On January 1, 2010, the adjusted amount was \$ 14,626.30.



73 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

D. Action on Judgment.

8 *Witkin Cal. Proc. Enf Judgm* § 436

[§ 436] Action on Judgment.

(1) *In General.* A new action on an existing domestic judgment may be a necessary or desirable step in its enforcement. (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:94 et seq.; 47 *Am.Jur.2d* (2006 ed.), *Judgments* §762 et seq.; 15A *Am.Jur.* P.P. Forms (2005 ed.), *Judgments* 460 et seq.) Nothing in the Enforcement of Judgments Law (*C.C.P.* 680.010 et seq.) limits any right the judgment creditor may have to bring an action on a judgment, but any such action must be commenced within the period prescribed by *C.C.P.* 337.5 (see *infra*, this section). (*C.C.P.* 683.050; see Law Rev. Com. Comment to *C.C.P.* 683.050 [10-year period of enforcement prescribed by *C.C.P.* 683.020 (see *supra*, §34) and renewal procedure provided by *C.C.P.* 683.110 et seq. (see *supra*, §35 et seq.) do not affect right to bring action on judgment].)

The following situations are illustrative of when an action on a judgment may be brought:

(a) *Statute of Limitations.* When the statute of limitations is about to run and the action seeks its renewal for a new statutory period. (See *Atkinson v. Adkins* (1928) 92 *C.A.* 424, 426, 268 *P.* 461; cf. *Kirkpatrick v. Harvey* (1942) 51 *C.A.2d* 170, 172, 124 *P.2d* 367 [judgment against husband and wife; action against wife, on judgment, after husband's bankruptcy].) The statutory renewal procedure under *C.C.P.* 683.110 et seq. and an independent action on the judgment are alternative methods to extend the life of a money judgment. (*Fidelity Creditor Service v. Browne* (2001) 89 *C.A.4th* 195, 200, 106 *C.R.2d* 854, *supra*, §35.)

(b) *Action Against Third Person.* Where the judgment creditor has a statutory cause of action against a third person, e.g., against an insurance company where the creditor has secured a judgment against its insured under a liability policy. (See 2 *Summary* (10th), *Insurance*, §301; on proceeding against nonappearing joint debtor on unsatisfied judgment, see *C.C.P.* 989 et seq., *supra*, §398 et seq.)

(c) *Contempt.* Where a spouse with a support judgment desires to invoke the contempt powers of the court of another county. In *Thomas v. Thomas* (1939) 14 *C.2d* 355, 358, 94 *P.2d* 810, the court said: "In the instant case the purpose of the action upon the Butte County decree was to obtain a continuing judgment enforceable by contempt in Los Angeles County, where both parties now reside. ... [A]ctions are allowed on domestic judgments when the plaintiff will secure some advantage thereby. The advantage here for plaintiff is that she may prosecute her action in the county of her residence rather than proceed to a distant county." (See 14 *So. Cal. L. Rev.* 84.)

(d) *Priority of Judgment Lien.* Where a judgment creditor seeks to preserve the priority of a judgment lien. In *Provisor v. Nelson* (1965) 234 C.A.2d Supp. 876, 44 C.R. 894, plaintiff's assignor recovered a money judgment against defendant in December 1953. In March, 1963, defendant recorded a homestead on the land. But in September 1955, before the lien of plaintiff's judgment became barred, a statutory amendment extended the duration of judgment lien from 5 to 10 years (see supra, §65). Plaintiff brought an action on the original judgment and received a second judgment for the amount due plus interest. Defendant contended that there was a merger of the two judgments, with the result that the homestead declaration was prior. On this question of first impression, the court, following authorities from other states, held that the lien of the second judgment related back to the date of the first judgment: "When a judgment is rendered in an action on a prior judgment, we regard the second judgment, in effect, as an extension of the first. So regarded, it would be inequitable and unfair to the judgment creditor to hold that the priorities of his lien under the first judgment are lost." (234 C.A.2d Supp. 880.)

(2) *Period of Limitations.* The period of limitations on an action on a judgment is 10 years. (C.C.P. 337.5(3), 3 Cal. Proc. (5th), Actions, §675.) This period is *not coterminous* with the 10-year period for enforcement of a judgment provided by C.C.P. 683.020 (see supra, §34). The period prescribed in C.C.P. 683.020 commences on the date of entry and is not tolled for any reason. The statute of limitations commences to run when the judgment is final and may be tolled, e.g., by the debtor's absence from the state. (Law Rev. Com. Comment to C.C.P. 683.050; see *Turner v. Donovan* (1942) 52 C.A.2d 236, 238, 126 P.2d 187, 3 Cal. Proc. (5th), Actions, §675 [cause of action did not accrue on entry of judgment, but only when judgment was affirmed on appeal]; *Pratali v. Gates* (1992) 4 C.A.4th 632, 637, 5 C.R.2d 733 [quoting Law Rev. Com. Comment; statute of limitations tolled from time judgment debtor left state until filing of action on judgment]; *Green v. Zissis* (1992) 5 C.A.4th 1219, 1222, 7 C.R.2d 406 [following *Pratali*]; *Barkley v. Blue Lake* (1993) 18 C.A.4th 1745, 1750, 23 C.R.2d 315, supra, §432 [action on judgment filed within 10 years after it became final was timely, even though mandamus proceeding was properly dismissed due to expiration of 10-year period for enforcing judgment]; *Iloff v. Dustrud* (2003) 107 C.A.4th 1201, 1208, 132 C.R.2d 848, supra, §35 [time periods set forth in C.C.P. 337.5 and C.C.P. 683.20 are not coterminous]; *Kertesz v. Ostrovsky* (2004) 115 C.A.4th 369, 376, 8 C.R.3d 907 [10-year limitations period for action on judgment was tolled by judgment debtor's petition for bankruptcy and resulting automatic stay].)

SUPPLEMENT: [This section is current through the latest supplement]



74 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

E. Suspension of Vehicle Driver's License.

1. Former Law.

8 *Witkin Cal. Proc. Enf Judgm* § 437

[§ 437] Former Law.

(1) *Nature of Statute.* The Financial Responsibility Law is in Division 7 of the Vehicle Code. As originally enacted, Chapter 1 (former Veh.C. 16000 et seq.) provided for a showing of financial responsibility after an accident and before judgment. Chapter 2 (former Veh.C. 16250 et seq.) required a showing after an unsatisfied judgment following an accident. In both situations, suspension of a driver's license was an available sanction. The prejudgment provisions included a variety of reporting requirements (former Veh.C. 16000 et seq.) and a procedure for a security deposit, in specified circumstances, to pay any final judgment or settlement amount (former Veh.C. 16020 et seq., 16050 et seq.). License suspension was discretionary with the Department of Motor Vehicles where a driver or owner failed to report (former Veh.C. 16004), but it was mandatory where a driver in an accident resulting in property damage over a specified amount, personal injury, or death failed to furnish security (former Veh.C. 16020, 16080 et seq.). Where both the driver and the registered owner failed to provide security, registration of the vehicle was suspended. (Former Veh.C. 16100 et seq.)

(2) *Constitutionality.* The law was upheld against constitutional challenges in several California cases. (See *Watson v. Division of Motor Vehicles of Calif.* (1931) 212 C. 279, 282, 298 P. 481; *Escobedo v. Department of Motor Vehicles* (1950) 35 C.2d 870, 874, 222 P.2d 1; *Orr v. Superior Court* (1969) 71 C.2d 220, 226, 77 C.R. 816, 454 P.2d 712; *Sheehan v. Division of Motor Vehicles of Calif.* (1934) 140 C.A. 200, 202, 35 P.2d 359.) However, decisions of the United States Supreme Court imposed limitations on the states' power in this area:

(a) The provision that a discharge in bankruptcy did not relieve the judgment debtor from requirements of the law (former Veh.C. 16372) was at first upheld. (See *Reitz v. Mealey* (1941) 314 U.S. 33, 62 S.Ct. 24, 27, 86 L.Ed. 21, 24 [Arizona law]; *Kesler v. Department of Public Safety, Financial Responsibility Division of Utah* (1962) 369 U.S. 153, 82 S.Ct. 807, 819, 7 L.Ed.2d 641, 655 [Utah law].) But the *Kesler* and *Reitz* approach was described as "aberrational" in *Perez v. Campbell* (1971) 402 U.S. 637, 650, 91 S.Ct. 1704, 1712, 29 L.Ed.2d 233, 243, with the court holding that the provision (in the Arizona law) was in conflict with the federal Bankruptcy Act and was invalid under the Supremacy Clause of the United States Constitution. (See 7 *Summary* (10th), *Constitutional Law*, §8.)

(b) A Georgia provision for suspension after a claim for damages was filed by the allegedly injured party, prior to either an administrative or a judicial hearing on the issue of fault, was held in *Bell v. Burson* (1971) 402 U.S. 535, 91

S.Ct. 1586, 1589, 29 L.Ed.2d 90, 95, to deny procedural due process. Subsequently, the provisions of the California statute for prejudgment suspension (requiring a prior determination by the Department of Motor Vehicles of a reasonable possibility that a judgment might be recovered) were held unconstitutional in *Rios v. Cozens* (1972) 7 C.3d 792, 799, 103 C.R. 299, 499 P.2d 979, 7 Summary (10th), *Constitutional Law*, §662, because no hearing was provided before suspension. Over 20,000 persons demanded hearings in reliance on *Rios* (see 6 *Pacific L. J.* 340), and former Veh.C. 16080.5 was enacted in 1973 to suspend all proceedings pending the outcome of review of *Rios* by the United States Supreme Court. (See 4 *Pacific L. J.* 565.) That Court, however, remanded the case to the California court because it was not clear whether the decision rested exclusively on the United States Constitution. (*Department of Motor Vehicles v. Rios* (1973) 410 U.S. 425, 93 S.Ct. 1019, 35 L.Ed.2d 398.) On remand, the California court certified that the decision rested on the California Constitution as an independent ground, reinstated the earlier decision in its entirety, and ordered a presuspension hearing. (*Rios v. Cozens* (1973) 9 C.3d 454, 455, 107 C.R. 784, 509 P.2d 696.)

West's Key Number Digest, Automobiles 132

SUPPLEMENT: [This section is current through the latest supplement]



75 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

E. Suspension of Vehicle Driver's License.

2. Enactment of Revised Law.

8 *Witkin Cal. Proc. Enf Judgm* § 438

[§ 438] Enactment of Revised Law.

(1) *In General.* In response to *Rios v. Cozens* (1973) 9 C.3d 454, 107 C.R. 784, 509 P.2d 696, supra, §437, the Financial Responsibility Law provisions governing prejudgment license suspension were substantially revised in 1974. Former Chapter 1 (Former Veh.C. 16000 et seq.) was repealed and replaced by a new Chapter 1 (*Veh.C. 16000* et seq.) and the following principal changes were made:

(a) The reporting requirements were continued, but suspension for failure to report was made mandatory. (See *infra*, §441.)

(b) The security deposit procedure was replaced by a mandatory requirement for an approved form of financial responsibility. (See *infra*, §439.)

(c) The registration suspension provisions were repealed. (See Stats. 1974, Chap. 1409, §8.)

In response to *Perez v. Campbell* (1971) 402 U.S. 637, 650, 91 S.Ct. 1704, 29 L.Ed.2d 233, supra, §437, former Veh.C. 16372, denying relief from suspension for a discharge in bankruptcy, was repealed in 1973. In 1974, a variety of technical and conforming changes were made in the provisions governing postjudgment suspension (*Veh.C. 16250* et seq.). (See Stats. 1974, Chap. 1409, §8; on suspension following unsatisfied judgment, see *infra*, §444.) (For further discussion of Financial Responsibility Law, see 2 *Summary* (10th), *Insurance*, §14.)

The Uniform Aircraft Financial Responsibility Act (*Pub.Util.C. 24230* et seq.), adopted in 1968, contains similar reporting and security requirements for aircraft accidents. (See *Pub.Util.C. 24300* et seq.)

(2) *No Fault Approach.* In enacting the revised Financial Responsibility Law, the Legislature announced its finding that "as a result of the difficulty of ascertaining a likelihood of fault in connection with vehicle operation, the number of financially irresponsible motor vehicle owners and operators has increased dramatically. The Legislature further finds that such fault determinations, and the costs associated therewith, do not further the purpose of the financial responsibility laws. Therefore, the Legislature declares that it is the policy of this state that those owning or operating motor vehicles on the streets or highways of this state *shall be financially capable of providing monetary protection to*

those suffering injury to their person or property by reason of the ownership or use of such vehicles *without regard to the negligence, liability, carelessness, or culpability of the owners or operators* thereof, and further, that such capability shall be deemed a concurrent responsibility of such motor vehicle ownership or operation. The Legislature further declares that it is the public policy of this state that those owning or operating motor vehicles on the streets or highways thereof shall evidence such financial capability by the methods specified in this act." (Stats. 1974, Chap. 1409, §1; see *State Farm Mut. Auto. Ins. Co. v. Haight* (1988) 205 C.A.3d 223, 232, 252 C.R. 162 [automobile financial responsibility law must be construed to foster its main objective of providing monetary protection to those who suffer great injury through negligent use of highways by others].)

(3) *Constitutionality*. The constitutionality of the revised law was upheld in *Anacker v. Sillas* (1976) 65 C.A.3d 416, 135 C.R. 537. A's license was suspended on a finding that he was involved in a motor vehicle accident in which he suffered bodily injury. He contended that to require proof of financial responsibility without a showing of fault on his part was a denial of equal protection, and the trial judge, agreeing, construed the statute as requiring property damage or bodily injury to another person. *Held*, reversed.

(a) The requirement of financial responsibility is imposed not only on negligent drivers but on all owners and drivers; and involvement in the accident does not create the obligation, but "merely provides the occasion for demonstrating that a preexisting obligation has been satisfied." (65 C.A.3d 422.) The driving privilege is not a "fundamental right," and a classification requiring a showing of financial responsibility based on involvement in an accident is not a "suspect classification," so as to demand heightened judicial scrutiny in the face of an equal protection claim. (65 C.A.3d 423.) Therefore, the court must invest the challenged legislation with a presumption of constitutionality and require only that the distinctions drawn bear some rational relationship to a conceivably legitimate state purpose. Although compliance with the law as a condition to issuance of a license might be more effective than the "random spot-check" at the time of an accident, the legislative scheme is not irrational. (65 C.A.3d 423.)

(b) The reference to "any person" shows a clear legislative intent to include the driver himself. "Admittedly, the Legislature could have narrowed its sampling of drivers in a number of ways, including one which would exclude respondent and others similarly situated from the category who must prove financial responsibility. It can still do so. But until that time even the person who suffers bodily injury in a motor vehicle accident may be obliged to demonstrate his financial responsibility." (65 C.A.3d 425.)

SUPPLEMENT: [This section is current through the latest supplement]



76 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

E. Suspension of Vehicle Driver's License.

3. Evidence of Financial Responsibility.

8 *Witkin Cal. Proc. Enf Judgm* § 439

[§ 439] Evidence of Financial Responsibility.

(1) *Requirement of Establishing Financial Responsibility.* Every driver and every owner of a motor vehicle must at all times be able to "establish financial responsibility" and must carry in the vehicle evidence of financial responsibility (*Veh.C. 16020*) and, if involved in an accident, must "establish evidence of financial responsibility" (*Veh.C. 16050*). (See *People v. Latif* (1995) 39 C.A.4th Supp. 1, 3, 46 C.R.2d 423 [*Veh.C. 16020* does not require motor vehicle drivers and owners to carry evidence that insurance policy is still in effect; evidence of insurer's name and policy number is sufficient].)

(2) *Methods of Establishing Financial Responsibility.* Financial responsibility is established by any of the following methods, which are exclusive (see *Ruttenberg v. Department of Motor Vehicles* (1987) 194 C.A.3d 1277, 1283, 240 C.R. 249):

(a) Self-insurance. (*Veh.C. 16021(a)*; on evidence, see *Veh.C. 16052, 16053*.) (See *Pacific Intermountain Express v. National Union Fire Ins. Co.* (1984) 151 C.A.3d 777, 782, 198 C.R. 897 [self-insurer is not subject to rights and duties of insurers or insurance policyholders under Insurance Code].)

(b) An insurance policy or bond complying with the requirements of the Financial Responsibility Law and covering the driver for the vehicle involved in the accident. (*Veh.C. 16021(b)*; on evidence, see *Veh.C. 16050.5, 16054, 16055*.) (See *State Farm Fire & Cas. Co. v. Superior Court* (1989) 215 C.A.3d 1455, 1468, 264 C.R. 512 [distinguishing requirements for automobile liability insurance and motor vehicle liability insurance]; 22 *Pacific L. J.* 743.)

(c) Public ownership. (*Veh.C. 16021(c)*; on evidence, see *Veh.C. 16051*.)

(d) A cash deposit. (*Veh.C. 16021(d)*; on evidence, see *Veh.C. 16054.2(a)*; on refund of deposit, see *Veh.C. 16027*.)

(e) An insurance policy issued by a charitable risk pool. (*Veh.C. 16021(e)*; on evidence and policy requirements, see *Veh.C. 16054.2(b)*.)

(f) Any other method approved by the Department of Motor Vehicles. (*Veh.C. 16021(f)*.)

(3) *Production of Evidence of Financial Responsibility on Demand of Peace Officer or Traffic Collision Investigator.* Generally, every driver of a motor vehicle must provide evidence of financial responsibility for the vehicle on demand of a peace officer when the officer issues a citation to the driver for violation of the Vehicle Code or a local ordinance adopted pursuant to the Code. This evidence must also be produced on request of a peace officer or traffic collision investigator who is summoned to the scene of an accident in which the driver is involved. The evidence must show that the financial responsibility is in effect at the time the demand is made. (*Veh.C. 16028.*) Violation of *Veh.C. 16028* is an infraction, punishable by fine and impoundment of the vehicle. (*Veh.C. 16029.*) It is a misdemeanor, punishable by fine or imprisonment or both, to knowingly provide false evidence of financial responsibility when required to give that evidence pursuant to *Veh.C. 16028.* (*Veh.C. 16030;* on suspension or restriction of license for giving false evidence, see *infra*, §443.)

SUPPLEMENT: [This section is current through the latest supplement]



77 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

E. Suspension of Vehicle Driver's License.

4. Report of Accident.

8 *Witkin Cal. Proc. Enf Judgm* § 440

[§ 440] Report of Accident.

(1) *In General.* Generally, a driver who is involved in an accident on a street or highway or in a reportable off-highway accident, in which property damage to any one person exceeds \$ 750, or in which anyone is injured or killed, must report the accident on a prescribed form to the Department of Motor Vehicles within 10 days. The report may be made either personally or through an insurance agent, broker, or legal representative, and must include the name and address, if available, of anyone involved in the accident complaining of bodily injury. (*Veh.C. 16000(a)*); see *Veh.C. 16000.1* [defining "reportable off-highway accident"]; *Veh.C. 16001* [owner is deemed driver of driverless runaway vehicle]; *Kruger v. Department of Motor Vehicles (1993) 13 C.A.4th 541, 548, 16 C.R.2d 584* [reporting requirements of *Veh.C. 16000* do not violate privilege against self-incrimination].) A report is not required if the vehicle involved in the accident is publicly owned or leased. (*Veh.C. 16000(b)*.) The report is for the confidential use of the department, but upon request, the department must disclose certain information from the report to persons having a proper interest. (*Veh.C. 16005*.)

(2) *Physically Incapacitated Driver.* If the driver is physically incapacitated, the owner must report the accident. (*Veh.C. 16003*.)

(3) *Vehicle of Employer.* Employee drivers must, within 5 days, report the accident to their employers, who are in turn required to report to the department. Public, self-insured, and adequately insured or bonded employers are exempt. (*Veh.C. 16002(a)*); see *Veh.C. 16002(b)* [reporting where accident involves public transit vehicle].)

(4) *Effect of Failure To Report.* Generally, the department must suspend the driving privilege of persons failing to make a required report. (*Veh.C. 16004*.) (See *10 Pacific L. J. 540*.) If, however, none of the parties involved has reported the accident to the department within 1 year following its date, the department is not required to file a report on the accident and the driver's license suspension requirements of *Veh.C. 16004* and *Veh.C. 16070* (*infra*, §441) do not apply. (*Veh.C. 16000(c)*.)

SUPPLEMENT: [This section is current through the latest supplement]



78 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

E. Suspension of Vehicle Driver's License.

5. Suspension for Failure To Provide Evidence of Financial Responsibility.

a. Duration and Scope.

8 *Witkin Cal. Proc. Enf Judgm § 441*

[§ 441] Duration and Scope.

(1) *In General.* The Department of Motor Vehicles *must suspend* the driving privilege of a driver who is involved in an accident described in *Veh.C. 16000* (see *supra*, §440) and who fails to provide evidence of financial responsibility as required by *Veh.C. 16020* (see *supra*, §439) at the time of the accident. (*Veh.C. 16070(a)*; see *Veh.C. 16071* [requiring suspension in California following suspension in another state on grounds that would result in suspension under California law]; 2 *A.L.R.5th* 725 [validity and application of statutes requiring conditions for reinstatement of suspended license].)

(2) *Notice to Driver and Commencement of Suspension.* Whenever the department receives an accident report alleging noncompliance with *Veh.C. 16020* at the time of the accident, it must immediately mail to the driver a notice of its intent to suspend the driving privilege and must suspend the privilege 30 days after mailing the notice, unless the driver has established evidence of financial responsibility at the time of the accident. The notice must inform the driver of the action taken and of the right to a hearing under *Veh.C. 16075* (see *infra*, §442). (*Veh.C. 16070(b)*.) The department must also notify every person whose license is suspended of the right to apply for a restricted driving privilege under *Veh.C. 16072* (see *infra*, this section). (*Veh.C. 16076*.) (On notice and hearing generally, see *infra*, §442.)

(3) *Duration of Suspension.* The suspension lasts for 1 year from the date suspension is actually commenced and continues beyond that date until the driver or owner files proof of financial responsibility. If proof is not maintained for 3 years, suspension may be reinstated. (*Veh.C. 16072(a)*.)

(4) *Exception for Employment Purposes.* In lieu of suspension, a person's driving privilege may be restricted to necessary travel to and from his or her place of employment and to driving required in the course of employment, if driving a vehicle is necessary to perform the duties of the person's primary employment. The restricted privilege may be granted on application by a driver who files and maintains proof of financial responsibility and pays a penalty of \$ 250. (*Veh.C. 16072(a)*; see *Veh.C. 16072(d)* [exception for employment purposes does not apply to commercial driver's license holder unless that person surrenders license and is issued noncommercial class C or M license]; 17 *Pacific L. J.* 803.)

Further, even though a person's individual driving privilege is suspended, the privilege to drive in the course of employment ordinarily may not be suspended if the person drives for compensation, the person's occupation requires use of a vehicle, and the vehicle is not registered in the person's own name. However, this exception does not apply to a commercial driver's license holder; a commercial driver's license holder whose driving privilege is otherwise suspended may not operate a commercial motor vehicle. (*Veh.C. 16073(b)*.)

(5) *Exception for Transporting Minor Dependent to School.* In lieu of suspension, a person's driving privilege may be restricted to necessary travel to transport a minor dependent of the driver's immediate family to and from an institution of primary or secondary instruction. The chief administrative officer or principal of the institution must certify in writing that the minor is enrolled in the institution, and that neither public transportation nor school bus is available to transport the minor. The restricted privilege may be granted on application by a driver who files and maintains proof of financial responsibility and pays a penalty of \$ 250. (*Veh.C. 16072(a)*; see 22 *Pacific L. J.* 747.)

(6) *Exception for Receiving Health Care.* In lieu of suspension, the driving privilege of a person who has serious health problems, or who has an immediate family member with serious health problems, may be restricted to travel for the purpose of receiving medical or mental health treatments of a prolonged and repetitive nature for the driver or the immediate family member if there is no other suitable means of transportation available. The restricted privilege may be granted on application by a driver who files and maintains proof of financial responsibility and pays a penalty of \$ 250. (*Veh.C. 16077(a)*; see *Veh.C. 16077(b)* [specifying documentation of health needs to be provided in application]; *Veh.C. 16077(e)* [exception for receiving health care does not apply to commercial driver's license holder unless that person surrenders license and is issued noncommercial class C or M license].)

(7) *No Exception for Good-Faith Belief of Insurance.* An uninsured driver who mistakenly, but in good faith, believes that a loaned vehicle is covered by the owner's insurance may nevertheless have his or her license suspended under *Veh.C. 16070* for failure to prove financial responsibility. (*Dowell v. Department of Motor Vehicles (1990) 220 C.A.3d 1567, 1570, 270 C.R. 240.*)

(8) *Effect of Postjudgment Suspension.* A suspension under *Veh.C. 16070* must be terminated after 1 year of actual suspension if the driving privilege is suspended following an unsatisfied judgment (see *infra*, §444) arising out of the same accident. However, the first suspension may be reinstated if the second suspension is later set aside for a reason other than satisfaction of the judgment. (*Veh.C. 16072(b)*; see 19 *Pacific L. J.* 707.)

West's Key Number Digest, Automobiles 144.1(4)

SUPPLEMENT: [This section is current through the latest supplement]



79 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

E. Suspension of Vehicle Driver's License.

5. Suspension for Failure To Provide Evidence of Financial Responsibility.

b. Notice and Hearing.

8 *Witkin Cal. Proc. Enf Judgm* § 442

[§ 442] Notice and Hearing.

(1) *Notice of Intent To Suspend.* The driving privilege may not be suspended under *Veh.C. 16070* et seq. until 30 days after the Department of Motor Vehicles notifies the driver or owner of its intent to suspend and advises the owner or driver of the right to a hearing. (*Veh.C. 16075(a).*)

(2) *Demand for Hearing.* Within 10 days of receiving notice of the department's action, the driver or owner may make a written demand for a hearing. Failure to make a demand constitutes a waiver of the right to a hearing. (*Veh.C. 16075(b)*; see *10 Pacific L. J. 540.*)

(3) *Time and Place of Hearing.* If a timely request for a hearing has been made, the department must hold the hearing before the effective date of the suspension, which is 30 days after the department mails notice of its intent to suspend driving privileges (see *Veh.C. 16070(b)*, supra, §441). (*Veh.C. 16075(c)*; see *Woods v. Department of Motor Vehicles (1989) 211 C.A.3d 1263, 1266, 259 C.R. 885* [requirement of former *Veh.C. 16075(b)* that hearing be held within 30 days of request was directory only; failure to comply did not invalidate suspension].) The hearing must be held in the county of residence of the driver or owner, pursuant to the procedure prescribed by *Veh.C. 14100* et seq. (hearings on license suspension or revocation). (*Veh.C. 16075(e).*)

(4) *Issues and Evidence.* The issues are (a) whether the accident resulted in property damage in excess of \$ 750, personal injury, or death, and (b) whether the driver or owner has established proof of responsibility at the time of the accident. (*Veh.C. 16075(c).*)

A driver's own accident report (see supra, §440) may be used to establish a prima facie case justifying suspension. (*Fahlgren v. Department of Motor Vehicles (1986) 186 C.A.3d 930, 936, 231 C.R. 229.*)

(5) *Stay of Suspension Where Hearing Is Not Timely Held.* If the department does not conduct a hearing within the 30-day period provided by *Veh.C. 16070(b)* (see supra, §441), it must stay the effective date of the order of suspension pending a determination. (*Veh.C. 16075(d).*)

(6) *Time for Decision.* The department must render a decision within 15 days of the conclusion of the hearing. (*Veh.C. 16075(f).*) In *Austin v. Department of Motor Vehicles (1988) 203 C.A.3d 305, 249 C.R. 618*, following a suspension hearing, the referee announced that she was recommending that defendant department reimpose plaintiff's license suspension, which had been stayed, and advised plaintiff that he would receive formal notice of defendant's decision by mail. More than 30 days after the hearing, plaintiff received written notice of reimposition of the suspension. *Held*, decision set aside.

(a) Defendant failed to comply with the requirement that it render its decision within 15 days after the conclusion of the hearing. "The referee specifically told respondent at the hearing that her findings would be recommended to the department; that decision, therefore, was not final. In fact, the record discloses on March 28, 1986 (16 days after the hearing), a DMV 'reviewer' approved the findings. ... Moreover, we interpret the meaning of 'rendering judgment' to be equivalent to the delivery or notice of the decision. ... Thus rendering judgment is accomplished only when the interested parties are advised of the decision." (*203 C.A.3d 308, 309.*)

(b) Defendant asks "that we deem the section directory because the public interest at stake is so important and respondent has suffered no prejudice." To do so "would eliminate uniformity and certainty in the administrative process and thereby create a far larger problem." (*203 C.A.3d 309, 310.*) (Cf. *Spitze v. Zolin (1996) 48 C.A.4th 1920, 1931, 56 C.R.2d 573* [holding, in unrelated matter (involving time of delivery of laboratory blood-alcohol report to department in license suspension proceeding for driving under the influence), that 15-day period for action was directory rather than mandatory; disagreeing with reasoning of *Austin v. Department of Motor Vehicles*].)

SUPPLEMENT: [This section is current through the latest supplement]



80 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

E. Suspension of Vehicle Driver's License.

6. Suspension for Providing False Evidence of Financial Responsibility.

8 Within Cal. Proc. Enf Judgm § 443

[§ 443] Suspension for Providing False Evidence of Financial Responsibility.

On conviction of a person for knowingly providing false evidence of financial responsibility when required to give that evidence pursuant to *Veh.C. 16028* (see *supra*, §439), the Department of Motor Vehicles must suspend the person's driver's license for 1 year following conviction. The suspension may not be terminated until 1 year has elapsed and until the person files proof of financial responsibility. The suspension must be reinstated if the person fails to maintain proof of financial responsibility for 3 years. (*Veh.C. 16030(a)*.)

In lieu of suspension, a person's driving privilege may be restricted to driving required in the course of employment, if driving a vehicle is necessary to perform the duties of the person's primary employment. The restriction must remain in effect for the period of suspension, and violation of the restriction is further grounds for suspension or revocation of the license. (*Veh.C. 16030(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]



81 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XII. OTHER ACTIONS AND PROCEEDINGS AGAINST DEBTOR

E. Suspension of Vehicle Driver's License.

7. Suspension Following Unsatisfied Judgment.

8 *Within Cal. Proc. Enf Judgm § 444*

[§ 444] Suspension Following Unsatisfied Judgment.

(1) *In General.* The Department of Motor Vehicles must suspend a person's driver's license on receiving a certified copy of a judgment, or a certified copy of the register of actions (or a comparable court record of another jurisdiction) in an action resulting in a judgment for damages, and a certificate of facts relative to the judgment indicating that the person has failed for a period of 30 days to satisfy a judgment rendered against that person. (*Veh.C. 16370*; see *Veh.C. 16251* [provisions for suspension following unsatisfied judgment do not apply to judgment based on statutory liability arising from signing minor's license application]; *Veh.C. 16370.5* [suspension where small claims judgment is unsatisfied].)

(2) *Duration.* The suspension must remain in effect and no license may be issued to the judgment debtor until (a) the judgment is satisfied in full or to the extent of \$ 15,000 for injury or death of one person, \$ 30,000 for injury or death of more than one person, or \$ 5,000 for property damage; and (b) the debtor gives proof of financial responsibility under *Veh.C. 16430* et seq. (*Veh.C. 16371, 16377.*) An insurance policy covering liability for these amounts constitutes sufficient proof of financial responsibility. (*Veh.C. 16430, 16431.*)

(3) *Effect of Subsequent Judgment Not Covered by Proof.* If, following satisfaction of judgment and proof of financial responsibility, another judgment is rendered against the same person for an accident occurring prior to the date of proof, and the person fails to satisfy the second judgment within the specified amounts within 15 days after the judgment is final, the department must again suspend the judgment debtor's license. Another license may not be issued while the second judgment remains unsatisfied. (*Veh.C. 16374.*)

(4) *Relief From Suspension.* A licensee may obtain relief from the suspension penalty by filing with the department an affidavit stating that he or she was insured at the time of the accident, that the insurer was liable to pay the judgment, and the reason, if known, why the insurer failed to do so. (*Veh.C. 16375*; see *Samson v. California (1942) 55 C.A.2d 194, 195, 130 P.2d 452* [requiring, under former law, allegation that insurer was authorized to transact insurance business in California].)

Where the judgment is ordered to be paid in installments, the judgment debtor, if not in default in the installment payments, may have his or her license restored on giving proof of financial responsibility for future damages. (*Veh.C.*

16379.)

After 3 years, the department may relieve the judgment debtor of the penalties and restore his or her privileges on proof of financial responsibility, notwithstanding that the judgment has not been paid or fully satisfied. (*Veh.C. 16482.*)

SUPPLEMENT: [This section is current through the latest supplement]



82 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

1. Action on Judgment.

a. When Action May Be Brought.

8 *Witkin Cal. Proc. Enf Judgm* § 445

[§ 445] When Action May Be Brought.

Generally, there is no right to extraterritorial execution on a judgment; i.e., the levying officer of the state of rendition cannot seize property in another state, and the other state will not issue a writ of execution on the foreign judgment. Hence, an action on the foreign judgment, to obtain a new domestic judgment on which execution may issue, has traditionally been essential to its enforcement. (See *C.C.P. 1913(a)* [judicial record of sister state is only enforceable by action or special proceeding]; *Kahn v. Berman* (1988) 198 C.A.3d 1499, 1506, 244 C.R. 575; *Rest.2d, Conflict of Laws* §§99, 100, Comment b; *Rest.2d, Judgments* §18, Comment e; 13 (Part I) U.L.A. (Master Ed.), p. 155 [Uniform Enforcement of Foreign Judgments Act; applicable in number of states, not including California]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1844 et seq.; 30 *Am.Jur.2d* (2005 ed.), *Executions and Enforcement of Judgments* §664 et seq.; 15A *Am.Jur. P.P. Forms* (2005 ed.), *Judgments* 460 et seq.; 10 *A.L.R.2d* 435 [inclusion in domestic judgment or record, in action on judgment of sister state, of findings respecting cause of action, on which judgment in sister state was rendered]; 39 *A.L.R.2d* 1232 [validity and enforceability of judgment entered in sister state under warrant of attorney to confess judgment]; 60 *A.L.R.2d* 1024 [identification of parties in action on foreign judgment]; 31 *A.L.R.4th* 706 [validity, construction, and application of Uniform Enforcement of Foreign Judgments Act]; on applicable statute of limitations in action on foreign judgment, see 3 *Cal. Proc.* (5th), *Actions*, §§53 et seq., 675; on full faith and credit given to foreign judgments, see 7 *Summary* (10th), *Constitutional Law*, §31 et seq.; on enforcement of sister state judgments under Sister State Money-Judgments Act, see *infra*, §449 et seq.)

Actions on foreign judgments have most commonly been brought to enforce dissolution or legal separation decrees containing orders for spousal or child support. (See *Biewend v. Biewend* (1941) 17 C.2d 108, 110, 109 P.2d 701; *Worthley v. Worthley* (1955) 44 C.2d 465, 468, 283 P.2d 19; *Tomkins v. Tomkins* (1948) 89 C.A.2d 243, 250, 200 P.2d 821; *Rall v. Lovell* (1951) 105 C.A.2d 507, 510, 233 P.2d 681; *Holt v. Parmer* (1951) 106 C.A.2d 329, 332, 235 P.2d 43; *Petersen v. Petersen* (1972) 24 C.A.3d 201, 206, 100 C.R. 822 [California could apply its own more liberal law on modification of Illinois divorce decree]; *In re Marriage of Taylor* (1981) 122 C.A.3d 209, 213, 175 C.R. 716 [Missouri child support order; father's obligation under Missouri law to support child until age 21 applied, rather than California termination age of 18]; 29 *Cal. L. Rev.* 754; 41 *Cal. L. Rev.* 692; 3 *U.C.L.A. L. Rev.* 246; 24 *Am.Jur.2d* (1998 ed.), *Divorce and Separation* §1186 et seq.; 8C *Am.Jur. P.P. Forms* (2006 ed.), *Divorce and Separation* §564 et seq.; 10

Summary (10th), *Parent and Child*, §375 et seq.; 11 *Summary* (10th), *Husband and Wife*, §§344, 345.) The interstate enforcement of support obligations and custody and visitation orders is now largely the subject of statute. (See *Family C. 4900* et seq., supra, §407 et seq. [Uniform Interstate Family Support Act]; *Family C. 3400* et seq., 10 *Summary* (10th), *Parent and Child*, §158 et seq. [Uniform Child Custody Jurisdiction and Enforcement Act].)

Other judgments were involved in the following decisions: *Redwood Inv. Co. of Stithton, Kentucky v. Exley* (1923) 64 C.A. 455, 459, 221 P. 973, 2 Cal. Proc. (5th), *Jurisdiction*, §238 [action on Kentucky decree directing conveyance of land in California]; *Tornquist v. Johnson* (1932) 124 C.A. 634, 636, 13 P.2d 405 [Indiana money judgment]; *Gill v. Wolf* (1948) 85 C.A.2d Supp. 817, 818, 190 P.2d 52 [action on deficiency judgment rendered in Illinois trust deed foreclosure]; *Weir v. Corbett* (1964) 229 C.A.2d 290, 292, 40 C.R. 161, infra, §448 [Washington money judgment]; *Sanpietro v. Collins* (1967) 250 C.A.2d 203, 204, 58 C.R. 219 [Arizona money judgment].

Sister state *nonmoney* judgments are not within the scope of the Sister State Money-Judgments Act (C.C.P. 1710.10 et seq., infra, §449 et seq.) and are generally enforceable, if at all, only by an independent action on the judgment. (See C.C.P. 1710.10(c), infra, §450; C.C.P. 1710.65, infra, §451.)

West's Key Number Digest, Judgment 815 et seq., 925

SUPPLEMENT: [This section is current through the latest supplement]

Spousal or child support orders: See 24A *Am.Jur.2d* (2008 ed.), *Divorce and Separation* §1117 et seq.



83 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

1. Action on Judgment.

b. Reasons for Denying Enforcement.

1. Judgment Not Final and Unconditional.

8 *Witkin Cal. Proc. Enf Judgm* § 446

[§ 446] Judgment Not Final and Unconditional.

(1) *In General.* Ordinarily, only a valid civil judgment that is final, certain, and unconditional may be the basis for an action in another state to enforce it. (See *Rest.2d, Conflict of Laws* §107 et seq.; *47 Am.Jur.2d* (2006 ed.), *Judgments* §767 et seq.; on what constitutes final judgment, see *7 Cal. Proc.* (5th), *Judgment*, §1.) However, a foreign support order is enforceable as a matter of comity, even though it is subject to modification. (See *Worthley v. Worthley* (1955) *44 C.2d* 465, 472, 283 P.2d 19; *Farmers & Merchants Trust Co. of Chambersburg v. Madeira* (1968) *261 C.A.2d* 503, 507, 68 C.R. 184; 11 *Summary* (10th), *Husband and Wife*, §344.)

(2) *Effect of Appeal.* In *Little v. Stevens* (1972) *23 C.A.3d* 112, 99 C.R. 885, plaintiff obtained a money judgment against defendant in Oklahoma, and defendant appealed without a stay bond. Under Oklahoma law, the judgment was not stayed and execution could be had. Plaintiff then brought this action in California to enforce the Oklahoma judgment. *Held*, summary judgment for plaintiff affirmed. Under *C.C.P. 1913* (see supra, §445), and *Taylor v. Shew* (1870) *39 C.* 536, 593 (decided before statute's enactment), an action can be maintained in California on a foreign judgment despite a pending appeal, where there is no stay in the foreign appeal. This holding is in accord with the weight of the limited authority on the point and is in agreement with *Rest.2d, Conflict of Laws* §107, Comment e, and §112, *Comment b.* (*23 C.A.3d* 113.) (See *Brinker v. Superior Court* (1991) *235 C.A.3d* 1296, 1300, *1 C.R.2d* 358 [New Jersey judgment was entitled to full faith and credit despite pending appeal]; *2 A.L.R.3d* 1384 [judgment subject to appeal as entitled to full faith and credit].)

The court in *Little v. Stevens* expressed no opinion on whether execution on the present California judgment should be stayed until the termination of the Oklahoma appeal. This question was answered in *Stevens v. Superior Court* (1972) *28 C.A.3d* 1, *104 C.R.* 369. After affirmance of plaintiff's judgment on appeal, defendant sought a stay of execution, on adequate security, pending the decision in the Oklahoma appeal from the underlying judgment. The lower court refused a stay, but the Court of Appeal issued a writ of mandamus to compel granting a stay on an adequate undertaking. (a) Both the case law of other jurisdictions and *Rest.2d, Conflict of Laws* §107, Comment e, and §112, Comment b, support a postjudgment stay of execution in this situation. (b) A stay pending appeal from the foreign judgment is expressly authorized by statute (former C.C.P. 1713.6, *infra*, §462; now *C.C.P. 1720*, *infra*, §466). (c) The same is true as to local

judgments, under *C.C.P. 917.1* (see 9 *Cal. Proc. (5th), Appeal*, §230 et seq.). Thus, California policy "is to permit a judgment debtor to stay enforcement of the judgment pending appellate review if he provides an undertaking to secure payment in the event of affirmance." (28 *C.A.3d 4*.)

Under the Sister State Money-Judgments Act, where an appeal from a sister state judgment is pending or may be taken in the state that originally rendered the judgment, a stay *must* be granted. (*C.C.P. 1710.50(a)*, *infra*, §461.)

SUPPLEMENT: [This section is current through the latest supplement]



84 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

1. Action on Judgment.

b. Reasons for Denying Enforcement.

2. Other Reasons.

8 *Witkin Cal. Proc. Enf Judgm* § 447

[§ 447] Other Reasons.

Enforcement may be denied for reasons other than lack of finality (see *supra*, §446) in the following situations:

(1) *Judgment subject to equitable relief in state of rendition.* An example is a judgment obtained by extrinsic fraud, subject to being set aside in an independent action in equity in the state of rendition. (See *Rest.2d, Conflict of Laws* §115; 55 *A.L.R.2d* 673 [fraud as defense to action on judgment of sister state]; 8 *Cal. Proc. (5th), Attack on Judgment in Trial Court*, §215 et seq.)

(2) *Judgment rendered in excess of jurisdiction.*(See *Bierl v. McMahon (1969) 270 C.A.2d 97, 101, 75 C.R. 473, 2 Cal. Proc. (5th), Jurisdiction*, §338; *Commercial Nat. Bank of Peoria v. Kermeen (1990) 225 C.A.3d 396, 398, 275 C.R. 122, infra*, §459; 2 *Cal. Proc. (5th), Jurisdiction*, §298 et seq.; 7 *Cal. Proc. (5th), Judgment*, §343.)

(3) *Penal judgment.* (See *Farmers & Merchants Trust Co. of Chambersburg v. Madeira (1968) 261 C.A.2d 503, 508, 68 C.R. 184* [principle recognized but held inapplicable]; *Rest.2d, Conflict of Laws* §120, Comment d ["uncertain" whether full faith and credit requires state to enforce penal judgment of sister state]; 2 *Cal. Proc. (5th), Jurisdiction*, §373.)

(4) *Judgment not enforceable in state of rendition.* Under the Full Faith and Credit Clause, the judgment will not be given greater effect in the state of the forum than in the state of rendition. (See *Gilmer v. Spitalny (1948) 84 C.A.2d 39, 44, 189 P.2d 744* [Arizona judgment against husband and wife on community debt was not enforceable in California as personal judgment against wife]; *Rall v. Lovell (1951) 105 C.A.2d 507, 510, 233 P.2d 681* [Montana child support judgment]; *St. Sava Mission Corp. v. Serbian Eastern Orthodox Diocese for the United States of America & Canada (1990) 223 C.A.3d 1354, 1374, 273 C.R. 340* [Illinois judgment purporting to vest title in church was not entitled to full faith and credit, where judgment was void as to California corporation, under Illinois law, for failure to join it as indispensable party]; 7 *Summary (10th), Constitutional Law*, §38.)

(5) *Interference with important interests of forum state.* Generally, the forum state must give full faith and credit to

a sister state judgment, regardless of the forum state's public policy on the underlying claim. (See *Rest.2d, Conflict of Laws §117*; 7 *Summary (9th), Constitutional Law, §27*.) However, a sister state judgment need not be enforced if it would involve an improper interference with important interests of the enforcing state. (See *Rest.2d, Conflict of Laws §103*.) In *Medical Legal Consulting Services v. Covarrubias (1991) 234 C.A.3d 80, 285 C.R. 559*, the court recognized this rule but refused to apply it where a money judgment was challenged on the ground of failure to appoint a guardian ad litem for a minor defendant. This "fundamental interest" exception has not been applied to money judgments rendered in civil suits, and, even if it were applicable to those judgments, the appointment of a guardian ad litem is not a fundamental interest that would justify denial of full faith and credit. (*234 C.A.3d 91*.) (See *Metropolitan Creditors Service of Sacramento v. Sadri (1993) 15 C.A.4th 1821, 1824, 19 C.R.2d 646* [forum state may refuse to entertain lawsuit on sister state *cause of action* if its enforcement is contrary to strong public policy of forum state]; *Smith v. Superior Court (1996) 41 C.A.4th 1014, 1025, 49 C.R.2d 20, 6 Cal. Proc. (5th), Provisional Remedies, §398* [although "public policy" exception may not prevent enforcement of sister state money judgment, because underlying cause of action is merged into judgment, it may prevent enforcement of sister state injunction]; 87 *Proof of Facts 3d 347* [enforceability of international gambling debts].)

(6) *Lack of controversy*. (See *Young v. Young (1950) 100 C.A.2d 85, 86, 223 P.2d 25* [demurrer was properly sustained in suit to "establish" Washington divorce decree where complaint did not allege that defendant had failed to comply with foreign decree].)

(7) *Plaintiff's misconduct*. (See *Kubon v. Kubon (1958) 51 C.2d 229, 232, 331 P.2d 636* [plaintiff seeking to enforce foreign support order had violated local custody and restraining orders]; *11 Hastings L. J. 68 [Kubon]*; 7 *U.C.L.A. L. Rev. 124* [same].)

SUPPLEMENT: [This section is current through the latest supplement]



85 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

1. Action on Judgment.

c. Effect of Expiration or Revival of Judgment.

8 *Witkin Cal. Proc. Enf Judgm* § 448

[§ 448] Effect of Expiration or Revival of Judgment.

(1) *Expiration.* An action on a foreign judgment commenced before the judgment expires under the rendition state's limitation period can be pursued to judgment in California. In *Weir v. Corbett* (1964) 229 C.A.2d 290, 293, 40 C.R. 161, this rule was held applicable to an action on a Washington judgment, notwithstanding language in the Washington statute purporting to prohibit enforcement of the judgment after the period had run. (See 3 *Cal. Proc. (5th), Actions*, §57.)

(2) *Revival.* A foreign judgment may be revived in the state of rendition, and thereafter an action may be maintained on it in another state, despite the running of the forum state's statute of limitations on the original judgment, if the revival proceeding is regarded by the state of rendition as creating a new judgment. (See *Union Nat. Bank of Wichita, Kansas v. Lamb* (1949) 337 U.S. 38, 69 S.Ct. 911, 913, 93 L.Ed. 1190, 1194; 3 *Cal. Proc. (5th), Actions*, §60.)

West's Key Number Digest, Judgment 930

SUPPLEMENT: [This section is current through the latest supplement]



86 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

a. In General.

1. Nature and Purpose.

8 *Witkin Cal. Proc. Enf Judgm* § 449

[§ 449] Nature and Purpose.

The traditional method of an action to enforce a sister state judgment (see *supra*, §445) has been criticized as time-consuming and inefficient. The 1974 Sister State Money-Judgments Act (SSMJA) (*C.C.P. 1710.10* et seq.) provides a simple alternative method of registration for enforcement, while affording the judgment debtor an opportunity to present available defenses. (See 11 *Cal. Law Rev. Com. Reports*, p. 457 et seq.; *Tom Thumb Glove Co. v. Han* (1978) 78 *C.A.3d* 1, 7, 144 *C.R.* 30, *infra*, §454; *Krofcheck v. Ensign Co.* (1980) 112 *C.A.3d* 558, 568, 569, 169 *C.R.* 516 [sister state judgment proceeding is in legal effect action on judgment]; *Liebow v. Superior Court* (1981) 120 *C.A.3d* 573, 575, 175 *C.R.* 26, quoting the text; *Kahn v. Berman* (1988) 198 *C.A.3d* 1499, 1507, 244 *C.R.* 575, citing the text; *Aspen Int. Capital Corp. v. Marsch* (1991) 235 *C.A.3d* 1199, 1203, 286 *C.R.* 921, citing the text; *Bank One Texas v. Pollack* (1994) 24 *C.A.4th* 973, 978, 29 *C.R.2d* 510 [act simply permits registration of sister state judgment so it may be enforced against property located in California]; *Yu v. Signet Bank/Virginia* (1999) 69 *C.A.4th* 1377, 1395, 82 *C.R.2d* 304 [*C.C.P. 1710.10* et seq. do not govern conduct outside state; California credit card holders had no cause of action against Virginia banks that allegedly violated statutes by serving wage garnishment order in Virginia, rather than domesticating judgment in California]; *Rutter Group*, 2 *Enforcing Judgments and Debts* §6:1800 et seq.; *C.E.B.*, 1 *Debt Collection Practice* 2d, §7.45 et seq.; 6 *Pacific L. J.* 207.) (For restrictions on entry of judgment, see *infra*, §451; on defenses to enforcement, see *infra*, §459; on applicable statute of limitations, see 3 *Cal. Proc. (5th), Actions*, §§53 et seq., 675.)

A constitutional challenge on the ground that the statute fails to provide for notice and hearing prior to entry of the judgment by the clerk (see *infra*, §456) was rejected in *Magalnick v. Magalnick* (1979) 98 *C.A.3d* 753, 758, 159 *C.R.* 889. In any event, the judgment debtor may move to vacate the judgment and set up defenses that would be available if the judgment creditor filed an action. (*C.C.P. 1710.40*, *infra*, §459.)

SUPPLEMENT: [This section is current through the latest supplement]



87 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

a. In General.

2. Scope.

8 *Witkin Cal. Proc. Enf Judgm* § 450

[§ 450] Scope.

(1) *What Constitutes Sister State Judgment.* For purposes of *C.C.P. 1710.10* et seq., a sister state judgment is that part of any judgment, decree, or order of a court of a state of the United States, other than California, that requires the payment of money. (*C.C.P. 1710.10(c)*.) (See *Richard A. Viguerie Co. v. Noble (1980) 101 C.A.3d 62, 64, 161 C.R. 435* ["sister state judgment" includes judgment of court of District of Columbia].) Any portion of the judgment that requires something other than the payment of money must be enforced by a separate action (see *supra*, §445). (Law Rev. Com. Comment to *C.C.P. 1710.10*; see *C.C.P. 1710.65*, *infra*, §451 [entry of judgment under *C.C.P. 1710.10* et seq. does not limit right to bring action based on part of judgment not requiring payment of money].) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1802 et seq.; *C.E.B.*, 1 *Debt Collection Practice* 2d, §7.45.)

(2) *Act Does Not Apply to Support Orders.* The Sister State Money-Judgments Act does not apply to support orders as defined by *Family C. 155* (see 11 *Summary* (10th), *Husband and Wife*, §4). (*C.C.P. 1710.10(c)*.) Support orders are enforceable under the Uniform Interstate Family Support Act (UIFSA) (*Family C. 4900* et seq.) (see *supra*, §407 et seq.). Formerly, support orders were enforceable under the Uniform Reciprocal Enforcement of Support Act (URESAs) (former *Family C. 4800* et seq.).

In *Neuman v. Barbera (1985) 164 C.A.3d 437, 210 C.R. 556*, when URESAs was still in effect, plaintiff registered a Pennsylvania judgment for accrued child support arrearages under the Sister State Money Judgments Act (SSMJA). Defendant's motion to vacate the sister state judgment was denied. *Held*, reversed.

(a) The judgment should have been registered under URESAs, allowing defendant to raise equitable defenses not available under SSMJA. Under *C.C.P. 1710.10(c)*, support orders enforceable under URESAs are not enforceable under SSMJA. A literal reading of former *C.C.P. 1653(k)* (now *Family C. 155*) indicates that all support judgments, whether presently due or past due, whether modifiable or final, are enforceable under URESAs. This is "precisely the result the Legislature intended." (*164 C.A.3d 442*.)

(b) URESAs makes it clear that a judgment for support arrearages, despite the fact that it is a nonmodifiable final

judgment for a liquidated sum of money (attributes of judgments traditionally enforced under SSMJA), is to be enforced by an action under URESA. (164 C.A.3d 443, quoting *Morris v. Cohen* (1983) 149 C.A.3d 507, 514, 196 C.R. 834.) *Liebow v. Superior Court* (1981) 120 C.A.3d 573, 175 C.R. 26, holding that URESA is limited to modifiable judgments, and *Fishman v. Fishman* (1981) 117 C.A.3d 815, 173 C.R. 59, holding that a New York judgment awarding a spouse's attorneys' fees and costs, although having "incidents" of a support order, was a nonmodifiable final money judgment for a liquidated sum enforceable under C.C.P. 1710.10 et seq., are disapproved. (164 C.A.3d 443.)

The *Neuman* case was distinguished in *McCallum v. McCallum* (1987) 190 C.A.3d 308, 235 C.R. 396. In 1983, plaintiff had applied to enforce three New York money judgments for spousal and child support and attorneys' fees under the SSMJA. While plaintiff's motion to reconsider the SSMJA judgment was pending, she registered the New York support order under URESA. *Held*, defendant's motion to vacate the registration should have been granted.

(a) The SSMJA judgment was a final adjudication of plaintiff's claims to child and spousal support under the New York judgments and could not be collaterally attacked under URESA. (190 C.A.3d 314.)

(b) At the time of the SSMJA judgment, *Liebow* and *Fishman*, *supra*, provided that SSMJA applied to foreign claims to attorneys' fees, as well as support orders reduced to money judgments, and plaintiff's documents indicated that she intended to litigate all portions of the New York judgments. *Morris* and *Neuman*, *supra*, which were decided later, authorize enforcement under URESA of a support order reduced to a money judgment. Nevertheless, "[a]ssuming that the SSMJA court made an error of substantive law in light of the *Morris* and *Neuman* cases decided after the November 18, 1983, judgment, such error will not support a collateral attack on a final judgment." (190 C.A.3d 315.)

(3) "*Judgment Creditor*" and "*Judgment Debtor*" Defined. For purposes of C.C.P. 1710.10 et seq., "judgment creditor" refers to a person who can bring an action to enforce a sister state judgment (C.C.P. 1710.10(a)), and "judgment debtor" refers to a person against whom an action to enforce a sister state judgment can be brought (C.C.P. 1710.10(b)).

West's Key Number Digest, Judgment 815

SUPPLEMENT: [This section is current through the latest supplement]



88 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

a. In General.

3. Restrictions on Entry of Judgment.

8 *Witkin Cal. Proc. Enf Judgm § 451*

[§ 451] Restrictions on Entry of Judgment.

(1) *In General.* A judgment based on a sister state judgment may not be entered under the Sister State Money-Judgments Act in any of the following situations:

(a) A stay of enforcement of the sister state judgment is currently in effect in the sister state. (*C.C.P. 1710.55(a)*); on stay of enforcement in California where judgment is entered prior to stay in sister state, see *infra*, §461.)

(b) An action based on the sister state judgment is currently pending in a California court. (*C.C.P. 1710.55(b)*.)

(c) A judgment based on the sister state judgment has previously been entered in a proceeding in California. (*C.C.P. 1710.55(c)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1803 et seq.)

(2) *Multiple Money Judgments Are Prohibited.* Unless a money judgment has already been entered under the Act, a traditional action to enforce payment (see *supra*, §445) may be brought. (*C.C.P. 1710.60*.) However, two money judgments may not be obtained in California on the same sister state judgment. (Law Rev. Com. Comments to *C.C.P. 1710.55, 1710.60*.)

(3) *Separate Action Is Permitted To Enforce Nonmoney Portion of Judgment.* The Act is limited to that part of a sister state judgment requiring the payment of money. (See *supra*, §450.) However, entry of a judgment under the Act does not limit the right to bring an action based on the part of a judgment not requiring the payment of money, nor, on the other hand, does bringing such an action limit the right to obtain entry of judgment pursuant to the Act. (*C.C.P. 1710.65*.) In other words, "use of the two separate procedures is not to be regarded as splitting a single cause of action." (Law Rev. Com. Comment to *C.C.P. 1710.65*.)

SUPPLEMENT: [This section is current through the latest supplement]



89 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

a. In General.

4. Effect of Judgment.

8 *Witkin Cal. Proc. Enf Judgm* § 452

[§ 452] Effect of Judgment.

Except as otherwise provided, a judgment entered pursuant to the Sister State Money-Judgments Act has the same effect as an original money judgment of the court and may be enforced or satisfied in like manner. (*C.C.P. 1710.35*.) This provision incorporates the statutes on judgment liens (see *supra*, §64 et seq.), execution (see *supra*, §99 et seq.), and supplemental proceedings (see *supra*, §275 et seq.). (Law Rev. Com. Comment to *C.C.P. 1710.35*.) (See Rutter Group, 2 Enforcing Judgments and Debts §§6:1819, 6:1821; for special provisions regarding execution, see *infra*, §460.)

SUPPLEMENT: [This section is current through the latest supplement]



90 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

b. Application for Entry of Judgment.

1. Jurisdiction and Venue.

8 *Witkin Cal. Proc. Enf Judgm* § 453

[§ 453] Jurisdiction and Venue.

(1) *Jurisdiction.* Enforcement of a sister state money judgment under the Sister State Money-Judgments Act is begun by filing an application for entry of a judgment based on that judgment in the superior court. (*C.C.P. 1710.15(a)*, *1710.20(a)*; see *16 Pacific L. J. 532.*) A case in which the sister state judgment is \$ 25,000 or less is a limited civil case. (*C.C.P. 1710.20(c)*; on limited civil cases, see *2 Cal. Proc. (5th), Courts*, 241.) (See Rutter Group, *2 Enforcing Judgments and Debts* §§6:1808, 6:1809.)

(2) *Venue.* The application must be filed in the county in which the judgment debtor resides or, if no debtor is a resident, in any county in the state, although the proceedings may be transferred under *C.C.P. 392* et seq. (*C.C.P. 1710.20(b)*; see *C.C.P. 396*, *2 Cal. Proc. (5th), Jurisdiction*, §399 et seq. [transfer where court lacks jurisdiction]; on venue generally, see *3 Cal. Proc. (5th), Actions*, §779 et seq.) However, a transfer will not affect the validity of actions already taken. (Law Rev. Com. Comment to *C.C.P. 1710.20.*)

SUPPLEMENT: [This section is current through the latest supplement]



91 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

b. Application for Entry of Judgment.

2. Who May File.

8 *Witkin Cal. Proc. Enf Judgm § 454*

[§ 454] Who May File.

(1) *Filing by Judgment Creditor.* The application may be filed by the judgment creditor. (*C.C.P. 1710.15(a)*; see *C.C.P. 1710.10(a)* [defining "judgment creditor" as person who may bring action to enforce sister state judgment].) This includes a corporate judgment creditor (*Tom Thumb Glove Co. v. Han (1978) 78 C.A.3d 1, 7, 144 C.R. 30*) and the conservator of a judgment creditor's estate (*Kessler v. Kessler (1983) 141 C.A.3d 94, 97, 190 C.R. 109*). (See Rutter Group, 2 Enforcing Judgments and Debts §6:1807.)

(2) *Assistance of Counsel Is Not Required.* The application may be filed without the aid of a California lawyer. In *Tom Thumb Glove Co., supra*, plaintiff corporation filed its application, signed by an officer, without representation by counsel. Defendant contended that the application was similar to a pleading and that the corporation, not entitled to appear in pro. per. (see 2 *Cal. Proc. (5th), Jurisdiction*, §197), could file an application only through a licensed attorney. *Held*, the application was properly made. Because entry of judgment is a ministerial act of the clerk (see 7 *Cal. Proc. (5th), Judgment*, §49), the application merely requests performance of a ministerial duty, and is neither a pleading nor an appearance. Only in the event that the judgment debtor moves to vacate (see *infra*, §458) is the court called on to perform judicial acts, in which case the corporation must be represented by counsel. (*78 C.A.3d 8.*)

West's Key Number Digest, Judgment 944

SUPPLEMENT: [This section is current through the latest supplement]



92 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

b. Application for Entry of Judgment.

3. Form and Content.

8 *Witkin Cal. Proc. Enf Judgm* § 455

[§ 455] Form and Content.

The application must be executed under oath (*C.C.P. 1710.15(b)*) and must include the following:

(1) A statement that an action in California on the sister state judgment is not barred by the applicable statute of limitations. (*C.C.P. 1710.15(b)(1)*); on applicable statute of limitations, see 3 *Cal. Proc. (5th), Actions*, §§53 et seq., 675.) (See *Epps v. Russell (1976) 62 C.A.3d 201, 204, 133 C.R. 30* [filing application stopped running of 10-year limitation of *C.C.P. 337.5(3)*, even though entry of judgment under *C.C.P. 1710.25* was made 5 days after expiration of period; *C.C.P. 1710.15(b)(1)* refers to date of application, not to some indefinite future date].)

(2) A statement, based on information and belief, that no stay of enforcement of the sister state judgment is currently in effect in the sister state. (*C.C.P. 1710.15(b)(2)*); on stay of enforcement as precluding entry of judgment under Sister State Money-Judgments Act, see *C.C.P. 1710.55*, supra, §451.)

(3) A statement of the amount unpaid under the sister state judgment; and, if accrued interest is to be included in the California judgment, a statement of the amount of accrued interest computed at the sister state rate, a statement of the applicable interest rate in the sister state, and a citation of the law of the sister state establishing the rate of interest. (*C.C.P. 1710.15(b)(3)*.) This provision is designed to prevent double recovery. (See Law Rev. Com. Comment to *C.C.P. 1710.15*.)

(4) A statement that no action on the sister state judgment is pending in any California court and that no judgment based on the sister state judgment has previously been entered in any proceeding in California. (*C.C.P. 1710.15(b)(4)*.)

(5) Where the judgment debtor is an individual, a statement of the debtor's name and last known residence address. Where the debtor is a corporation, a statement of the corporation's name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in California. Where the debtor is a partnership, a statement of the name of the partnership, whether it is a foreign partnership, and, if it is a foreign partnership, whether it has filed a statement designating an agent for service of process. Except for facts that are matters of public record in California, the

foregoing statements may be made on the applicant's information and belief. (*C.C.P. 1710.15(b)(5)*.)

(6) A statement of the name and address of the judgment creditor. (*C.C.P. 1710.15(b)(6)*.) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1810 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §§7.45, 7.46.)

A properly authenticated copy of the sister state judgment must be attached. (*C.C.P. 1710.15(c)*.) (On authentication of judgment, see 28 *U.S.C.*, §1738; *Ev.C. 1452, 1453, 1530(a)*; 2 *Cal. Evidence (4th), Documentary Evidence*, §§23, 24, 41 et seq.)

The Judicial Council has adopted an optional form for the application. (See Judicial Council Form No. EJ-105 [Application for Entry of Judgment on Sister-State Judgment].)

SUPPLEMENT: [This section is current through the latest supplement]



93 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

c. Entry and Notice.

1. Entry of Judgment.

8 *Witkin Cal. Proc. Enf Judgm* § 456

[§ 456] Entry of Judgment.

(1) *In General.* On the filing of the application for entry of judgment (see *supra*, §453 et seq.), the clerk must enter judgment for the total of the following amounts shown in the application:

(a) The amount remaining unpaid under the sister state judgment. (*C.C.P. 1710.25(a)(1).*)

(b) The amount of accrued interest computed at the rate applicable in the sister state. (*C.C.P. 1710.25(a)(2).*)

(c) The amount of the filing fee. (*C.C.P. 1710.25(a)(3).*) (See Rutter Group, 2 *Enforcing Judgments and Debts* §6:1818 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §7.45.)

(2) *Manner and Effect of Entry.* The judgment must be entered in the same manner as entry of an original judgment of the court (see 7 *Cal. Proc. (5th), Judgment*, §49 et seq.), and interest accrues on the judgment from the time of entry at the rate of interest applicable to a judgment entered in California (see 7 *Cal. Proc. (5th), Judgment*, §326 et seq.). (*C.C.P. 1710.25(b)*; see 9 *Pacific L. J. 370.*) (See *Bank One Texas v. Pollack (1994) 24 C.A.4th 973, 978, 29 C.R.2d 510* [sister state judgment was not void even though debtor had died before judgment was secured, and entry of judgment was valid ministerial act; nothing more was required beyond subsequently serving notice of entry on administrator of debtor's estate].)

(3) *Installment Judgments.* Where the judgment is payable in installments, the judgment must be entered in installment form for the amount unpaid, and execution may issue only as to installments that have accrued. (Law Rev. Com. Comment to *C.C.P. 1710.25.*)

(4) *Amendment of Judgment To Correct Clerical Errors.* Because entry of the judgment by the clerk is a ministerial act, the court has authority to amend the judgment to conform to the original judgment of the sister state. (*Aspen Int. Capital Corp. v. Marsch (1991) 235 C.A.3d 1199, 1203, 286 C.R. 921* [amendment of judgment to include additional costs and attorneys' fees incurred in collection of judgment, as provided in Colorado judgment, but inadvertently left out

of California judgment].)

SUPPLEMENT: [This section is current through the latest supplement]



94 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

c. Entry and Notice.

2. Notice of Entry.

8 *Within Cal. Proc. Enf Judgm § 457*

[§ 457] Notice of Entry.

(1) *Service of Notice.* Unlike notice of entry of judgments generally (see *C.C.P. 664.5, 7 Cal. Proc. (5th), Judgment, §59*), notice of entry of a sister state judgment must be served promptly by the judgment creditor on the judgment debtor in the manner provided for the service of summons by *C.C.P. 415.10* et seq. (see *3 Cal. Proc. (5th), Actions, §1008* et seq.). (*C.C.P. 1710.30(a)*.) Proof of service of the notice must be made in the manner provided by *C.C.P. 417.10* et seq. (see *3 Cal. Proc. (5th), Actions, §1067* et seq.). (*C.C.P. 1710.40(b), 1710.45(a), (d)*.) (See Rutter Group, *2 Enforcing Judgments and Debts §6:1820; C.E.B., 1 Debt Collection Practice 2d, §7.47*.)

(2) *Form and Content.* The notice must be in a form prescribed by the Judicial Council, and must inform the debtor that he has 30 days within which to move to vacate the judgment. (*C.C.P. 1710.30(a)*.) The Judicial Council has approved an optional form for the notice. (See Judicial Council Form No. EJ-110 [Notice of Entry of Judgment on Sister-State Judgment].)

(3) *Fee for Service.* The fee for service of the notice is a recoverable cost in the same manner as the fee for service of a writ pursuant to *C.C.P. 685.010* et seq. (see *supra, §42* et seq.), but may not exceed the amount allowed for service by a public officer or employee. (*C.C.P. 1710.30(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]



95 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

d. Vacation of Judgment.

1. In General.

8 *Witkin Cal. Proc. Enf Judgm* § 458

[§ 458] In General.

(1) *Motion*. The judgment debtor may move to vacate the judgment on written notice to the judgment creditor, not later than 30 days after service of notice of entry (see *supra*, §457). (*C.C.P. 1710.40(b)*); on grounds for vacating judgment, see *infra*, §459.) (See *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd. (1993) 12 C.A.4th 74, 84, 15 C.R.2d 585* [service of notice, not actual knowledge, commences 30-day period under *C.C.P. 1710.40(b)*]; period was tolled while dissolved partnership sought reinstatement in order to pursue motion to vacate].) (See *Rutter Group, 2 Enforcing Judgments and Debts* §6:1830 et seq.)

(2) *Stay of Enforcement*. When a motion to vacate has been made, the court must order a stay of enforcement of the judgment. (See *C.C.P. 1710.50(a)(3)*, *infra*, §461.) If execution will issue or be levied before the motion can be heard, the court may either shorten the time for notice (see 6 *Cal. Proc. (5th), Proceedings Without Trial*, §16) or grant a stay. Also, equitable relief from the judgment may be available after the time for moving to vacate has expired. (Law Rev. Com. Comment to *C.C.P. 1710.40*; on equitable relief, see 8 *Cal. Proc. (5th), Attack on Judgment in Trial Court*, §215 et seq.)

(3) *Hearing and Determination*. After the hearing, the judgment may be vacated on any applicable ground, and a different judgment may be entered, including, but not limited to, another and different judgment for the judgment creditor. The court's decision must be given and filed as provided by *C.C.P. 632, 634, and 635* (statement of decision; see 7 *Cal. Proc. (5th), Trial*, §390 et seq.), except that written findings and conclusions are not required if the judgment does not exceed \$ 1,000. (*C.C.P. 1710.40(c)*.)

(4) *Appeal*. An order on a motion to vacate under *C.C.P. 1710.40* is appealable. (*Fishman v. Fishman (1981) 117 C.A.3d 815, 819, 173 C.R. 59; Liebow v. Superior Court (1981) 120 C.A.3d 573, 576, 175 C.R. 26.*) (See *Silbrico Corp. v. Raanan (1985) 170 C.A.3d 202, 206, 216 C.R. 201* [while defendant appealed from judgment, preservation of grounds for appeal required that he have moved to vacate judgment pursuant to *C.C.P. 1710.40*, and taken appeal from order of denial].)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Motion*. The 30-day limitation to move to vacate a sister state judgment in *C.C.P. 1710.40(b)* does not apply to challenges based on lack of fundamental jurisdiction. (*Airlines Reporting Corp. v. Renda* (2009) 177 C.A.4th 14, 16, 19, 99 C.R.3d 66 [Virginia default judgment void for lack of personal jurisdiction over defendant].)



96 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

d. Vacation of Judgment.

2. Grounds.

8 *Witkin Cal. Proc. Enf Judgm* § 459

[§ 459] Grounds.

(1) *Ground Must Be Defense to Action on Judgment.* A motion to vacate the judgment under the Sister State Money-Judgments Act may be based on any ground that would be a defense to an action in California on the sister state judgment, including the ground that interest accrued on the sister state judgment and included in the judgment is incorrect. (*C.C.P. 1710.40(a)*; see *Tom Thumb Glove Co. v. Han* (1978) 78 C.A.3d 1, 5, 144 C.R. 30, supra, §454 [defendant's declarations were insufficient to sustain burden of proof]; *Bank of America v. Jennett* (1999) 77 C.A.4th 104, 114, 91 C.R.2d 359 [defendant retains right under Act to assert those defenses to enforcement of sister state judgment that were available under former procedure, which required separate lawsuit to enforce judgment]; Rutter Group, 2 Enforcing Judgments and Debts §6:1831 et seq.; on grounds for denying enforcement of sister state judgments, see supra, §§446, 447.)

Common defenses to enforcement of a sister state judgment include: (a) the judgment is not final and unconditional; (b) the judgment was obtained by extrinsic fraud; (c) the judgment was rendered in excess of jurisdiction; (d) the judgment is not enforceable in the state of rendition; (e) the judgment has already been paid; (f) the plaintiff is guilty of misconduct; and (g) the action on the judgment is barred by the statute of limitations in the state where enforcement is sought. (Law Rev. Com. Comment to *C.C.P. 1710.40*.)

(2) *Illustrations.* The following cases illustrate what have, or have not, been recognized as grounds for vacation under *C.C.P. 1710.40(a)*:

New York Higher Education Assistance Corp. v. Siegel (1979) 91 C.A.3d 684, 688, 154 C.R. 200 [defense of extrinsic fraud was unavailable in absence of showing of meritorious case].

Harris v. EMI Television Programs (1980) 102 C.A.3d 214, 219, 162 C.R. 357 [discharge of judgment by accord and satisfaction was ground].

Krofcheck v. Ensign Co. (1980) 112 C.A.3d 558, 564, 567, 169 C.R. 516 [improper entry of Utah judgment against

partnership against individual partner who had not been named as party or served in Utah proceeding was ground].

Fishman v. Fishman (1981) 117 C.A.3d 815, 819, 820, 173 C.R. 59 [allegedly improper holding whether sister state award was "support order" excluded from Act was not ground for vacating judgment].

World Wide Imports v. Bartel (1983) 145 C.A.3d 1006, 1009, 193 C.R. 830 [waiver of jury trial was procedural matter governed by law of forum; California public policy favoring jury trial was not sufficient basis for vacation].

Stuart v. Lilves (1989) 210 C.A.3d 1215, 1220, 258 C.R. 780, 7 Cal. Proc. (5th), Judgment, §368 [California court was not required to recognize Colorado judgment that conflicted with earlier California judgment].

Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd. (1993) 12 C.A.4th 74, 94, 15 C.R.2d 585, 8 Cal. Proc. (5th), Attack on Judgment in Trial Court, §226 [relief based on extrinsic fraud preventing partnership from raising meritorious defense of partner's lack of authority to execute guaranty contract].

In *Silbrico Corp. v. Raanan (1985) 170 C.A.3d 202, 216 C.R. 201*, defendant debtor argued that a Wisconsin money judgment should not be given full faith and credit because it did not meet California's requirements for judgment by confession and contained penal liquidated damages unenforceable under California law. The trial judge rejected this argument. *Held*, affirmed.

(a) Under *C.C.P. 1710.40*, a sister state money judgment entered in California may be vacated *only* on a ground that would be a defense to an action in California on the sister state judgment, e.g., defenses that the judgment was not final, was obtained by extrinsic fraud, or was rendered in excess of jurisdiction. Neither of defendant's claims is such a defense. (*170 C.A.3d 207*, citing the text.)

(b) "California must, regardless of policy objections, recognize the judgment of another state as *res judicata*, and this is so even though the action or proceeding which resulted in the judgment could not have been brought under the law or policy of California." (*170 C.A.3d 207*, quoting *World Wide Imports v. Bartel*.)

In *Washoe Dev. Co. v. Guaranty Fed. Bank (1996) 47 C.A.4th 1518, 55 C.R.2d 479*, defendant bank held a note, secured by deeds of trust on real property, that guaranteed a Nevada judgment. On motion under the Act, defendant obtained judgment in California against plaintiffs, the judgment debtors, for the amount remaining unpaid on the Nevada judgment after foreclosure on the property. Plaintiffs each moved to vacate entry of the Nevada judgment on the ground that it violated the anti-deficiency statutes of both California and Nevada. The trial court denied the motions. *Held*, affirmed.

(a) Under *C.C.P. 1710.40*, as explained by the Law Revision Commission Comment, the only potential defense available to plaintiffs was that the judgment was not enforceable in the state of rendition. However, in a proceeding for renewal of the judgment in Nevada following the foreclosure sale, the partial satisfaction caused by the sale was set forth and plaintiffs made no claim of invalidity under the anti-deficiency statutes. In fact, their counsel approved by signature the order renewing the judgment, and there was no other suggestion of Nevada unenforceability. (*47 C.A.4th 1523*.)

(b) Deficiency judgments are only statutorily limited and are not inherently objectionable, because they are not a threat to the moral or ethical standards of California citizens. Thus, a deficiency judgment in a sister state is not so offensive as to compel recognition of an exception to the requirement that foreign judgments be given full faith and credit. (*47 C.A.4th 1524*.)

In *Traci & Marx Co. v. Legal Options (2005) 126 C.A.4th 155, 23 C.R.3d 685*, plaintiffs sued defendants in Ohio on various causes of action, requesting "compensatory damages in excess of \$ 25,000" and "punitive damages in excess of \$ 25,000." On defendants' failure to answer, the Ohio court held a default hearing and granted judgment to plaintiffs in the amount of \$ 25,890 as compensatory damages and \$ 130,000 as punitive damages. On defendants' motion under

the Act, the California court vacated the Ohio judgment, concluding that the award was in excess of the Ohio court's jurisdiction because it exceeded the prayer for relief in plaintiff's complaint. *Held*, reversed.

(a) Under *C.C.P. 1710.40*, a judgment entered pursuant to the Act may be vacated on grounds that would be a defense to an action in California on a sister state judgment. These would include that the judgment in Ohio was rendered in excess of jurisdiction or is not enforceable in that state. (*126 C.A.4th 158*.)

(b) *Becker v. S.P.V. Const. Co. (1980) 27 C.3d 489, 165 C.R. 825, 612 P.2d 915, 6 Cal. Proc. (5th), Proceedings Without Trial*, §150, held that, in a default proceeding in California, a prayer for relief "in excess of" a specified dollar amount will result in an award of "no more than" that dollar amount. However, the issue before the trial court was whether the same result would obtain in Ohio. California must, regardless of policy objections, recognize the judgment of another state as *res judicata*, and this is so even though the judgment could not have been awarded under the law or policy of *California*. (*126 C.A.4th 160*.)

(c) Defendants, whose burden it was to establish that the judgment was not enforceable in Ohio, failed to provide any Ohio authority to support their assertion that Ohio law provides that the "in excess of" language in the prayer for relief constitutes a ceiling rather than a floor for recoverable damages. Consequently, the trial court erred in vacating the judgment; there was no basis to conclude that the Ohio court acted in excess of its jurisdiction, or that the judgment was not enforceable in *Ohio*. (*126 C.A.4th 160*, citing *Silbrico*.)

(3) *Vacation May Be Based on Due Process Violation*. In *Commercial Nat. Bank of Peoria v. Kermeen (1990) 225 C.A.3d 396, 275 C.R. 122*, defendant borrowed money from plaintiff Illinois bank and signed a preprinted bank note containing a cognovit clause providing for confession of judgment by plaintiff if he defaulted on the loan. The bank subsequently filed suit in Illinois seeking the entire amount of the note, plus interest and attorneys' fees. An attorney appeared for plaintiff, waived service of process, confessed judgment, and waived all other rights as authorized by the cognovit clause. The Illinois court ordered judgment and immediate execution. Plaintiff then filed the present California proceeding under the Act for entry of the Illinois judgment as a sister state judgment. After defendant received notice of entry of the Illinois judgment in California, he moved to vacate the judgment under *C.C.P. 1710.40*. Defendant contended that he had moved from Illinois to California, did not know and had never communicated with the attorney who appeared for him in the Illinois court, and had received no demand for payment and no complaint or other notice of the Illinois proceeding. *Held*, judgment vacated.

(a) Plaintiff had not received notice or been afforded an opportunity to be heard in the Illinois action as required by constitutional due process. (*225 C.A.3d 399*.)

(b) The cognovit clause did not constitute a voluntary and knowing waiver of plaintiff's due process rights. There was no showing of equality of bargaining between the parties and no indication that the terms of the note were subject to negotiation. (*225 C.A.3d 401*.)

(4) *No Vacation on Grounds Under C.C.P. 473(b)*. Entry of a sister state judgment may not be vacated on the grounds of mistake, inadvertence, surprise, or excusable neglect under *C.C.P. 473(b)* (see 8 *Cal. Proc. (5th), Attack on Judgment in Trial Court*, §144 et seq.). That section is not a defense to a sister state judgment under *C.C.P. 1710.40*; it is a procedural remedy for setting aside a default or a default judgment in California and has nothing to do with sister state judgments. The procedural remedy for vacating entry of a sister state judgment lies within *C.C.P. 1710.40* alone. (See *Liquidator of Integrity Ins. Co. v. Hendrix (1997) 54 C.A.4th 971, 976, 63 C.R.2d 240* [disagreeing with *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd., supra*, insofar as it held that vacating sister state judgment requires not only establishing valid defense under *C.C.P. 1710.40*, but also showing additional procedural ground such as *C.C.P. 473*].)

SUPPLEMENT: [This section is current through the latest supplement]



97 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

e. Enforcement.

1. 30-Day Delay.

8 *Witkin Cal. Proc. Enf Judgm* § 460

[§ 460] 30-Day Delay.

(1) *General Rule.* Because the judgment debtor has 30 days within which to move to vacate the judgment (see *supra*, §458), except as otherwise provided, a writ of execution may not be issued, and the judgment may not be enforced by other means, for 30 days after the creditor serves notice of entry of the judgment. (*C.C.P. 1710.45(a)*; see Rutter Group, 2 *Enforcing Judgments and Debts* §6:1821 et seq.)

(2) *Execution Before Service of Notice.* If the clerk determines from the judgment creditor's application (see *supra*, §455) that the debtor is a nonresident individual, a foreign corporation not qualified to do business in California, or a foreign partnership that has not designated an agent for service of process, the clerk may issue a writ of execution or seek other enforcement before service of the notice of entry of judgment. (*C.C.P. 1710.45(b)*.) In addition, the court has discretion to order issuance of a writ of execution or to permit enforcement by other means if it finds on an *ex parte* showing that great or irreparable injury would result to the creditor if issuance of the writ were delayed. (*C.C.P. 1710.45(c)*.)

(3) *Restrictions on Sale and Distribution.* If a writ of execution is issued immediately or satisfaction of the judgment is sought by other means, property may not be sold or distributed before expiration of the 30-day period, except that perishable property may be sold in order to prevent its destruction or loss of value. Proceeds from a sale of perishable property may not be distributed to the creditor before the date on which a sale of nonperishable property is permissible. (*C.C.P. 1710.45(d)*; see Law Rev. Com. Comment to *C.C.P. 1710.45* [*C.C.P. 1710.45(d)* provides special 30-day delay period that gives judgment debtor opportunity to move to vacate judgment before debtor's property is sold or distributed].)

West's Key Number Digest, Judgment 823

SUPPLEMENT: [This section is current through the latest supplement]



98 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

A. Sister State Judgments.

2. Sister State Money-Judgments Act.

e. Enforcement.

2. Stay of Enforcement.

8 *Within Cal. Proc. Enf Judgm § 461*

[§ 461] Stay of Enforcement.

(1) *Discretionary Stay.* The court may grant a stay of enforcement on its own motion, on an ex parte motion, or on noticed motion. (*C.C.P. 1710.50(b).*) (See Rutter Group, 2 Enforcing Judgments and Debts §§6:1832, 6:1835 et seq.)

(2) *Mandatory Stay.* The court must order a stay in the following circumstances:

(a) An appeal from the sister state judgment is pending or may be taken in the sister state: Enforcement must be stayed until the proceeding on appeal has been concluded or the time for appeal has expired. (*C.C.P. 1710.50(a)(1).*)

(b) A stay of enforcement of the sister state judgment has been granted in the sister state: Enforcement must be stayed until the sister state stay of enforcement expires or is vacated. (*C.C.P. 1710.50(a)(2).*)

(c) The judgment debtor moves to vacate under *C.C.P. 1710.40* (see supra, §458): Enforcement must be stayed until the motion to vacate is determined. (*C.C.P. 1710.50(a)(3).*)

(d) Any other circumstance exists where the interests of justice require a stay of enforcement. (*C.C.P. 1710.50(a)(4).*)

(3) *Terms.* A stay must be granted on such terms and conditions as are just, including, but not limited to, the following:

(a) The court may require an undertaking in a just amount not exceeding double the amount of the judgment creditor's claim. (*C.C.P. 1710.50(c)(1).*) In determining whether to issue an undertaking and its amount, the court may consider various factors, including whether a successful defense is probable. (Law Rev. Com. Comment to *C.C.P. 1710.50.*)

(b) If a writ of execution has been issued, the court may order that it remain in effect. (*C.C.P. 1710.50(c)(2).*)

(c) If property has been levied on under a writ of execution, the court may order the levying officer to retain possession of property capable of physical possession and to maintain the levy on other property. (*C.C.P.* 1710.50(c)(3).)

SUPPLEMENT: [This section is current through the latest supplement]



99 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

1. Uniform Foreign-Country Money Judgments Recognition Act.

a. Former Law: Uniform Foreign Money Judgments Recognition Act.

8 *Witkin Cal. Proc. Enf Judgm* § 462

[§ 462] Former Law: Uniform Foreign Money Judgments Recognition Act.

(1) *In General.* The Uniform Foreign Money-Judgments Recognition Act formerly governed the enforcement of foreign money judgments in California. (See former C.C.P. 1713 et seq.; 13 (Part II) U.L.A. (Master Ed.), p. 39; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1850 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §7.47A; 88 *A.L.R.5th* 545 [construction and application of Act].)

(2) *Purpose of Act.* The purpose of the Uniform Foreign Money-Judgments Recognition Act was stated as follows: "In a large number of civil law countries, grant of conclusive effect to money-judgments from foreign courts is made dependent upon reciprocity. Judgments rendered in the United States have in many instances been refused recognition abroad either because the foreign court was not satisfied that local judgments would be recognized in the American jurisdiction involved or because no certification of existence of reciprocity could be obtained from the foreign government in countries where existence of reciprocity must be certified to the courts by the government. Codification by a state of its rule on the recognition of money-judgments rendered in a foreign court will make it more likely that judgments rendered in the state will be recognized abroad." (13 (Part II) U.L.A. (Master Ed.), Prefatory Note, p. 40.)

(3) *Scope of Act.* Under the Act, a "foreign judgment" meant "any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters." (Former C.C.P. 1713.1(2); see *Societe Civile Succession Richard Guino v. Redstar Corp.* (2007) 153 *C.A.4th* 697, 702, 63 *C.R.3d* 224 [judgment ordering partial payment amount in specified sum was enforceable under Act; judgment granted recovery of sum of money was within terms of Act, even though amount was subject to later accounting].) A "foreign state" was "any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands." (Former C.C.P. 1713.1(1).)

The Act applied to any foreign judgment that was final, conclusive, and enforceable in the jurisdiction rendering the judgment, even though an appeal was pending or the judgment was subject to appeal. (Former C.C.P. 1713.2; see former C.C.P. 1713.4(a) [specifying certain defects rendering foreign judgment "not conclusive"]; *Korea Water Resources Corp. v. Lee* (2004) 115 *C.A.4th* 389, 401, 8 *C.R.3d* 853 [foreign judgment was not "conclusive" within

meaning of former C.C.P. 1713.2 where foreign appellate court had remanded case for retrial de novo]; *Societe Civile Succession Richard Guino v. Redstar Corp.*, *supra*, 153 C.A.4th 704 [judgment ordering partial payment amount in specified sum was final, conclusive, and enforceable, even though amount was subject to later accounting].) However, if the defendant satisfied the court that an appeal was pending or that the defendant intended to appeal, the court could stay the proceedings until the appeal had been determined or the time to prosecute the appeal had lapsed. (Former C.C.P. 1713.6; see *Korea Water Resources Corp. v. Lee*, *supra*, 115 C.A.4th 400 [provisional creditors' remedies, such as attachment, were available to prevent dissipation of assets on stay of recognition action during foreign appellate process].)

(4) *Recognition and Enforcement of Judgments.* Except as provided in former C.C.P. 1713.4, a foreign judgment meeting the requirements for application of the Act pursuant to former C.C.P. 1713.2 was conclusive between the parties to the extent that it granted or denied recovery of a sum of money. The judgment was enforceable in the same manner as the judgment of a sister state that is entitled to full faith and credit, but it was not enforceable under the Sister State Money Judgments Act (C.C.P. 1710.10 et seq., *supra*, §449 et seq.). (Former C.C.P. 1713.3.) Thus, foreign nation money judgments were enforced by an action in California to obtain a domestic judgment. (Law Rev. Com. Comment to former C.C.P. 1713.3.) (See *Renoir v. Redstar Corp.* (2004) 123 C.A.4th 1145, 1148, 20 C.R.3d 603 [summons was required to be served to obtain personal jurisdiction over judgment debtor; Act did not exempt judgment creditor from compliance with requirements applicable in civil actions generally].) The Act did not prevent recognition or nonrecognition of foreign judgments in situations not covered by the Act. (Former C.C.P. 1713.7.)

(5) *Discretionary Grounds for Denying Enforcement.* A foreign judgment was not required to be recognized in the following circumstances:

(a) The defendant in the foreign proceeding did not receive sufficient notice to enable him or her to defend. (Former C.C.P. 1713.4(b)(1).)

(b) The judgment was obtained by extrinsic fraud. (Former C.C.P. 1713.4(b)(2).)

(c) The cause of action or defense supporting the judgment was repugnant to the public policy of California. (Former C.C.P. 1713.4(b)(3).) (See *Pentz v. Kuppinger* (1973) 31 C.A.3d 590, 597, 107 C.R. 540 [Mexican judgment enforcing payment of alimony to divorced wife despite her remarriage was contrary to California statutory rule and in conflict with earlier California judgments]; but see *Crockford's Club Ltd. v. Si-Ahmed* (1988) 203 C.A.3d 1402, 1406, 250 C.R. 728 [enforcement by English gambling casino of English judgment against person for passing bad checks at casino was not so against California public policy as to preclude extension of comity].)

(d) The judgment conflicted with another final and conclusive judgment. (Former C.C.P. 1713.4(b)(4).)

(e) The foreign proceeding was contrary to an agreement between the parties designating the forum for settling disputes. (Former C.C.P. 1713.4(b)(5).)

(f) Jurisdiction was based only on personal service, and the foreign court was a "seriously inconvenient forum" for the trial of the action. (Former C.C.P. 1713.4(b)(6).)

(6) *Mandatory Grounds for Denying Enforcement.* Certain fundamental defects rendered a foreign judgment "not conclusive" and, therefore, not enforceable:

(a) The judgment was rendered under a system that did not provide impartial tribunals or procedures giving due process of law. (Former C.C.P. 1713.4(a)(1).)

(b) The foreign court lacked subject matter jurisdiction. (Former C.C.P. 1713.4(a)(2).)

(c) The foreign court lacked personal jurisdiction over the defendant. (Former C.C.P. 1713.4(a)(3).) Under the Act,

the following bases for personal jurisdiction were recognized, although the list was not exclusive: (1) personal service in the foreign state; (2) a voluntary general appearance; (3) a prior agreement to submit to foreign jurisdiction with respect to the subject matter involved; (4) foreign domicile or corporate status in the foreign state; (5) a business office where the foreign cause of action arose from the defendant's business conducted through that office; and (6) operation of a motor vehicle or airplane in the foreign jurisdiction, where the foreign proceeding involved a cause of action arising from the operation of the vehicle or airplane. (Former C.C.P. 1713.5.)

(7) *Repeal of Act*. The Act was repealed in 2007 and replaced by the Uniform Foreign-Country Money Judgments Recognition Act. (See *infra*, §463 et seq.) However, the Act continues to apply to all actions commenced before the effective date of the replacement statute (January 1, 2008) in which the issue of recognition of a foreign-country judgment is raised. (C.C.P. 1724(b).)

West's Key Number Digest, Judgment 831

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Scope of Act*. See *Java Oil Ltd. v. Sullivan* (2008) 168 C.A.4th 1178, 1186, 1189, 86 C.R.3d 177 [Gibraltar judgment against plaintiff's attorney in underlying personal injury action, which awarded attorneys' fees to defendants to compensate them for defending groundless litigation that was advanced through attorney's complicity in fraud, was not "penalty" that would preclude recognition under former C.C.P. 1713.1 of Uniform Foreign Money Judgments Recognition Act; nor did judgment violate policy of American rule, requiring litigants to pay their own fees absent statute or contract]; *In re Marriage of Lyustiger* (2009) 177 C.A.4th 1367, 1373, 99 C.R.3d 922 [British orders requiring husband to pay wife's attorneys' fees in divorce proceeding were for her support and thus were excluded from enforcement under Act by former C.C.P. 1713.1(2)].(4) *Recognition and Enforcement of Judgments*. In *Manco Contracting Co. (W.L.L.) v. Bezdikian* (2008) 45 C.4th 192, 85 C.R.3d 233, 195 P.3d 604, a judgment creditor sued the judgment debtor under the former Uniform Foreign Money Judgments Recognition Act to domesticate a multimillion-dollar Qatar judgment that was pending appeal. The trial court granted the debtor summary judgment on statute of limitations grounds, but the Court of Appeal reversed, finding that a fact issue remained whether the foreign judgment was final. *Held*, judgment of the Court of Appeal affirmed. To determine whether a foreign judgment on appeal is "final" for recognition in California under the Act, a court must look to the law of the nation where the judgment was rendered, even if that law differs from California's law. If that nation's rule is that judgments are final even though an appeal is pending, a judgment may be recognized despite an appeal. If the foreign rule is that judgments are not final while an appeal is pending, a judgment on appeal cannot be recognized. (45 C.4th 196, 198.) *Korea Water Resources Corp. v. Lee* (2004) 115 C.A.4th 389, 8 C.R.3d 853, text, p. 501, is disapproved to the extent it is inconsistent. (45 C.4th 203, footnote 7.)(8) *(New) Statute of Limitations*. The 10-year limitations period in C.C.P. 337.5(3) (action on sister state judgment; 3 *Cal. Proc.* (5th), *Actions*, §675), not the 4-year "catch-all" statute of limitations of C.C.P. 343 (3 *Cal. Proc.* (5th), *Actions*, §677 et seq.), applies to an action on a foreign country judgment under the former Uniform Foreign Money Judgments Recognition Act. (*Manco Contracting Co. (W.L.L.) v. Bezdikian*, *supra*, 45 C.4th 204.)



100 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

1. Uniform Foreign-Country Money Judgments Recognition Act.

b. Current Law: Uniform Foreign-Country Money Judgments Recognition Act.

8 *Witkin Cal. Proc. Enf Judgm* § 463

[§ 463] Current Law: Uniform Foreign-Country Money Judgments Recognition Act.

(1) *In General.* The Uniform Foreign Money Judgments Recognition Act was replaced in 2007 by the Uniform Foreign-Country Money Judgments Recognition Act (*C.C.P. 1713* et seq.). (See 13 (Part II) U.L.A. (Master Ed.), Supplement; 9 Proof of Facts 3d 687 [invalidity of judgment of court of foreign country]; 81 *Harv. L. Rev.* 1601 [recognition of foreign adjudications: survey and suggested approach]; 45 *Santa Clara L. Rev.* 877 [enforcement in United States of decisions of international tribunals]; 9 *U.C.L.A. L. Rev.* 44 [international res judicata and collateral estoppel in United States]; 13 *A.L.R.4th* 1109 [judgment of court of foreign country as entitled to enforcement or extraterritorial effect in state court]; *Am.Jur.2d* (2005 ed.), *Executions and Enforcement of Judgments* §664 et seq.)

(2) *Purpose of Act.* This revised uniform act "continues the basic policies and approach of" the earlier act, which was promulgated in 1962. "Its purpose is not to depart from the basic rules or approach of the 1962 Act, which have withstood well the test of time, but rather to update the 1962 Act, to clarify its provisions, and to correct problems created by the interpretation of the provisions of that Act by the courts over the years since its promulgation. Among the more significant issues that have arisen under the 1962 Act which are addressed in this Revised Act are (1) the need to update and clarify the definitions section; (2) the need to reorganize and clarify the scope provisions, and to allocate the burden of proof with regard to establishing application of the Act; (3) the need to set out the procedure by which recognition of a foreign-country money judgment under the Act must be sought; (4) the need to clarify and, to a limited extent, expand upon the grounds for denying recognition in light of differing interpretations of those provisions in the current case law; (5) the need to expressly allocate the burden of proof with regard to the grounds for denying recognition; and (6) the need to establish a statute of limitations for recognition actions." (13 (Part II) U.L.A. (Master Ed.), Prefatory Note, 2008 Supplement, p. 5.)

(3) *Construction of Act.* In applying and construing the uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (*C.C.P. 1722.*)

(4) *Definitions.* The Act defines the following terms:

(a) "Foreign country" means a government other than (1) the United States; (2) a state, district, commonwealth,

territory, or insular possession of the United States; or (3) any other government with regard to which the decision in California whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution. (*C.C.P. 1714(a)*.)

(b) "Foreign-country judgment" means a judgment of a court of a foreign country. "Foreign-country judgment" includes a judgment by an Indian tribe recognized by the Government of the United States. (*C.C.P. 1714(b)*.)

West's Key Number Digest, Judgment 831-

SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General*. See *59 Hastings L.J. 943* [creating reciprocity regime for recognition and enforcement of foreign judgments].



101 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

1. Uniform Foreign-Country Money Judgments Recognition Act.

c. Scope of Act.

8 *Witkin Cal. Proc. Enf Judgm* § 464

[§ 464] Scope of Act.

(1) *Effective Date.* The Uniform Foreign-Country Money Judgments Recognition Act applies to all actions commenced on or after the effective date of the Act (January 1, 2008) in which the issue of recognition of a foreign-country judgment is raised. (*C.C.P. 1724(a).*)

(2) *Judgments to Which Act Applies.* The Act ordinarily applies to a foreign-country judgment to the extent that the judgment satisfies both of the following conditions:

(a) The judgment grants or denies recovery of a sum of money. (*C.C.P. 1715(a)(1).*)

(b) Under the law of the foreign country where rendered, the judgment is final, conclusive, and enforceable. (*C.C.P. 1715(a)(2).*)

(3) *Judgments to Which Act Does Not Apply.* The Act does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is any of the following:

(a) A judgment for taxes. (*C.C.P. 1715(b)(1).*)

(b) A fine or other penalty. (*C.C.P. 1715(b)(2).*)

(c) A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations, to the extent judgment is not recognized pursuant to *C.C.P. 1723* (see *infra*, §465). (*C.C.P. 1715(b)(3).*)

SUPPLEMENT: [This section is current through the latest supplement]



102 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

1. Uniform Foreign-Country Money Judgments Recognition Act.

d. Standards for Recognition.

8 *Witkin Cal. Proc. Enf Judgm* § 465

[§ 465] Standards for Recognition.

(1) *General Rule of Recognition.* Except as otherwise provided, a California court must recognize a foreign-country judgment to which the Uniform Foreign-Country Money Judgments Recognition Act applies (see *supra*, §464). (*C.C.P. 1716(a).*)

(2) *Mandatory Grounds for Denying Recognition.* A California court must deny recognition to a foreign-country judgment if any of the following conditions applies:

(a) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law. (*C.C.P. 1716(b)(1).*)

(b) The foreign court did not have personal jurisdiction over the defendant. (*C.C.P. 1716(b)(2).*)

(c) The foreign court did not have jurisdiction over the subject matter. (*C.C.P. 1716(b)(3).*)

(3) *Discretionary Grounds for Denying Recognition.* A California court is not required to recognize a foreign-country judgment if any of the following conditions applies:

(a) The defendant in the foreign court proceeding did not receive notice of the proceeding in sufficient time to enable the defendant to defend. (*C.C.P. 1716(c)(1).*)

(b) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case. (*C.C.P. 1716(c)(2).*)

(c) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of California or of the United States. (*C.C.P. 1716(c)(3).*)

(d) The judgment conflicts with another final and conclusive judgment. (*C.C.P. 1716(c)(4).*)

(e) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court. (*C.C.P. 1716(c)(5).*)

(f) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action. (*C.C.P. 1716(c)(6).*)

(g) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment. (*C.C.P. 1716(c)(7).*)

(h) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law. (*C.C.P. 1716(c)(8).*)

(4) *When Lack of Personal Jurisdiction Is Insufficient Ground for Denying Recognition.* A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if any of the following conditions applies:

(a) The defendant was served with process personally in the foreign country. (*C.C.P. 1717(a)(1).*)

(b) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant. (*C.C.P. 1717(a)(2).*)

(c) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved. (*C.C.P. 1717(a)(3).*)

(d) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country. (*C.C.P. 1717(a)(4).*)

(e) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign country. (*C.C.P. 1717(a)(5).*)

(f) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action or claim for relief arising out of that operation. (*C.C.P. 1717(a)(6).*)

This list of bases for personal jurisdiction is not exclusive. California courts may recognize other bases of personal jurisdiction as sufficient to support a foreign-country judgment. (*C.C.P. 1717(b).*)

(5) *No Requirement of Reciprocity.* "While recognition of U.S. judgments continues to be problematic in a number of foreign countries," the drafters of the uniform act found "insufficient evidence to establish that a reciprocity requirement would have a greater effect on encouraging foreign recognition of U.S. judgments than does the approach taken by the Act. At the same time, the certainty and uniformity provided by the ... Act, creates a stability in this area that facilitates international commercial transactions." (13 (Part II) U.L.A. (Master Ed.), Prefatory Note, 2008 Supplement, p. 6.)

(6) *Judgments Outside Scope of Act.* The Act does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of the Act. (*C.C.P. 1723.*)

SUPPLEMENT: [This section is current through the latest supplement]

(3) *Discretionary Grounds for Denying Recognition.*

(i) (*New*) The judgment includes recovery for defamation unless the defamation law applied by the foreign court provided at least as much protection for freedom of speech and the press as that provided by the United States and

California Constitutions. (*C.C.P. 1716(c)(9)*, added in 2009.)(7) (*New Defamation Actions*. If a judgment was rendered in a defamation action in a foreign country against a California resident or a party amenable to California jurisdiction, and a party seeks declaratory relief with respect to liability for the judgment or a determination that the judgment is not recognizable under *C.C.P. 1716*, a court has jurisdiction to determine both the declaratory relief action and personal jurisdiction over the party who obtained the foreign judgment if the publication at issue was published in California and the defendant either (a) has assets in California that might be subject to an enforcement proceeding or (b) may have to take actions in California to comply with the foreign defamation judgment. (*C.C.P. 1717(c)*, added in 2009.)



103 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

1. Uniform Foreign-Country Money Judgments Recognition Act.

e. Procedure for Recognition.

8 *Within Cal. Proc. Enf Judgm § 466*

[§ 466] Procedure for Recognition.

(1) *Raising Issue.* If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition must be raised by filing an action seeking recognition of the judgment. If recognition is sought in a pending action, the issue may be raised by counterclaim, cross-claim, or affirmative defense. (*C.C.P. 1718.*)

(2) *Burden of Proof.* A party seeking recognition of a foreign-country judgment has the burden of establishing that the foreign-country judgment is entitled to recognition under the Uniform Foreign-Country Money Judgments Recognition Act. (*C.C.P. 1715(c).*)

When the party seeking recognition has met its burden, a party resisting recognition has the burden of establishing the existence of a ground for nonrecognition stated in *C.C.P. 1716(b)* or *(c)* (see *supra*, §465). (*C.C.P. 1716(d).*)

(3) *Stay Pending Appeal.* If a party establishes that an appeal from a foreign-country judgment is pending or will be taken in the foreign country, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so. (*C.C.P. 1720.*)

(4) *Statute of Limitations.* An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 10 years from the date that the foreign-country judgment became effective in the foreign country. (*C.C.P. 1721.*)

SUPPLEMENT: [This section is current through the latest supplement]



104 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

1. Uniform Foreign-Country Money Judgments Recognition Act.

f. Effect of Recognition.

8 Within Cal. Proc. Enf Judgm § 467

[§ 467] Effect of Recognition.

If the court in a proceeding seeking recognition of a foreign-country judgment finds that the judgment is entitled to recognition under the Uniform Foreign-Country Money Judgments Recognition Act, the judgment is, to the extent that it grants or denies recovery of a sum of money, both of the following:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in California would be conclusive. (*C.C.P. 1719(a)*.)

(2) Enforceable in the same manner and to the same extent as a judgment rendered in California. (*C.C.P. 1719(b)*.)

SUPPLEMENT: [This section is current through the latest supplement]



105 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 468*

[§ 468] In General.

(1) *Adoption of Act.* The Uniform Foreign-Money Claims Act (*C.C.P. 676 et seq.*) is designed to facilitate the payment of foreign-money claims. It was approved by the Commissioners on Uniform State Laws in 1989 and was enacted in California in 1991. (See 13 (Part II) U.L.A. (Master Ed.), p. 13; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1865; 23 *Pacific L. J.* 560; 22 *Santa Clara L. Rev.* 871 [the need to retreat from inflexible conversion rules--an equitable approach to judgment in foreign currency].)

(2) *Scope of Act.* The Act applies only to a foreign-money claim in an action or distribution proceeding. (*C.C.P. 676.2(a)*.) It applies to foreign-money issues even if other law under the conflict of laws rules of California applies to other issues in that action or proceeding. (*C.C.P. 676.2(b)*.)

(3) *Variation by Agreement.* The effect of the Act may be varied by an agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment. (*C.C.P. 676.3(a)*.) Parties to a transaction may agree on the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction. (*C.C.P. 676.3(b)*.) A basic policy of the Act is to preserve freedom of contract and to permit the parties to resolve disputed matters by contract at any time, even concerning choice of law. (Official Comment 1 to §3 of Uniform Foreign-Money Claims Act.)

(4) *Supplementary Principles of Law.* Unless displaced by particular provisions of the Act, the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions. (*C.C.P. 676.13*.)

(5) *Uniform Construction.* The Act must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the Act among states enacting it. (*C.C.P. 676.14*.)

(6) *Definitions.* Under the Act, an "action" is a judicial proceeding or arbitration in which a payment in money may

be awarded or enforced with respect to a foreign-money claim. (*C.C.P. 676.1(1)*.) A "distribution proceeding" is a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund. (*C.C.P. 676.1(4)*.) The Act also defines various technical terms, such as "bank-offered spot rate," "conversion date," "rate of exchange," and "spot rate." (See *C.C.P. 676.1*.)

SUPPLEMENT: [This section is current through the latest supplement]



106 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

Copyright (c) 2010 By B.E. Witkin Article Sixth Testamentary Trust

CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

b. Nature and Purpose.

8 Witkin Cal. Proc. Enf Judgm § 469

[§ 469] Nature and Purpose.

The Commissioners' Prefatory Note (see 13 (Part II) U.L.A. (Master Ed.), p. 14) gives the background of the Uniform Foreign-Money Claims Act.

(1) "This Act facilitates uniform judicial determination of claims expressed in the money of foreign countries. It requires judgments and arbitration awards in these cases to be entered in the foreign money rather than in United States dollars. The debtor may pay the judgment in dollars on the basis of the rate of exchange prevailing at the time of payment."

(2) "American courts historically follow one of two different rules in selecting a time during litigation for converting foreign money into United States dollars. These are called the 'breach day rule'--the date the money should have been paid--and the 'judgment date rule'--when judgment is entered. Many other countries use the 'payment day rule'--when the judgment is paid. ... The merits of this approach have begun to be recognized in this country. The payment day rule is endorsed by this Act."

(3) "If conversion is delayed until the date of actual payment, the creditor is recompensed with its own money or the financial equivalent in United States dollars; the debtor bears the risk of a fall in the debtor's money or reaps the benefit of a rise therein. If conversion is made at breach or judgment date, the risk of fluctuation in value of a money not of its selection falls on the creditor."

(4) "The real issue is where the risk of exchange rate fluctuation should be placed. This Act recognizes the right of the parties to agree upon the money that governs their relationship. In the absence of an agreement, the Act adopts the rule of giving the aggrieved party the amount to which it is entitled in its own money or the money in which the loss was suffered."

(5) "The principle of the Act is to restore the aggrieved party to the economic position it would have been in had the wrong not occurred. Thus, for example, if oil is spilled on the coast of France by an American ship, the loss is felt by the French in francs and a judgment of an American court for damages should reflect this fact. Courts should enter

judgments in the money customarily used by the injured person."

(6) "The payment day rule, on which the Act is based, meets the reasonable expectations of the parties involved. It places the aggrieved party in the position it would have been in financially but for the wrong that gave rise to the claim. States which adopt it will align themselves with most of the major civilized countries of the world."

(7) "The Act also covers other issues that may arise in connection with foreign-money claims. These include revalorization and interest. In order to determine aliquot shares for distributions from funds created in insolvency and estate proceedings, the Act specifies use of the date the distribution proceeding was initiated for conversion of foreign money into United States dollars."

SUPPLEMENT: [This section is current through the latest supplement]



107 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

c. Determining Proper Money of Claim.

8 *Witkin Cal. Proc. Enf Judgm* § 470

[§ 470] Determining Proper Money of Claim.

(1) *By Agreement.* The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment. (*C.C.P. 676.4(a).*)

(2) *In Absence of Agreement.* If the parties to a transaction have not otherwise agreed, the proper money of the claim, "as in each case may be appropriate," is one of the following: (a) the money regularly used between the parties as a matter of usage or course of dealing; (b) the money used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or (c) the money in which the loss was ultimately felt or will be incurred by the party claimant. (*C.C.P. 676.4(b).*) The three rules will normally apply in the order stated. (Official Comment 2 to §4 of Uniform Foreign-Money Claims Act.)

(3) *Question of Law.* The determination of the proper money of the claim at trial is a question of law. (*C.C.P. 676.6(d).*) The money of the claim is a threshold issue to be determined, if contested, after any factual issues as to expenditures, custom, usage, or course of dealing are decided. Judgments may be entered in more than one money when dealings impact on more than one area. (Official Comment 2 to §6 of Uniform Foreign-Money Claims Act.)

SUPPLEMENT: [This section is current through the latest supplement]



108 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

d. Determining Amount of Money Owed on Claim.

8 Witkin Cal. Proc. Enf Judgm § 471

[§ 471] Determining Amount of Money Owed on Claim.

C.C.P. 676.5 states rules for determining the amount of money owed on certain contract claims:

(1) *Amount Measured by Specified Amount of Different Money.* If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date. (*C.C.P. 676.5(a)*; see *C.C.P. 676.1(3)* [defining "conversion date"].) (On judgment or award on these claims, see *infra*, §473.)

(2) *Amount Measured by Different Money at Exchange Rate in Effect on Date Before Default.* If that amount is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date. (*C.C.P. 676.5(b)*; see *C.C.P. 676.1(2)* [defining "bank-offered spot rate"]; *C.C.P. 676.1(10)* [defining "rate of exchange"]; *C.C.P. 676.1(11)* [defining "spot rate"].) (On judgment or award on these claims, see *infra*, §473.)

(3) *Amount To Be Paid in Debtor's Money That Equals Specified Amount of Creditor's Money When Received.* A monetary claim is neither usurious nor unconscionable even though the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, shall equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator must amend the judgment or award accordingly. (*C.C.P. 676.5(c)*)

West's Key Number Digest, Judgment 830.1

SUPPLEMENT: [This section is current through the latest supplement]



109 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

e. Allegation and Proof of Money of Claim.

8 *Within Cal. Proc. Enf Judgm § 472*

[§ 472] Allegation and Proof of Money of Claim.

(1) *Foreign Money Must Be Specified.* A person may assert a claim in a specified foreign money; otherwise, the claimant makes the claim in United States dollars. (*C.C.P. 676.6(a).*) This rule applies not only to the claim of a plaintiff but also to the assertion by a defendant of a defense, setoff, or counterclaim. (Official Comment 1 to Uniform Foreign-Money Claims Act.)

(2) *Assertion Is Not Binding on Other Parties.* An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant. (*C.C.P. 676.6(b).*) A person may assert a defense, setoff, recoupment, or counterclaim in any money without regard to the money of other claims. (*C.C.P. 676.6(c).*)

SUPPLEMENT: [This section is current through the latest supplement]



110 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

f. Judgment or Award.

8 *Witkin Cal. Proc. Enf Judgm* § 473

[§ 473] Judgment or Award.

(1) *In General.* A judgment or award on a foreign-money claim must be stated in an amount of the money of the claim (*C.C.P. 676.7(a)*), except that assessed costs must be entered in United States dollars (*C.C.P. 676.7(c)*). The judgment or award is payable in the foreign money or, at the option of the debtor, in the amount of United States dollars that will purchase that foreign money on the conversion date at a bank-offered spot rate. (*C.C.P. 676.7(b)*.) (See *C.C.P. 676.7(f)* [setting forth form of judgment that complies with *C.C.P. 676.7(a)*]; *C.C.P. 676.1(3)* [defining "conversion date"]; *C.C.P. 676.1(2)* [defining "bank-offered spot rate"]; *C.C.P. 676.1(11)* [defining "spot rate"].)

(2) *Payment in Dollars.* Each payment in United States dollars must be accepted and credited on a judgment or award in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment. (*C.C.P. 676.7(d)*.)

(3) *Setoff of Mutual Debts.* A judgment or award made in an action or distribution proceeding on both (a) a defense, setoff, recoupment, or counterclaim and (b) the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and must specify the rates of exchange used. (*C.C.P. 676.7(e)*.) The theory of this provision is that when claims are reduced to money, they become mutual debts and should be set off by the judge or arbitrator. (Official Comment 3 to §7 of Uniform Foreign-Money Claims Act.)

(4) *Contract Claim.* If a contract claim is of the type covered by *C.C.P. 676.5(a)* or (b) (see *supra*, §471), the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment, or, at the option of the debtor, the number of United States dollars that will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate. (*C.C.P. 676.7(g)*.)

(5) *Effect of and Discharge of Judgment.* A judgment must be entered in foreign money in the same manner as other judgments, and it has the same effect as a lien as other judgments. It may be discharged by payment. (*C.C.P. 676.7(h)*.)

SUPPLEMENT: [This section is current through the latest supplement]



111 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

g. Conversion of Money in Distribution Proceeding.

8 Witkin Cal. Proc. Enf Judgm § 474

[§ 474] Conversion of Money in Distribution Proceeding.

In a distribution proceeding, the rate of exchange prevailing at or near the close of business on the date the proceeding is initiated governs all exchanges of foreign money. A foreign-money claimant must assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated. (*C.C.P. 676.8.*) All claims must be in the same money when determining aliquot shares in a distribution proceeding. A claim may be amended to show the proper conversion rate and the proper amount of United States dollars. (Official Comment to §8 of Uniform Foreign-Money Claims Act.)

West's Key Number Digest, Judgment 830.1

SUPPLEMENT: [This section is current through the latest supplement]



112 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

h. Interest.

8 *Witkin Cal. Proc. Enf Judgm* § 475

[§ 475] Interest.

(1) *Prejudgment Interest.* Generally, in an action or distribution proceeding involving a foreign-money claim, recovery of prejudgment or pre-award interest and the rate of interest to be applied are matters of the substantive law governing the right to recovery under California's conflict of laws rules. (*C.C.P.* 676.9(a); on prejudgment interest, see 7 *Cal. Proc.* (5th), *Judgment*, §325.) However, the court or arbitrator must increase or decrease the amount of interest otherwise payable to the extent required by California law governing a failure to make or accept an offer of settlement or an offer of judgment, or conduct by a party or attorney causing undue delay or expense. (*C.C.P.* 676.9(b).)

(2) *Interest on Judgment.* A judgment or award on a foreign-money claim bears interest at the rate applicable to California judgments. (*C.C.P.* 676.9(c); on interest on judgment, see *supra*, §42 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



113 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

i. Enforcement of Judgment Rendered in Another Jurisdiction.

8 *Witkin Cal. Proc. Enf Judgm* § 476

[§ 476] Enforcement of Judgment Rendered in Another Jurisdiction.

(1) *Converting Foreign Currency to U.S. Dollars.* In *Pecaflor Const. v. Landes* (1988) 198 C.A.3d 342, 350, 243 C.R. 605, the court held that a California court, when enforcing a foreign judgment rendered in foreign currency, must ordinarily convert the foreign currency to United States dollars using the exchange rate in effect at the time of the foreign judgment. However, under the Uniform Foreign-Money Claims Act, if an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in California as enforceable, the enforcing judgment must be entered as provided in *C.C.P. 676.7* (see supra, §473), whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars. (*C.C.P. 676.10(a)*.) Under *C.C.P. 676.7*, a judgment on a foreign-money claim must be stated in an amount of the money of the claim and, if payment is made in United States dollars, they must be in an amount sufficient to purchase the foreign money on the "conversion date." (See supra, §473.) This is defined as the banking day next preceding the payment date. (*C.C.P. 676.1(3)*.)

(2) *Enforcement Under Sister-State Money Judgments Act and Uniform Foreign-Country Money Judgments Recognition Act.* A foreign judgment may be enforced in accordance with *C.C.P. 1710.10* et seq., governing enforcement of sister state and foreign money judgments. (*C.C.P. 676.10(b)*); on Sister-State Money Judgments Act, see supra, §449 et seq.; on Uniform Foreign-Country Money Judgments Recognition Act, see supra, §463 et seq.)

(3) *Satisfaction or Partial Payment.* On proof of a satisfaction or partial payment made on a foreign judgment, the satisfaction or partial payment must be credited against the amount of foreign money specified in the judgment notwithstanding the entry of judgment in California. (*C.C.P. 676.10(c)*.)

(4) *Judgment Entered in Sister State.* A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in California in United States dollars only. (*C.C.P. 676.10(d)*.)

SUPPLEMENT: [This section is current through the latest supplement]



114 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

j. Determining Dollar Value of Claim for Limited Purposes.

8 *Within Cal. Proc. Enf Judgm § 477*

[§ 477] Determining Dollar Value of Claim for Limited Purposes.

(1) *Methods of Computation.* The Uniform Foreign-Money Claims Act provides methods for computing the value in United States dollars of assets to be seized or restrained under a writ of attachment, garnishment, execution, or other legal process, the amount of dollars at issue for assessing costs, and the amount of dollars involved for a surety bond or other court-required undertaking. (*C.C.P. 676.11(b).*)

A party seeking process, costs, bond, or other undertaking must compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking. (*C.C.P. 676.11(c).*)

A party seeking process, costs, bond, or other undertaking must file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Court officials incur no liability for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate. (*C.C.P. 676.11(d).*)

(2) *Limited Purpose.* These computations are only for the limited purpose of facilitating the enforcement of provisional remedies in an action (*C.C.P. 676.11(b)*) and do not affect computation of the United States dollar equivalent of the money of the judgment for the purposes of payment (*C.C.P. 676.11(a)*). "This section protects those who must determine how much should be held subject to a levy or other collection process or what the dollar amount of a supersedeas or other surety bond should be. If the judgment debtor is damaged by a gross overstatement of the dollar amount in the affidavit or certificate of counsel for the judgment creditor or the bank officer, recovery should be against that person." (Official Comment to §11 of Uniform Foreign-Money Claims Act.)

West's Key Number Digest, Judgment 830.1

SUPPLEMENT: [This section is current through the latest supplement]



115 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIII. SISTER STATE AND FOREIGN COUNTRY JUDGMENTS

B. Foreign Country Judgments.

2. Uniform Foreign-Money Claims Act.

k. Effect of Issuing Country's Substitution of New Money for Old.

8 *Witkin Cal. Proc. Enf Judgm § 478*

[§ 478] Effect of Issuing Country's Substitution of New Money for Old.

(1) *Application of Established Rate of Conversion.* If the country issuing or adopting foreign money in which an obligation is expressed or a loss is incurred substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money. (*C.C.P. 676.12(a)*.) This provision refers to situations in which a country authorizes the issue of new money to take the place of the old money at a stated ratio; foreign-money claims should be subjected to the same ratio. (Official Comment 1 to §12 of Uniform Foreign-Money Claims Act.) If substitution occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator must amend the judgment or award by a like conversion of the former money. (*C.C.P. 676.12(b)*.)

(2) *No Position Taken on Confiscations or Exchange Control Laws.* "The Act takes no position on the effect of money repudiations or revalorizations so drastic as to be, in effect, confiscations. Remedy, if any, for these is usually found through diplomatic channels. Equally, the Act takes no position on the effect of exchange control laws. The effect, if any, on obligations to pay is left to other law." (Official Comment 2 to §12 of Uniform Foreign-Money Claims Act.)

SUPPLEMENT: [This section is current through the latest supplement]



116 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

A. In General.

1. Nature and Classes of Fraudulent Transfers.

8 *Within Cal. Proc. Enf Judgm* § 479

[§ 479] Nature and Classes of Fraudulent Transfers.

(1) *Nature of Fraudulent Transfer.* A single accurate definition, covering all aspects of the term "fraudulent transfer," would be difficult to state. However, broadly speaking, it is a transfer by a debtor of some property interest with the object or effect of preventing creditors from reaching that interest to satisfy their claims. (See C.C. 3439.01 et seq.; *Rest. 2d, Property (Donative Transfers)*, §34.3; Rutter Group, 1 *Enforcing Judgments and Debts* §3:313 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §§12.66, 12.66A; C.E.B., *Sales and Mergers of California Businesses*, §§2.16, 6.18; 90 *Harv. L. Rev.* 505 [related concepts of fraudulent conveyance, equitable subordination, dividend restraints, and piercing corporate veil]; 21 *Western State L. Rev.* 515 [problems created by law of fraudulent conveyances for lenders in commercial real estate transactions]; 6 *A.L.R.4th* 862 [applicability of rule denying grantor recovery of property fraudulently conveyed where creditor's claim motivating conveyance is never established]; 37 *Am.Jur.2d* (2001 ed.), *Fraudulent Conveyances* §1.) In cases based on actual intent to defraud, solvency of the transferor is immaterial; i.e., the transfer may be fraudulent even though the debtor retains sufficient property after the transfer to satisfy creditors. (*Fross v. Wotton* (1935) 3 *C.2d* 384, 389, 44 *P.2d* 350.)

(2) *Classes of Fraudulent Transfers.* Invalid transfers fall into two main classes: (a) those that are fraudulent transfers within the provisions of the Uniform Fraudulent Transfer Act (see *infra*, §488 et seq.); and (b) those that violate various provisions outside the Act that govern the transfer of property (see *infra*, §503 et seq.).

(3) *Creditor's Choice of Remedies.* If the debtor has made an invalid transfer of property, the creditor may elect to execute directly on the property standing in the name of the transferee, ignoring the void conveyance. This involves some risk in its assumption that the transfer is in fact void. And, after purchase at the execution sale, the creditor does not have a clear record title, and would normally have to sue to quiet title. The creditor may preclude both the risk and the cloud on title by bringing an equitable action to avoid the fraudulent transfer to the extent necessary to satisfy the claim. If the creditor is successful, the title will be adjudged in the debtor-transferor, and the creditor may then proceed to execute and either purchase or sell a good title on execution. (See *Richardson v. Michel* (1941) 45 *C.A.2d* 188, 197, 113 *P.2d* 916; *Knapp v. Elliott* (1947) 81 *C.A.2d* 667, 675, 184 *P.2d* 934 [both cases decided under former Uniform Fraudulent Conveyance Act]; 37 *Am.Jur.2d* (2001 ed.), *Fraudulent Conveyances* §143; on remedies under Uniform Fraudulent Transfer Act, see *infra*, §498.)

West's Key Number Digest, Fraudulent Conveyances 8

SUPPLEMENT: [This section is current through the latest supplement]



117 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

A. In General.

2. Distinctions.

8 *Witkin Cal. Proc. Enf Judgm* § 480

[§ 480] Distinctions.

(1) *Preferences*. A payment or security given to one creditor in preference to another is valid. (C.C. 3432.) This is so, even though it results in making the debtor insolvent. (See *Foster v. Foster* (1932) 123 C.A. 1, 3, 10 P.2d 796; *Dandini v. Dandini* (1947) 82 C.A.2d 263, 271, 186 P.2d 41; *First Nat. Bank of Stockton v. Pomona Tile Mfg. Co.* (1947) 82 C.A.2d 592, 609, 186 P.2d 693; *Arnold v. Hadgis* (1951) 102 C.A.2d 88, 91, 226 P.2d 641; *Wyzard v. Goller* (1994) 23 C.A.4th 1183, 1188, 28 C.R.2d 608, *infra*, §495; *Lyons v. Security Pac. Nat. Bank* (1995) 40 C.A.4th 1001, 1019, 48 C.R.2d 174; Rutter Group, 1 Enforcing Judgments and Debts §3:313.1; 5 *Stanf. L. Rev.* 83; 42 *Am.Jur.2d* (2000 ed.), *Insolvency* §66 et seq.; but see *Hansen v. Cramer* (1952) 39 C.2d 321, 324, 245 P.2d 1059, *infra*, §485 [debtor wife transferred separate property to husband's creditor; preference rule was not applicable and transfer was fraudulent].) In *bankruptcy* proceedings, however, certain preferences are voidable by the trustee in bankruptcy if made within 90 days before the petition is filed. (See 11 U.S.C., §547; *Appling v. Brueckner* (1929) 97 C.A. 750, 751, 276 P. 382 [preference voidable by trustee]; Cal. Civil Practice, 1 Real Property Litigation, §7:27 [affirmative defense of transferee based on creditor preference]; 63 *Harv. L. Rev.* 1390; 1 *Stanf. L. Rev.* 189; 5 *Stanf. L. Rev.* 80; 9B *Am.Jur.2d* (2006 ed.), *Bankruptcy* §1993 et seq.; on discharge in bankruptcy, see *infra*, 514 et seq.) (On recovery of preferences in assignment for benefit of creditors, see C.C.P. 1800, *infra*, §505.)

(2) *Transfer of Exempt Property*. The former Uniform Fraudulent Conveyance Act defined "assets" as property of a debtor "not exempt from liability for his debts" (former C.C. 3439.01), and the Uniform Fraudulent Transfer Act defines "assets" as excluding property "to the extent it is generally exempt under nonbankruptcy law" (C.C. 3439.01(a)(2)). These definitions recognize a general exception to the fraudulent transfer rules: the transfer of exempt property cannot be deemed to be in fraud of creditors. (See 37 *Am.Jur.2d* (2001 ed.), *Fraudulent Conveyances* §§86, 87; on property not subject to enforcement of money judgment, see *supra*, §60 et seq.; on exemptions of judgment debtor generally, see *supra*, §168 et seq.)

Thus, the transfer of a homestead to a third party cannot be a fraudulent conveyance because, if the creditor were allowed to set it aside, the property would go back to the transferor and would remain impressed with the homestead exemption. Because the creditor cannot benefit from setting it aside, he or she is not entitled to do so. (*Montgomery v. Bullock* (1938) 11 C.2d 58, 62, 77 P.2d 846; *Parker v. Riddell* (1940) 41 C.A.2d 908, 914, 108 P.2d 88; *Tassone v. Tovar* (1994) 28 C.A.4th 765, 768, 33 C.R.2d 786 [gift of homestead could not be fraudulent conveyance; citing

Montgomery]; but see *Reddy v. Gonzalez* (1992) 8 C.A.4th 118, 121, 10 C.R.2d 55 [transfer of family home subject to potential homestead exemption was fraudulent conveyance].)

West's Key Number Digest, Fraudulent Conveyances 114 et seq.

SUPPLEMENT: [This section is current through the latest supplement]



118 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

A. In General.

3. Effect of Fraudulent Transfer.

8 *Within Cal. Proc. Enf Judgm § 481*

[§ 481] Effect of Fraudulent Transfer.

(1) *General Rule.* A transfer in fraud of creditors generally binds the *transferor* and those claiming under him. Equity will not relieve the transferor, or those in privity with the transferor, from the consequences of the fraudulent act. (*Tognazzi v. Wilhelm* (1936) 6 C.2d 123, 125, 56 P.2d 1227; *Darrah v. Lang* (1932) 119 C.A. 552, 554, 6 P.2d 989; *Ramirez v. Hartford Acc. & Indem. Co.* (1938) 29 C.A.2d 193, 197, 84 P.2d 172; *Estate of Xydias* (1949) 92 C.A.2d 857, 860, 208 P.2d 378; *Samuelson v. Ingraham* (1969) 272 C.A.2d 804, 806, 77 C.R. 750; see 37 *Am.Jur.2d* (2001 ed.), *Fraudulent Conveyances* §95 et seq.) Nor can an assignee for the benefit of creditors attack a fraudulent transfer of his or her assignor; the assignee is merely the representative of the assignor and not of the creditors. (*Smith v. Kirkpatrick* (1929) 208 C. 417, 419, 281 P. 616.)

(2) *Exceptions.* Two exceptions to this general rule have been recognized:

(a) *Fiduciary Relationship.* Where there is a fiduciary relationship. Thus, if an attorney advises a client to transfer property to the attorney to defeat creditors, the client is deemed not *in pari delicto*, and may sue to set the transfer aside. (*Sontag v. Denio* (1937) 23 C.A.2d 319, 323, 73 P.2d 248; on exception to clean hands doctrine where plaintiff's conduct is less culpable, see 13 *Summary* (10th), *Equity*, §14.)

(b) *Voluntary reconveyance.* Where the transferee voluntarily reconveys to the transferor. The reconveyance will be upheld, and the transferor will prevail over creditors of the transferee. Two reasons are usually given: (1) The fraudulent transferee has a moral obligation to restore the property to its owner (the fraudulent transferor); (2) creditors of the transferee, who have not given credit in reliance on his or her purported ownership and who have not yet acquired liens on the property, lose nothing, for the transferee never did have any real ownership. (*Roesman v. De Hart* (1947) 80 C.A.2d 737, 740, 182 P.2d 263.)

SUPPLEMENT: [This section is current through the latest supplement]



119 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

A. In General.

4. Personal Action Against Transferee.

8 *Within Cal. Proc. Enf Judgm § 482*

[§ 482] Personal Action Against Transferee.

A personal judgment may be entered against a transferee who knowingly participates in the fraudulent transfer with the intention of defrauding creditors, or who wrongfully sells or disposes of the property, or refuses to surrender possession to the creditor after a sale has been declared void. (See *Wright v. Salzberger* (1932) 121 C.A. 639, 644, 9 P.2d 860; *Pedro v. Soares* (1937) 18 C.A.2d 600, 604, 64 P.2d 776; *Malaquias v. Novo* (1943) 59 C.A.2d 225, 232, 138 P.2d 729; but see *Hy-Lo Unit & Metal Products Co. v. Ryon* (1937) 21 C.A.2d 38, 43, 68 P.2d 393 [money judgment against fraudulent transferee was not justified absent proof that property was not available]; *Kuzmicki v. Nelson* (1950) 101 C.A.2d 278, 281, 225 P.2d 233 [creditor cannot attach property as that of transferee]; Rutter Group, 1 *Enforcing Judgments and Debts* §3:379; on liability of transferee under Uniform Fraudulent Transfer Act, see *infra*, §499.) (On tort liability for fraudulent conveyance, see 19 *Stanf. L. Rev.* 638; 11 *A.L.R.4th* 345 [right of creditor to recover damages for conspiracy to defraud creditor of claim]; 37 *Am.Jur.2d* (2001 ed.), *Fraudulent Conveyances* §145.)

SUPPLEMENT: [This section is current through the latest supplement]



120 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

B. Former Law: Uniform Fraudulent Conveyance Act.

1. Adoption of Act.

8 Witkin Cal. Proc. Enf Judgm § 483

[§ 483] Adoption of Act.

In 1939, former code sections dealing with fraudulent conveyances were repealed, and the Uniform Fraudulent Conveyance Act (former C.C. 3439 et seq.) was adopted. (See 7A (Part II) U.L.A. (Master Ed.), p. 2; for criticism of prior California law, see 27 *Cal. L. Rev. 1.*) The Act made applicable general rules of law and equity, law merchant, etc. (former C.C. 3439.11), and called for construction to bring about uniformity (former C.C. 3439.12). (On uniformity in construction, see *Kirkland v. Rizzo* (1979) 98 C.A.3d 971, 977, 159 C.R. 798.)

Insofar as the provisions of the revised Uniform Fraudulent Transfer Act (see *infra*, §488 et seq.) are substantially the same as the provisions of the former Uniform Fraudulent Conveyance Act, they must be construed as restatements and continuations, and not as new enactments. (C.C. 3439.12, *infra*, §488.) Thus, to that extent, decisions under the former Act remain relevant.

SUPPLEMENT: [This section is current through the latest supplement]



121 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

B. Former Law: Uniform Fraudulent Conveyance Act.

2. Types of Conveyances.

a. Actual Intent To Defraud.

8 *Witkin Cal. Proc. Enf Judgm § 484*

[§ 484] Actual Intent To Defraud.

(1) *In General.* Under the former Uniform Fraudulent Conveyance Act, every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors was fraudulent as to both present and future creditors. (Former C.C. 3439.07; see *Economy Refining & Service Co. v. Royal Nat. Bank of New York* (1971) 20 C.A.3d 434, 441, 97 C.R. 706 [intent to defraud did not necessarily require malicious desire to cause harm].)

(2) *Proof of Intent.* In actions under former C.C. 3439.07 and prior code sections dealing with fraudulent conveyances, it was necessary to prove actual intent. But direct evidence of intent was often impossible because the facts were peculiarly within the knowledge of those charged with fraud. Hence, the proof could consist of inferences from circumstances surrounding the transaction, such as secrecy or concealment by the debtor, the relationship and the interest of the parties and the like. (See *Rossen v. Villanueva* (1917) 175 C. 632, 635, 166 P. 1004; *Fross v. Wotton* (1935) 3 C.2d 384, 393, 44 P.2d 350; *Aggregates Associated v. Packwood* (1962) 58 C.2d 580, 588, 25 C.R. 545, 375 P.2d 425 [finding of intent on insufficient evidence, rejected on appeal]; *Hansford v. Lassar* (1975) 53 C.A.3d 364, 377, 125 C.R. 804 [finding of actual intent was reversed where evidence negating insolvency was erroneously excluded].) Actual intent to defraud could be established by a preponderance of the evidence; there was no requirement of clear and convincing evidence. (*Liodas v. Sahadi* (1977) 19 C.3d 278, 287, 290, 293, 137 C.R. 635, 562 P.2d 316, 5 Summary (10th), *Torts*, §769.)

(3) *Future or Subsequent Creditors.* Cases decided prior to adoption of the former Uniform Fraudulent Conveyance Act took the position that there had to be an actual intent to defeat the claims of future or subsequent creditors in order to allow them to attack the transfer. (*McAlvay v. Consumers' Salt Co.* (1931) 112 C.A. 383, 394, 297 P. 135.) Under the former Act (former C.C. 3439.07), it was clear that subsequent creditors could attack a fraudulent conveyance though it was made only with intent to defraud existing creditors. (*Severance v. Knight-Counihan Co.* (1947) 29 C.2d 561, 567, 177 P.2d 4; see *Sasaki v. Kai* (1942) 56 C.A.2d 406, 409, 133 P.2d 18 [suggesting that intentionally fraudulent conveyance was void for illegality].)

(4) *Tort Claimant.* A person with a tort claim was considered a creditor even before receiving judgment. (*Smedberg*

v. *Bevilockway* (1936) 14 C.A.2d 312, 314, 58 P.2d 173; see former C.C. 3439.01 ["creditor" is person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent; "debt" is any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or continent]; *Estate of Blanco* (1978) 86 C.A.3d 826, 832, 150 C.R. 645 [quoting *Smedberg*, but holding conveyance not fraudulent because tort claimant lost action and thus was never creditor].)

(5) *What Constituted Conveyance*. Former C.C. 3439.01 defined "conveyance" to include every payment of money, assignment, release, transfer, lease, mortgage, or pledge of tangible or intangible property, and also the creation of any lien or encumbrance. (See *Menick v. Goldy* (1955) 131 C.A.2d 542, 547, 280 P.2d 844 [debtor bought car, which he placed in daughter's name].) The following rules applied:

(a) *Executory Contract*. Early cases were in some doubt whether an executory contract was enforceable between the parties notwithstanding an intent to defraud creditors. Following adoption of the former Uniform Fraudulent Conveyance Act it was settled that the contract was illegal and that neither party could recover on it. (*Severance v. Knight-Counihan Co.* (1947) 29 C.2d 561, 568, 177 P.2d 4, 1 Summary (10th), *Contracts*, §440.)

(b) *Disclaimer*. The renunciation of a devise by a devisee, with intent to defeat creditors, was a fraudulent conveyance. (*Estate of Kalt* (1940) 16 C.2d 807, 811, 108 P.2d 401.)

(c) *Joint Tenancy* An insolvent who placed his property in joint tenancy with the insolvent and another made a fraudulent conveyance. (a) As to the interest of the other joint tenant, it was an attempt to place the property beyond reach of the insolvent's creditors during his lifetime. (b) As to the insolvent's one-half, because the entire property went to the survivor, the effect was the same as if the insolvent had conveyed to a grantee without consideration, contingent on the grantee surviving the grantor, with a reservation of a life estate. Thus, the entire title held by a surviving joint tenant, resulting from a conveyance by the insolvent without consideration, was subject to the insolvent's debts. (*Rupp v. Kahn* (1966) 246 C.A.2d 188, 196, 55 C.R. 108.)

SUPPLEMENT: [This section is current through the latest supplement]



122 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

B. Former Law: Uniform Fraudulent Conveyance Act.

2. Types of Conveyances.

b. Transfer by Insolvent Person Without Fair Consideration.

8 *Witkin Cal. Proc. Enf Judgm* § 485

[§ 485] Transfer by Insolvent Person Without Fair Consideration.

(1) *In General.* Under the former Uniform Fraudulent Conveyance Act, every conveyance made and every obligation incurred by a person who was or would be thereby rendered insolvent was fraudulent as to creditors without regard to the person's actual intent if the conveyance was made or the obligation was incurred without a fair consideration. (Former C.C. 3439.04.) In these cases, decided under both the former Act and prior law, it was unnecessary to prove an actual intent to defraud. (See *Lefrooth v. Prentice* (1927) 202 C. 215, 228, 259 P. 947; *Hansen v. Cramer* (1952) 39 C.2d 321, 324, 245 P.2d 1059; *Enos v. Picacho Gold Mining Co.* (1943) 56 C.A.2d 765, 776, 133 P.2d 663.)

In a case decided before adoption of the former Act, it was held that this type of fraudulent conveyance could be attacked only by an existing creditor. (*Haller v. Haller* (1929) 102 C.A. 370, 283 P. 94.) And the absence of any reference in former C.C. 3439.04 to future creditors indicated that the same was true under the former Act. (*T W M Homes v. Atherwood Realty & Inv. Co.* (1963) 214 C.A.2d 826, 843, 29 C.R. 887, citing the text; *Pope v. National Aero Finance Co.* (1965) 236 C.A.2d 722, 728, 46 C.R. 233.)

(2) *What Constituted Fair Consideration.* A transfer, even though made by an insolvent, was valid if made for "fair consideration." (See *Peterson v. Wilson* (1948) 88 C.A.2d 617, 626, 199 P.2d 757.) Under the former Uniform Fraudulent Conveyance Act, fair consideration was given for property or an obligation (a) when in exchange for the property or obligation, as a "fair equivalent" and in good faith, property was conveyed or an antecedent debt was satisfied, or (b) when the property or obligation was received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property or obligation obtained. (Former C.C. 3439.03; see *Hansen v. Cramer*, *supra*, 39 C.2d 324 [discharge of husband's debt was not fair compensation for conveyance of debtor wife's separate property, which was not liable for husband's debts; discharge of antecedent debt would constitute fair compensation only if debt were legally enforceable obligation of transferor]; *Laugharn v. Chamberlain* (1934) 139 C.A. 601, 604, 34 P.2d 756 [decided before former Uniform Act; "moral" obligation of host to compensate guest for injuries was sufficient to support transfer]; *United States Fidelity & Guaranty Co. v. Postel* (1944) 64 C.A.2d 567, 571, 149 P.2d 183 [discharge of antecedent debt could be fair compensation even though debt was barred by statute of limitations]; *Pope v. National Aero Finance Co.*, *supra*, 236 C.A.2d 729 ["fair equivalent" found].)

If the transferor was admittedly insolvent, the burden of proof was on the transferee to prove fair consideration. (*Kirkland v. Risso* (1979) 98 C.A.3d 971, 978, 159 C.R. 798.)

(3) *What Constituted Insolvency.* Under the former Uniform Fraudulent Conveyance Act, a person was insolvent when the present fair salable value of the insolvent's assets was less than the amount that would be required to pay his or her probable liability on existing debts as they became absolute and matured. (Former C.C. 3439.02(a).) The following rules applied:

(a) *Insolvency at time of conveyance.* The proof had to show insolvency at the time of the conveyance; subsequent insolvency was not alone a sufficient foundation for an inference of insolvency at the earlier time. (*T W M Homes v. Atherwood Realty & Inv. Co.*, *supra*, 214 C.A.2d 847; see *Aggregates Associated v. Packwood* (1962) 58 C.2d 580, 588, 25 C.R. 545, 375 P.2d 425 [finding was not supported by evidence]; *Stearns v. Los Angeles City School Dist.* (1966) 244 C.A.2d 696, 738, 53 C.R. 482 [general presumption of solvency was overcome and transfer was invalid].)

(b) *Assets subject to process.* Only assets subject to court process at the time of the conveyance could be considered. So, if the debtor had property sufficient to meet his debts but situated outside the state, the transfer could nevertheless be set aside; the creditor was not required to go to another state or country to satisfy his or her claim. (*Wight v. Rohlffs* (1941) 48 C.A.2d 696, 703, 121 P.2d 76.) And a home, exempt from execution, was likewise not a part of the debtor's assets. (*Carter v. Carter* (1942) 55 C.A.2d 13, 15, 130 P.2d 186.)

(c) *Burden of proof.* With respect to the burden of proof of insolvency, a voluntary conveyance made without fair consideration was presumptively fraudulent, where the evidence showed that there was existing indebtedness. It was then incumbent on the grantee to prove that the conveyor was solvent. (*Neumeyer v. Crown Funding Corp. of America* (1976) 56 C.A.3d 178, 190, 128 C.R. 366.)

(d) *Innocent grantee.* Where the conveyance was by an insolvent grantor to an innocent grantee who had merely given less than fair consideration, the grantee was entitled to repayment of what he or she gave. Accordingly, the court could provide a procedure for subjecting the property to satisfaction of the creditor's claim and also securing the grantee's investment. (*Patterson v. Missler* (1965) 238 C.A.2d 759, 770, 48 C.R. 215.)

SUPPLEMENT: [This section is current through the latest supplement]



123 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

B. Former Law: Uniform Fraudulent Conveyance Act.

2. Types of Conveyances.

c. Other Types.

8 *Within Cal. Proc. Enf Judgm § 486*

[§ 486] Other Types.

The following transfers were also declared to be fraudulent under the former Uniform Fraudulent Conveyance Act:

(1) *Conveyance Without Fair Consideration*. A conveyance without fair consideration, by a person engaged or about to engage in business or a transaction for which his or her remaining capital was "unreasonably small," was fraudulent as to present creditors and those who became such during continuance of the business or transaction. (Former C.C. 3439.05; see *Holcomb v. Nunes* (1955) 132 C.A.2d 776, 780, 283 P.2d 301 [showing was insufficient].)

(2) *Change of Life Insurance Beneficiary*. In a case decided prior to adoption of the former Uniform Act, change of the beneficiary of a life insurance policy from an insolvent insured's estate to his sister, shortly before his suicide, was held to be a fraud on the insured's aunt, whose funds were embezzled and used to pay the insurance premiums. The aunt recovered the policy proceeds. (See *Bryson v. Manhart* (1936) 11 C.A.2d 691, 696, 54 P.2d 778.) However, where a life insurance policy and its proceeds were exempt from execution, change of the beneficiary from the insured's estate to third parties, in contemplation of death and with intent to defraud creditors, was not a fraudulent conveyance. (See *Prudential Ins. Co. of America v. Beck* (1940) 39 C.A.2d 355, 358, 103 P.2d 241; on insurance exemption, see *supra*, §199.)

In *Headen v. Miller* (1983) 141 C.A.3d 169, 190 C.R. 198, two partners in a real estate venture maintained life insurance on each other's lives with premiums paid by the partnership. Three months before his death in an automobile accident, M, an insolvent partner, changed the beneficiary from his partner to his wife. *Held*, creditors of the partnership and M could satisfy their claims from the insurance proceeds paid to M's widow. *Bryson v. Manhart, supra*, was not limited to situations involving a change of beneficiaries from the insured's estate to a third person. In actions to set aside a fraudulent conveyance, the relevant inquiry was whether the debtor had put some asset beyond the reach of creditors that would have been available to them but for the conveyance. (141 C.A.3d 175.) M incurred debts on behalf of the partnership and the insurance proceeds were either a partnership asset or an asset of M's partner available to partnership creditors. (141 C.A.3d 176.)

SUPPLEMENT: [This section is current through the latest supplement]



124 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

B. Former Law: Uniform Fraudulent Conveyance Act.

3. Remedies of Creditors.

8 *Witkin Cal. Proc. Enf Judgm* § 487

[§ 487] Remedies of Creditors.

(1) *Execution*. Under the former Uniform Fraudulent Conveyance Act, the creditor could disregard the conveyance and attach or levy execution on the property conveyed when the creditor's claim had matured. (Former C.C. 3439.09(a)(2).) Because the transfer was binding on the transferor (see *supra*, §481), and a creditor could attack it only to the extent necessary to satisfy his or her own claim, the rights of each creditor were independent of those of any other, and the transferee was a necessary (indispensable) party to any action. (*Heffernan v. Bennett & Armour* (1952) 110 C.A.2d 564, 586, 243 P.2d 846.)

(2) *Action To Set Aside Conveyance*. As an alternative to execution, a creditor whose claim had matured could have the conveyance set aside or the obligation annulled to the extent necessary to satisfy that claim. (Former C.C. 3439.09(a)(1); see *Fleischmann v. Lotito* (1936) 6 C.2d 365, 57 P.2d 922 [sufficient pleading; decided prior to adoption of former Uniform Act]; *Kuhlman v. Pacific States Savings & Loan Co.* (1941) 17 C.2d 820, 821, 112 P.2d 620 [defective pleading]; *Webb v. Pillsbury* (1943) 23 C.2d 324, 327, 144 P.2d 1 [cause of action is assignable]; *Richardson v. Michel* (1941) 45 C.A.2d 188, 196, 113 P.2d 916 [supplemental remedies need not be exhausted prior to action]; *Heffernan v. Bennett & Armour*, *supra*, 110 C.A.2d 586, [residue, if any, belonged to transferee]; for elimination of distinction between remedies of creditors holding matured claims and those holding unmatured claims under Uniform Fraudulent Transfer Act, see *infra*, §488.)

Under the law prior to adoption of the former Uniform Act, a creditor could not attack an alleged fraudulent transfer unless that creditor had a specific lien on the property or had reduced his claim to judgment. (See *Moore v. Schneider* (1925) 196 C. 380, 387, 238 P. 81; *Thomas v. Lavery* (1932) 125 C.A. 666, 668, 14 P.2d 158.) The former Uniform Act eliminated the necessity of a lien or judgment. (See *Estate of Kalt* (1940) 16 C.2d 807, 811, 108 P.2d 401; *Hansen v. Cramer* (1952) 39 C.2d 321, 323, 245 P.2d 1059 [plaintiff with unliquidated tort claim; "the relationship of debtor and creditor arises in tort cases the moment the cause of action accrues"]; *Rupp v. Kahn* (1966) 246 C.A.2d 188, 197, 55 C.R. 108, citing the text.) Where, however, the creditor did reduce the claim to judgment, and that judgment was the sole basis for the attack on the conveyance as fraudulent, reversal of the judgment on appeal deprived the creditor of any foundation for the action. (*Weisenburg v. Cragholm* (1971) 5 C.3d 892, 896, 97 C.R. 862, 489 P.2d 1126; see *Estate of Blanco* (1978) 86 C.A.3d 826, 837, 150 C.R. 645 [following *Weisenburg*].)

SUPPLEMENT: [This section is current through the latest supplement]



125 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

1. Adoption of Act.

8 *Within Cal. Proc. Enf Judgm § 488*

[§ 488] Adoption of Act.

(1) *Approval of Uniform Act.* In 1979, the Commissioners on Uniform State Laws began a study of the need to revise the original Uniform Fraudulent Conveyance Act (see *supra*, §483 et seq.). (See 7A (Part II) U.L.A. (Master Ed.), Prefatory Note, p. 4.) The revised Act was approved in 1984. Its name was changed in recognition of its applicability to transfers of personal property as well as real property. (Prefatory Note, p. 5.) "[H]owever, this Act, like the original Uniform Act, does not purport to cover the whole law of voidable transfers and obligations." (Prefatory Note, p. 5.) The basic structure and approach of the original Act are preserved. (Prefatory Note, p. 5.)

(2) *Enactment in California.* The Legislature repealed the former Act and enacted the revised Act in 1986. (See C.C. 3439 et seq.; Rutter Group, 1 Enforcing Judgments and Debts §3:314 et seq.; Cal. Civil Practice, 1 Real Property Litigation, §7:1 et seq.; Cal. Civil Practice, 4 Business Litigation, §47:25 et seq.; C.E.B., 2 Debt Collection Practice 2d, §12.66A; C.E.B., Sales and Mergers of California Businesses, §§2.16, 6.18.) The revised Act may be cited as the Uniform Fraudulent Transfer Act. (C.C. 3439.) It applies to transfers made or obligations incurred on or after January 1, 1987. Transfers and obligations before that date remain subject to the former Act. (C.C. 3439.12.)

The California statute differs in some respects from the revised Uniform Act as adopted by the Commissioners. For example, the Uniform Act, but not the California statute, adds a new category of fraudulent transfer--a preferential transfer by an insolvent insider to a creditor who has reason to believe the debtor to be insolvent. The new category is based on the premise that an insolvent debtor is obligated to pay debts to unrelated creditors before paying insiders. Insiders include relatives, officers or directors of a corporate debtor, partners, and those in control of a debtor. (Prefatory Note, p. 6; see Uniform Act §1(1), (7), (11) [definitions], Uniform Act §5(b) [insider transfer fraudulent as to present creditor], Uniform Act §8(f) [defenses of insiders], Uniform Act §9(c) [statute of limitation applicable to insider transfers].)

(3) *Principal Changes From Former Act.*

(a) *Reasonably equivalent value.* Following the Bankruptcy Code, the revised Act eliminates good faith as an issue in determining whether adequate consideration has been given by a transferee or obligee, substituting the concept of "reasonably equivalent value" (see *infra*, §496). (Prefatory Note, p. 6.)

(b) *Debt and transferred property of equivalent value.* Following the Bankruptcy Code, the revised Act eliminates the provision of the former Act that enabled a creditor to attack a security transfer on the ground that the value of the property transferred is disproportionate to the debt secured, and allows a transferee or obligee who has given less than a reasonable equivalent a reduction in liability to the extent of value given. The premise of the Act is that the value of the interest transferred for security is measured by and thus corresponds exactly to the debt secured. (Prefatory Note, p. 6.)

(c) *No special provision for partnerships.* The revised Act omits provisions in the former Act involving transactions between an insolvent partnership and a partner and transactions by an insolvent partnership for less than fair consideration. (Prefatory Note, p. 6.)

(d) *Creditors' remedies.* The revised Act sets forth the remedies available to defrauded creditors (see *infra*, §498) and eliminates as unnecessary and confusing the former distinction between remedies of creditors holding matured claims and those holding unmatured claims. (Prefatory Note, p. 6.)

(e) *Rights and liabilities of transferee.* The revised Act prescribes the measure of liability of a transferee or obligee and enumerates defenses (see *infra*, §499 et seq.). (Prefatory Note, p. 6.)

(f) *When transfer is made or obligation is incurred.* The revised Act specifies when a transfer is made or an obligation is incurred (see *infra*, §493). If the law prescribes a mode for making a transfer a matter of public record or notice, the transfer is not deemed to be made for purposes of the Act until it becomes a matter of record or notice. (Prefatory Note, p. 7.)

(g) *Statute of limitations.* The revised Act includes a statute of limitations (see *infra*, §492), but recognizes that laches or estoppel may preclude an action by a particular creditor even though the statutory period has not run (see *infra*, this section). (Prefatory Note, p. 7.)

(4) *Construction of Provisions Similar to Those of Former Act.* The provisions of the revised Act, insofar as they are substantially the same as the provisions of the former Act, must be construed as restatements and continuations, and not as new enactments. (C.C. 3439.12.)

(5) *General Law Is Applicable.* The principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement the Uniform Fraudulent Transfer Act unless displaced by its provisions. (C.C. 3439.10.)

(6) *Construction of Act To Foster Uniformity.* The Act must be construed and applied to effectuate its general purpose to make uniform the law of the states enacting it. (C.C. 3439.11.)

SUPPLEMENT: [This section is current through the latest supplement]



126 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

2. Terminology.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 489*

[§ 489] In General.

The Uniform Fraudulent Transfer Act defines the following terms:

(1) *"Property" and "Asset."* "Property" is anything that may be owned. (C.C. 3439.01(h).) An "asset" is property of a debtor, but the term excludes (a) property to the extent that it is encumbered by a valid lien, (b) property to the extent that it is generally exempt under nonbankruptcy law, and (c) an interest in marital property to the extent that it is not subject to process by a creditor holding a claim against only one spouse. (C.C. 3439.01(a); see *Family C. 851, 11 Summary* (10th), *Community Property*, §153 [transmutation of marital property is subject to "the laws governing fraudulent transfers"]; *Mejia v. Reed* (2003) 31 *C.4th* 657, 663, 3 *C.R.3d* 390, 74 *P.3d* 166 [transfer of community property to spouse as separate property in marital dissolution may be fraudulent transfer]; *Yaesu Electronics Corp. v. Tamura* (1994) 28 *C.A.4th* 8, 13, 33 *C.R.2d* 283 [transfer is not fraudulent if debtor merely transfers property otherwise exempt from liability for debts]; Rutter Group, 1 *Enforcing Judgments and Debts* §3:317 et seq.; for form of affirmative defense based on exemption of property, see *Cal. Civil Practice*, 1 *Real Property Litigation*, §7:29.)

(2) *"Claim" and "Creditor."* A "claim" is a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. (C.C. 3439.01(b).) "Creditor" means a person who has a claim, including the assignee of a general assignment for the benefit of creditors as defined in *C.C.P. 493.010* (supra, §170). (C.C. 3439.01(c).)

(3) *"Debt" and "Debtor."* "Debt" means liability on a claim. (C.C. 3439.01(d); see *Mejia v. Reed*, supra, 31 *C.4th* 669 [future child support obligation is not "debt" for purposes of Uniform Fraudulent Transfer Act; obligation is generally paid from future income rather than current assets].) A "debtor" is a person liable on a claim. (C.C. 3439.01(e).)

(4) *"Lien" and "Valid Lien."* A "lien" is a charge against property or an interest in property to secure payment of a debt or performance of an obligation, including a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien. (C.C. 3439.01(f).) A "valid lien" is a lien that is effective against the holder of a subsequent judicial lien. (C.C. 3439.01(j).)

(5) "*Person.*" "Person" includes an individual, partnership, corporation, limited liability company, association, organization, government entity, business trust, estate, trust, and any other legal or commercial entity. (C.C. 3439.01(g).)

(6) "*Transfer.*" "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance. (C.C. 3439.01(i); see *Mejia v. Reed, supra*, 31 C.4th 663 [Uniform Fraudulent Transfer Act applies to property transfers under marital settlement agreements]; *Gagan v. Gouyd* (1999) 73 C.A.4th 835, 842, 86 C.R.2d 733 [transfer of property by judgment debtor and wife to revocable trust was not fraudulent transfer within meaning of C.C. 3439.01(i), because they remained beneficiaries and thus transfer did not result in "disposing of or parting with an asset or an interest in an asset"]; *Filip v. Bucurenciu* (2005) 129 C.A.4th 825, 838, 28 C.R.3d 884 [following *Mejia*]; Rutter Group, 1 Enforcing Judgments and Debts §3:319 et seq.; 37 Am.Jur.2d (2001 ed.), *Fraudulent Conveyances* §39 et seq.; CACI, No. 4204 ["Transfer" Explained].)

SUPPLEMENT: [This section is current through the latest supplement]



127 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

2. Terminology.

b. Insolvency.

8 *Witkin Cal. Proc. Enf Judgm* § 490

[§ 490] Insolvency.

(1) *In General.* A debtor is insolvent if, at fair valuations, the sum of the debtor's debts is greater than all of the debtor's assets. (C.C. 3439.02(a).) A partnership is insolvent if, at fair valuations, the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts. (C.C. 3439.02(b).) (See Rutter Group, 1 *Enforcing Judgments and Debts* §3:327 et seq.; CACI, No. 4205 ["Insolvency" Explained].)

(2) *Presumption of Insolvency.* A debtor who is generally not paying debts as they become due is presumed to be insolvent. (C.C. 3439.02(c).) The party against whom the presumption is directed has the burden of proving that the nonexistence of insolvency is more probable than its existence. (Legislative Com. Comment to C.C. 3439.02 [noting that provision overrules specified cases dealing with insolvency under former Uniform Fraudulent Conveyance Act].) (See CACI, No. 4206 [Presumption of Insolvency].)

(3) *"Assets" and "Debts" Further Defined.* For purposes of the insolvency provision, "assets" do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a way that makes the transfer voidable under the Act. (C.C. 3439.02(d).) "Debts" do not include an obligation to the extent it is secured by a valid lien on property of the debtor that is not an asset. (C.C. 3439.02(e).) (For general definitions of "asset" and "debt," see C.C. 3439.01(a) and (d), supra, §489.)

West's Key Number Digest, Fraudulent Conveyances 56 et seq.

SUPPLEMENT: [This section is current through the latest supplement]



128 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

2. Terminology.

c. Value for Transfer or Obligation.

8 Witkin Cal. Proc. Enf Judgm § 491

[§ 491] Value for Transfer or Obligation.

Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, (1) property is transferred, or (2) an antecedent debt is secured or satisfied. However, value does not include an unperformed promise to support the debtor or another person not made in the ordinary course of the promisor's business. (C.C. 3439.03; see *supra*, §485.) This section is in accord with California cases holding that "fairness of consideration is to be judged from the standpoint of the creditors of the debtor." (Legislative Com. Comment to C.C. 3439.03.) (See *15 A.L.R.6th 241* [assumption of mortgage of real property as consideration for conveyance attacked as fraudulent].)

SUPPLEMENT: [This section is current through the latest supplement]



129 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

3. Statute of Limitations.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 492*

[§ 492] In General.

(1) *General Rule.* A cause of action with respect to a fraudulent transfer or obligation (see *infra*, §498) is generally extinguished unless the creditor brings an action for relief, attaches the transferred asset, or levies execution on the transferred asset within 4 years after the transfer was made or the obligation was incurred. (C.C. 3439.09(a), (b).) (See Rutter Group, 1 *Enforcing Judgments and Debts* §3:351 et seq.; CACI, No. 4208 [Affirmative Defense--Statute of Limitations--Actual and Constructive Fraud (*Civ. Code*, § 3439.09)]; on when transfer is made or obligation incurred, see C.C. 3439.06, *infra*, §493; on running of statute from date of judgment on underlying debt, see *infra*, §494.)

(2) *Transfer With Intent To Defraud.* If, however, a transfer was made or an obligation was incurred with actual intent to hinder, delay, or defraud a creditor, the applicable period is the later of (a) 4 years after the transfer was made or the obligation was incurred, or (b) 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant. (C.C. 3439.09(a).)

(3) *Maximum Period of Limitations.* Nevertheless, notwithstanding any other provision of law, the maximum period of limitation is 7 years after the transfer was made or the obligation was incurred. (C.C. 3439.09(c).)

SUPPLEMENT: [This section is current through the latest supplement]



130 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

3. Statute of Limitations.

b. When Transfer Is Made or Obligation Is Incurred.

8 *Witkin Cal. Proc. Enf Judgm § 493*

[§ 493] When Transfer Is Made or Obligation Is Incurred.

(1) *Making of Transfer.*

(a) *Acquisition of rights required.* A transfer is not made until the debtor has acquired rights in the asset transferred. (C.C. 3439.06(d).)

(b) *Real property other than fixtures.* With respect to an asset that is real property other than a fixture, including the interest of either party under a contract for sale of the asset, a transfer is made when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee. (C.C. 3439.06(a)(1).)

(c) *Personal property and fixtures.* With respect to an asset that is not real property or is a fixture, a transfer is made when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under the Uniform Fraudulent Transfer Act that is superior to the interest of the transferee. (C.C. 3439.06(a)(2).)

(d) *Where perfection is unauthorized or delayed.* If applicable law does not permit perfection as provided by C.C. 3439.06(a), the transfer is made when it becomes effective between the debtor and the transferee. (C.C. 3439.06(c).) If perfection is authorized but does not occur before an action for relief under the Act is commenced (see *infra*, §498), the transfer is deemed made immediately before the action is commenced. (C.C. 3439.06(b).) (See Rutter Group, 1 *Enforcing Judgments and Debts* §3:353.)

(2) *Incurring of Obligation.*

(a) *Oral obligation.* An oral obligation is incurred when it becomes effective between the parties. (C.C. 3439.06(e)(1).)

(b) *Written obligation.* An obligation evidenced by a writing is incurred when a writing executed by the obligor is delivered to or for the benefit of the obligee. (C.C. 3439.06(e)(2).) (See Rutter Group, 1 *Enforcing Judgments and Debts* §3:354.)

SUPPLEMENT: [This section is current through the latest supplement]



131 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

3. Statute of Limitations.

c. Statute Runs From Date of Judgment on Underlying Debt.

8 *Witkin Cal. Proc. Enf Judgm § 494*

[§ 494] Statute Runs From Date of Judgment on Underlying Debt.

(1) *In General.* In *Cortez v. Vogt* (1997) 52 C.A.4th 917, 60 C.R.2d 841, plaintiff judgment creditor brought an action under the Uniform Fraudulent Transfer Act to set aside an alleged fraudulent transfer by defendants. The action was brought almost 6 years after the transfer occurred, but only 3 years after the judgment in the underlying action establishing plaintiff as defendants' creditor became final. The trial court granted summary judgment in favor of defendants, finding that the complaint was barred by the 4-year statute of limitations in C.C. 3439.09. *Held*, reversed.

(a) No California case construing the Act has previously determined whether, when a transfer alleged to be a fraudulent conveyance occurs during an underlying action which later establishes by final judgment the actual legal existence of a debtor-creditor relationship, the limitations period runs from the date of the transfer as distinguished from the date the underlying judgment becomes final. Although the reference in C.C. 3439.09 to the time "the transfer was made or the obligation was incurred" appears to be straightforward, the legislative history of the Act requires the conclusion that a creditor has an option to establish creditor status by judgment and thus cause the limitations period to run from the time the underlying judgment becomes final. (52 C.A.4th 929.)

(b) The legislative and decisional history of the Act makes clear that its remedies are cumulative to preexisting remedies for fraudulent conveyances. Under prestatutory case law, a creditor could not attack a fraudulent conveyance unless he or she had a specific lien on the property or had reduced the claim to judgment, and a creditor alleging a fraudulent conveyance was entitled to the benefit of a limitations period that began to run when judgment on the underlying debt became final. The Act permits, but does not require, a creditor to bring an action to set aside a fraudulent transfer before the claim has matured. Because the Act does not establish an exclusive method of setting aside a fraudulent conveyance, a creditor has the option to resort to the old procedure and should not be penalized for making that choice. Thus, if a creditor may pursue the unmatured claim to judgment before suing to set aside the fraudulent transfer, it would be inappropriate to begin the running of the statute of limitations period for the fraudulent transfer action before the creditor choosing to pursue a judgment actually obtains it. (52 C.A.4th 930.)

(c) Having the period of limitations begin to run before final judgment would force the creditor to file both actions to protect against the expiration of the limitations period, leading to needless expense and effort to both parties and the

court. (52 C.A.4th 932.)

(d) Other states apply a statute of limitations running from the time of judgment in the underlying action, and the stated purpose of the limitations provision is to establish a uniform rule. (52 C.A.4th 933.) (See Rutter Group, 1 Enforcing Judgments and Debts §3:354.1.)

(2) *Common Law Fraud Actions*. The rule of accrual at the time of the underlying judgment was applied in *Macedo v. Bosio* (2001) 86 C.A.4th 1044, 104 C.R.2d 1, which involved the statute of limitations set forth in C.C.P. 338(d) (3 Cal. Proc. (5th), Actions, §653), governing actions for fraud or mistake. Plaintiff judgment creditor's action to set aside certain real property conveyances as fraudulent was brought on the same day that judgment was entered on the underlying debt but 6 years after the conveyances were made. The trial court sustained defendant's demurrer without leave to amend, concluding that the action was time-barred by C.C. 3439.09(a) because the property transfers were made more than 4 years before. *Held*, reversed. The Uniform Fraudulent Transfer Act does not provide the only statute of limitations applicable to actions to set aside a fraudulent transfer. C.C.P. 338(d) provides a 3-year statute of limitations for relief on the ground of fraud, and that statute does not begin to run until a plaintiff obtains a judgment on the underlying debt. (86 C.A.4th 1047.) The Act is not the exclusive remedy by which fraudulent transfers may be attacked. If a common law fraud action is brought, the applicable statute of limitations is C.C.P. 338(d). (86 C.A.4th 1051.) Thus, the trial court should have considered the action's timeliness under that section. (86 C.A.4th 1052.) (See Rutter Group, 1 Enforcing Judgments and Debts §3:356 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



132 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

4. Fraudulent Transfers.

a. Transfer With Intent To Defraud.

8 *Witkin Cal. Proc. Enf Judgm* § 495

[§ 495] Transfer With Intent To Defraud.

(1) *In General.* A debtor's transfer or obligation is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation "with actual intent to hinder, delay, or defraud any creditor." (C.C. 3439.04(a)(1); see *Reddy v. Gonzalez* (1992) 8 C.A.4th 118, 122, 10 C.R.2d 55 [actual fraudulent intent was shown]; *Whitehouse v. Six Corp.* (1995) 40 C.A.4th 527, 533, 48 C.R.2d 600 [actual intent to defraud may be established by preponderance of evidence; proof need not be by clear and convincing evidence]; Rutter Group, 1 Enforcing Judgments and Debts §3:312 et seq.; C.E.B., 2 Debt Collection Practice 2d, §12.66A; 38 A.L.R.3d 597 [conveyance as fraudulent where made in contemplation of possible liability for future tort]; 37 *Am.Jur.2d* (2001 ed.), *Fraudulent Conveyances* §§8 et seq., 124 et seq.; CACI, No. 4200 [Actual Intent to Defraud a Creditor (*Civ. Code*, § 3439.04(a)(1))--Essential Factual Elements].)

In *Wyzard v. Goller* (1994) 23 C.A.4th 1183, 28 C.R.2d 608, the established rule permitting a transfer preferring one creditor over another, codified in C.C. 3432 (see *supra*, §480), was applied to defeat a claim of fraudulent conveyance by a transfer with intent to defraud. Plaintiff sued a judgment debtor's attorney to challenge the conveyance of security interests by the debtor to defendant for payment of attorneys' fees incurred in defending against plaintiff's action to recover sales commissions. Defendant admitted that the security, consisting of the debtor's only substantial assets, was obtained when it became apparent that a sizable judgment would be entered against the debtor, which would render him unable to pay defendant's fees. The trial judge granted defendant's motion for summary judgment. *Held*, affirmed.

(a) California courts recognized the rule permitting preferential transfers even before the enactment of C.C. 3432 in 1872, and the rule was continued in subsequent cases decided before the adoption of the Uniform Fraudulent Conveyance Act in 1939. (23 C.A.4th 1188.) Later cases relied on C.C. 3432 to reject challenges to preferential transfers without discussion of the *Uniform Act*. (23 C.A.4th 1189.) Indeed, the rule has existed for over 400 years, since the Statute of Elizabeth in 1571. (23 C.A.4th 1190.)

(b) Cases decided in other jurisdictions have reached the same result under §7 of the former Uniform Act, which is substantially the same as C.C. 3439.04. A transfer made in good faith to secure an antecedent debt does not amount to

an act to "hinder, delay, or defraud" an unpreferred creditor. Setting aside the transfer in favor of another creditor would merely substitute one preference for another; hence, a preference cannot be undone by a competing creditor. (23 C.A.4th 1190, citing federal and sister state cases.) In the present case, the transfer to defendant in payment of his legal services, while a preference, was not for that reason a transfer made to "hinder, delay, or defraud" plaintiff. (23 C.A.4th 1191.)

(2) *Consideration of "Badges of Fraud."* Consideration may be given to the following factors, among others, in determining actual intent under C.C. 3439.04(a)(1):

- (a) Whether the transfer or obligation was to an insider. (C.C. 3439.04(b)(1).)
- (b) Whether the debtor retained possession or control of the property after the transfer. (C.C. 3439.04(b)(2).)
- (c) Whether the transfer or obligation was disclosed or concealed. (C.C. 3439.04(b)(3).)
- (d) Whether before the transfer was made or the obligation was incurred, the debtor was sued or threatened with suit. (C.C. 3439.04(b)(4).)
- (e) Whether the transfer was of substantially all the debtor's assets. (C.C. 3439.04(b)(5).)
- (f) Whether the debtor absconded. (C.C. 3439.04(b)(6).)
- (g) Whether the debtor removed or concealed assets. (C.C. 3439.04(b)(7).)
- (h) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred. (C.C. 3439.04(b)(8).)
- (i) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred. (C.C. 3439.04(b)(9).)
- (j) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred. (C.C. 3439.04(b)(10).)
- (k) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor. (C.C. 3439.04(b)(11).)

Courts have regularly given consideration to these so-called "badges of fraud" in determining the existence or nonexistence of actual intent to hinder, delay, or defraud. However, the presence of one or more of them does not create a presumption of fraud but is merely evidence from which an inference of fraud may be drawn. (Legislative Com. Comment (Assembly) to C.C. 3439.04.) (See C.C. 3439.04(c) [amendment adding C.C. 3439.04(b) "does not constitute a change in, but is declaratory of, existing law, and is not intended to affect any judicial decisions that have interpreted" Uniform Fraudulent Transfer Act]; *Annod Corp. v. Hamilton & Samuels* (2002) 100 C.A.4th 1286, 1298, 123 C.R.2d 924, *infra*, §499 [fraudulent intent could not be inferred from presence of several "badges of fraud" where substantial evidence negated that inference]; *Filip v. Bucurenciu* (2005) 129 C.A.4th 825, 834, 28 C.R.3d 884 [C.C. 3439.04(b) does not create mathematical formula to establish actual intent to defraud; no minimum number of statutory factors need be present for finding of actual intent].) (See CACI, No. 4201 [Factors to Consider in Determining Actual Intent to Defraud (Civ. Code, § 3439.04(b))].)

West's Key Number Digest, Fraudulent Conveyances 63 et seq.

SUPPLEMENT: [This section is current through the latest supplement]



133 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

4. Fraudulent Transfers.

b. Transfer Without Receipt of Reasonably Equivalent Value.

8 *Witkin Cal. Proc. Enf Judgm* § 496

[§ 496] Transfer Without Receipt of Reasonably Equivalent Value.

(1) *General Conditions.* A debtor's transfer or obligation is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation "without receiving a reasonably equivalent value in exchange" and (a) was engaged or about to engage in a business or a transaction for which the debtor's remaining assets were "unreasonably small in relation to the business or transaction," or (b) intended to incur or believed or reasonably should have believed the debtor would incur debts "beyond his or her ability to pay as they became due." (C.C. 3439.04(a)(2); see Rutter Group, 1 *Enforcing Judgments and Debts* §3:326 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §12.66A; 45 *A.L.R.2d* 500 [conveyance or transfer in consideration of legal services, rendered or to be rendered, as fraudulent as against creditors]; 37 *Am.Jur.2d* (2001 ed.), *Fraudulent Conveyances* §18 et seq.; CACI, No. 4202 [Constructive Fraudulent Transfer (*Civ. Code*, § 3439.04(a)(2))--Essential Factual Elements]; for form of allegation that transfer impaired capital, see Cal. Civil Practice, 1 *Real Property Litigation*, §7:24; for what constitutes value for transfer or obligation, see C.C.P. 3439.03, supra, §491.)

While the transferee's good faith was an element of "fair consideration" under the former Uniform Fraudulent Conveyance Act (see supra, §485), it is irrelevant to a determination of the adequacy of the consideration under the Uniform Fraudulent Transfer Act. However, lack of good faith may be a basis for withholding protection of a transferee or obligee under C.C. 3439.08(d) (see infra, §501.). (Legislative Com. Comment (Assembly) to C.C. 3439.04.)

(2) *As to Present Creditors: Transfer Resulting in Insolvency.* A debtor's transfer or obligation is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor (1) did not receive "reasonably equivalent value" in exchange, and (2) was "insolvent" at that time or became insolvent as a result of the transfer or obligation. (C.C. 3439.05; see Rutter Group, 1 *Enforcing Judgments and Debts* §3:326 et seq.; C.E.B., 2 *Debt Collection Practice* 2d, §12.66A; CACI, No. 4203 [Constructive Fraudulent Transfer (Insolvency) (*Civ. Code*, § 3439.05)--Essential Factual Elements]; for forms of allegation that transfer was made by insolvent debtor, see Cal. Civil Practice, 1 *Real Property Litigation*, §§7:22, 7:23; on what constitutes insolvency, see C.C.P. 3439.02, supra, §490; on what constitutes value for transfer or obligation, see C.C.P. 3439.03, supra, §491.)

West's Key Number Digest, Fraudulent Conveyances 73 et seq.

SUPPLEMENT: [This section is current through the latest supplement]

Corrections: Page 536, first paragraph, last two lines, "C.C.P. 3439.03" should be "C.C. 3439.03". Page 537, first full paragraph, last two lines, "C.C.P. 3439.02" should be "C.C. 3439.02" and "C.C.P. 3439.03" should be "C.C. 3439.03".



134 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

4. Fraudulent Transfers.

c. Requirement of Injury to Creditor.

8 *Witkin Cal. Proc. Enf Judgm § 497*

[§ 497] Requirement of Injury to Creditor.

In *Mehrtash v. Mehrdash* (2001) 93 C.A.4th 75, 112 C.R.2d 802, plaintiff, as creditor of her former husband for delinquent spousal support, brought an action to set aside, as a fraud on her, a conveyance of the former husband's home to his stepsons. The trial court granted judgment in favor of the former husband, his current wife, and the stepsons on the basis that plaintiff failed to prove that the value of the property exceeded encumbrances and senior liens. *Held*, affirmed.

(a) A well-established principle of the law of fraudulent transfers is that a transfer in fraud of creditors may be attacked only by one who is injured by the transfer. It cannot be said that a creditor has been injured unless the transfer puts beyond the creditor's reach property that the creditor otherwise would be able to subject to the payment of the debt. This concept, which formerly was expressly stated by statute, remains implied by the current language of C.C. 3439.04 (see supra, §§495, 496) and C.C. 3439.05 (see supra, §496), that a transfer "fraudulent *as to a creditor*" may be set aside. This is a principle of equity; a plaintiff seeking the equitable relief of setting aside a transfer of property must show entitlement to relief and inadequacy of a remedy at law. The requirement is also implied by the maxim, set forth in C.C. 3532, that the law neither does nor requires idle acts. It seldom needs restatement in case law, because ordinarily creditors do not bother to seek avoidance of debtors' conveyances without a clear prospect of profiting by the litigation. (93 C.A.4th 80.)

(b) In the present case, the property was heavily mortgaged, and at least two other creditors had obtained judgment liens on the property. Even if the conveyance were set aside, the property could not have been sold without a court order, because it was the former husband's dwelling, and, under *C.C.P. 704.800(a)* (supra, §224), it could not be sold without a minimum bid equal to all encumbrances and senior liens plus the homestead exemption. Plaintiff produced no evidence that the value of the property could support any net recovery for her. (93 C.A.4th 81.) (See Rutter Group, 1 Enforcing Judgments and Debts §3:330.5.)

SUPPLEMENT: [This section is current through the latest supplement]



135 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

5. Remedies of Creditors.

8 *Witkin Cal. Proc. Enf Judgm* § 498

[§ 498] Remedies of Creditors.

(1) *Action for Relief*. A creditor may bring an action for relief from a fraudulent transfer or obligation. (C.C. 3439.07(a); see *Wisden v. Superior Court* (2004) 124 C.A.4th 750, 754, 21 C.R.3d 523 [right to jury trial exists in action to set aside fraudulent transfer; these proceedings were triable by jury at common law]; Rutter Group, 1 Enforcing Judgments and Debts §3:331 et seq.; C.E.B., 2 Debt Collection Practice 2d, §12.66A; 37 *Am.Jur.2d* (2001 ed.), *Fraudulent Conveyances* §159 et seq.; on right to bring action for relief from fraudulent conveyance after close of bankruptcy, see *infra*, §533; on statute of limitations, see *supra*, §492 et seq.; on venue, see 3 *Cal. Proc.* (5th), *Actions*, §826; on pleading, see 5 *Cal. Proc.* (5th), *Pleading*, §882.) A creditor may obtain the following:

(a) *Avoidance of the transfer or obligation* to the extent necessary to satisfy the creditor's claim. (C.C. 3439.07(a)(1) [subject to limitations in C.C. 3439.08 (see *infra*, §499 et seq.)]; see 35 *A.L.R.2d* 8 [right of creditors to attack conveyance by third person to debtor's spouse]; 73 *A.L.R.2d* 749 [right of tort claimant, prior to judgment, to attack conveyance or transfer as fraudulent]; 8 *A.L.R.4th* 1123 [right of secured creditor to set aside fraudulent transfer of other property of debtor]; for forms of complaint to set aside transfer, see *Cal. Civil Practice*, 4 Business Litigation, §§47:43, 47:44; *Cal. Civil Practice*, 1 Real Property Litigation, §7:21; 12A *Am.Jur.* P.P. Forms (1999 ed.), *Fraudulent Conveyances* §1 et seq.)

(b) *An attachment or other provisional remedy* against the transferred asset or its proceeds under *C.C.P.* 481.010 et seq. (see 6 *Cal. Proc.* (5th), *Provisional Remedies*, §52 et seq.). (C.C. 3439.07(a)(2) [subject to limitations in C.C. 3439.08]; see C.C. 3439.07(b) [where creditor has commenced action on claim against debtor, creditor may attach transferred asset or its proceeds "if the remedy of attachment is available in the action under applicable law and the property is subject to attachment in the hands of the transferee under applicable law"].)

(c) *An injunction* against the debtor, the transferee, or both against further disposition of the transferred asset or its proceeds. (C.C. 3439.07(a)(3)(A) [subject to limitations in C.C. 3439.08, principles of equity, and applicable rules of civil procedure]; on injunctions, see 6 *Cal. Proc.* (5th), *Provisional Remedies*, §274 et seq.)

(d) *Appointment of a receiver* to take charge of the transferred asset or its proceeds. (C.C. 3439.07(a)(3)(B) [subject to limitations in C.C. 3439.08, principles of equity, and applicable rules of civil procedure]; on receivers, see 6 *Cal.*

Proc. (5th), Provisional Remedies, §419 et seq.)

(e) *Any other relief* the circumstances may require. (C.C. 3439.07(a)(3)(C) [subject to limitations in C.C. 3439.08, principles of equity, and applicable rules of civil procedure].) Other remedies may include recording a lis pendens and instituting a class action on behalf of similarly situated creditors. (See Legislative Com. Comment to C.C. 3439.10 [noting that C.C. 3439.10 preserves those remedies]; *Kirkeby v. Superior Court (2004) 33 C.4th 642, 649, 15 C.R.3d 805, 93 P.3d 395* [recording of lis pendens]; *Hunting World v. Superior Court (1994) 22 C.A.4th 67, 73, 26 C.R.2d 923, 3 Cal. Proc. (5th), Actions, §400* [same; holding was approved in *Kirkeby*]; *Monastra v. Konica Business Machines, U.S.A. (1996) 43 C.A.4th 1628, 1635, 51 C.R.2d 528* [constructive trust is proper remedy under C.C. 3439.07(a)(3)]; *Filip v. Bucurenciu (2005) 129 C.A.4th 825, 839, 28 C.R.3d 884* [trial court had authority under C.C. 3439.07(a)(3)(C) to set aside fraudulent real property transfers and authorize creditor to foreclose on them].)

(2) *Levy of Execution*. Where a creditor has obtained a judgment on a claim against a debtor, the creditor may levy execution on the transferred asset or its proceeds. (C.C. 3439.07(c); on execution, see *supra*, §99 et seq.)

(3) *Assignment for Benefit of Creditors*. A creditor who is an assignee of a general assignment for the benefit of creditors may exercise the rights and remedies specified in C.C. 3439.07 if they are available to any one or more creditors of the assignor who are beneficiaries of the assignment, but only to the extent they are so available and only for the benefit of those creditors whose rights are asserted by the assignee. (C.C. 3439.07(d).)

(4) *Remedies Are Cumulative*. The remedies specified in C.C. 3439.07 are cumulative. (Legislative Com. Comment to C.C. 3439.07; see *Cortez v. Vogt (1997) 52 C.A.4th 917, 930, 60 C.R.2d 841*, *supra*, §494 [remedies under Uniform Fraudulent Transfer Act are not exclusive but are cumulative to preexisting common law remedies]; *Macedo v. Bosio (2001) 86 C.A.4th 1044, 1048, 1051, 104 C.R.2d 1*, *supra*, §494 [same]; *Wisden v. Superior Court, supra*, 124 C.A.4th 758 [same; citing *Cortez* and *Macedo*].)

West's Key Number Digest, Fraudulent Conveyances 205 et seq.

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Action for Relief*.

(a) *Avoidance of transfer or obligation*: See 12B Am.Jur. P.P. Forms (2009 ed.), Fraudulent Conveyances §1 et seq.



136 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

6. Defenses and Rights of Transferees.

a. Transfers That Are Not Voidable.

8 *Witkin Cal. Proc. Enf Judgm* § 499

[§ 499] Transfers That Are Not Voidable.

Under prescribed circumstances, transfers or obligations that would ordinarily be fraudulent for purposes of the Uniform Fraudulent Transfer Act are deemed not voidable:

(1) *Transfer in Good Faith and for Value.* A transfer made or an obligation incurred with actual intent to hinder, delay, or defraud a creditor is fraudulent. (C.C. 3439.04(a)(1), *supra*, §495.) However, the transfer or obligation is not voidable against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee. (C.C. 3439.08(a); see *Barisich v. Lewis* (1990) 226 C.A.3d 12, 20, 275 C.R. 331 [reasonably equivalent value was shown where quitclaim deed to own quarter interest in property was given to transferee trust deed holder in lieu of foreclosure and in exchange for debt comparable to value of transferee's own quarter interest in property]; *Filip v. Bucurenciu* (2005) 129 C.A.4th 825, 836, 28 C.R.3d 884 [evidence of active participation in plan to hide assets from creditor precluded any claim of innocent mistake and good faith]; Rutter Group, 1 Enforcing Judgments and Debts §3:323 et seq.; CACI, No. 4207 [Affirmative Defense--Good Faith (*Civ. Code*, § 3439.08)]; for forms of affirmative defense based on good faith transfer, see Cal. Civil Practice, 4 Business Litigation, §47:46; Cal. Civil Practice, 1 Real Property Litigation, §7:26.) The person invoking this defense has the burden of establishing good faith and the reasonable equivalence of the consideration exchanged. (Legislative Com. Comment (Assembly) to C.C. 3439.08.)

The term "good faith" as used in C.C. 3439.08 means that the transferee did not collude with the debtor or otherwise actively participate in the fraudulent scheme of the debtor. Thus, a person cannot become a fraudulent transferee by accident or negligently, and guilty knowledge cannot be created by the fiction of constructive notice. (*Lewis v. Superior Court* (1994) 30 C.A.4th 1850, 1858, 37 C.R.2d 63.) Evidence of the transferee's knowledge of the transferor's insolvency at the time of the transfer is not relevant on the issue of good faith, but the transferee's knowledge of the transferor's fraudulent intent, in combination with other facts, may be so relevant. (Legislative Com. Comment (Assembly) to C.C. 3439.08.)

In *Annod Corp. v. Hamilton & Samuels* (2002) 100 C.A.4th 1286, 123 C.R.2d 924, the landlord of a defunct law firm sued the individual partners, asserting that the partners had drained the firm of its assets by taking *partnership*

draws instead of paying overdue rent. *Held*, summary judgment for the partners affirmed; the partners established a complete defense by showing that the transfers were made in good faith and for reasonably equivalent value.

(a) Plaintiff failed to demonstrate a triable issue of material fact as to the partners' defense. The lease provided that the individual partners were not liable for rent, the partners would not have continued working without receiving the draws, and the draws were less than the partners' historical compensation, while generating receivables in excess of their modest draws. Neither did the timing of the draws show fraudulent intent. (*100 C.A.4th 1295.*)

(b) Defendants were not precluded from asserting the defense because they were all insiders of the firm and had actual notice of the lease obligation at the time they took the cash draws. No authority prohibits a partner from receiving a partnership draw authorized by the relevant partnership documents if the partnership, which is solely liable for rent, cannot make its rental payments. (*100 C.A.4th 1299.*)

(2) *Certain Lease and Lien Transactions Even Though Made Without Reasonable Equivalent Value.* Under specified circumstances, a transfer made without receiving reasonable equivalent value in exchange may be fraudulent. (See C.C. 3439.04(a)(2), *supra*, §496; C.C. 3439.05, *supra*, §496.) However, the transfer is not voidable if it results from either of the following:

(a) *Termination of a lease on default of the debtor* pursuant to the lease and applicable law. (C.C. 3439.08(e)(1).)

(b) *Noncollusive enforcement of a lien* in compliance with applicable law, including liens under U.C.C. 9101 et seq. (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §20 et seq.) other than a retention of collateral under U.C.C. 9620 and 9621 (see 4 *Summary* (10th), *Secured Transactions in Personal Property*, §191 et seq.) or a voluntary transfer of collateral in satisfaction of all or part of a secured obligation. (C.C. 3439.08(e)(2).) (See Rutter Group, 1 *Enforcing Judgments and Debts* §3:330; for form of affirmative defense based on transfer resulting from noncollusive enforcement of lien, see Cal. Civil Practice, 1 *Real Property Litigation*, §7:28.)

SUPPLEMENT: [This section is current through the latest supplement]



137 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

6. Defenses and Rights of Transferees.

b. Restrictions on Creditor's Judgment.

8 Within Cal. Proc. Enf Judgm § 500

[§ 500] Restrictions on Creditor's Judgment.

In an action for relief against a fraudulent transfer, a creditor may avoid the transfer to the extent necessary to satisfy the claim. (C.C. 3439.07(a)(1), *supra*, §498.) To the extent that the transfer is voidable, the creditor may obtain a judgment against (1) the *first transferee* of the asset or the person for whose benefit the transfer was made, or (2) any *subsequent transferee* other than a good faith transferee who took for value or from any subsequent transferee. (C.C. 3439.08(b).) Judgment may be recovered in the lesser of (1) the value of the transferred asset at the time of transfer, subject to adjustment as the equities may require, or (2) the amount necessary to satisfy the claim. (C.C. 3439.08(b), (c); see Rutter Group, 1 Enforcing Judgments and Debts §§3:333, 3:334; for form of judgment setting aside transfer, appointing receiver to sell property, and compensating good faith transferee, see Cal. Civil Practice, 1 Real Property Litigation, §7:30; on personal action against transferee, see *supra*, §482.)

SUPPLEMENT: [This section is current through the latest supplement]



138 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

6. Defenses and Rights of Transferees.

c. Rights Where Value Is Given in Good Faith.

8 Witkin Cal. Proc. Enf Judgm § 501

[§ 501] Rights Where Value Is Given in Good Faith.

Notwithstanding the voidability of a transfer or obligation, to the extent of the value given the debtor, a good faith transferee or obligee is entitled to the following:

(1) A lien on or a right to retain any interest in the transferred asset. (C.C. 3439.08(d)(1).)

(2) Enforcement of any obligation incurred. (C.C. 3439.08(d)(2).)

(3) A reduction in the amount of liability on the judgment. (C.C. 3439.08(d)(3).) (See Rutter Group, 1 Enforcing Judgments and Debts §3:335; for form of cross-complaint for declaratory relief by good faith transferee, see Cal. Civil Practice, 1 Real Property Litigation, §7:25.)

SUPPLEMENT: [This section is current through the latest supplement]



139 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

C. Current Law: Uniform Fraudulent Transfer Act.

6. Defenses and Rights of Transferees.

d. Undertaking by Transferee.

8 *Witkin Cal. Proc. Enf Judgm* § 502

[§ 502] Undertaking by Transferee.

(1) *Condition and Amount of Undertaking.* In a creditor's action under the Uniform Fraudulent Transfer Act for relief against a fraudulent transfer or obligation (see *supra*, §498), the transferee may give an undertaking to pay the creditor, should the creditor prevail, the lesser of (a) the value of the property or obligation estimated in the undertaking, or (b) the amount determined in the action to be due the creditor from the person who transferred the property or incurred the obligation, in the event the transfer or obligation is determined to be fraudulent. (C.C. 3446(a), 3447.) The undertaking must be in the lesser of (a) double the value of the property or obligation, or (b) double the amount of the creditor's claim in the action. (C.C. 3448.) It becomes effective 10 days after service on the creditor. (C.C. 3449.) (See Rutter Group, 1 *Enforcing Judgments and Debts* §3:338 et seq.; for form of undertaking, see *Cal. Civil Practice*, 4 *Business Litigation*, §47:45.)

(2) *Effect of Undertaking.* If an undertaking is given, the transferee may sell, encumber, transfer, or otherwise dispose of the property or obligation, and the purchaser, secured party, or other taker possesses the property or obligation unaffected by the action and any judgment that is rendered in the action. (C.C. 3446(b).)

(3) *Definitions.* For purposes of the undertaking statutes, "transfer" and "creditor" have the same meaning as those terms are defined in C.C. 3439.01 (see *supra*, §489) and "transferee" means the person to whom the property was transferred or an obligation was incurred and that person's successors or assigns. (C.C. 3445.)

West's Key Number Digest, Fraudulent Conveyances 172

SUPPLEMENT: [This section is current through the latest supplement]



140 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

D. Transfers Violating Other Statutes.

1. Transfer of Personal Property Without Change of Possession.

8 Within Cal. Proc. Enf Judgm § 503

[§ 503] Transfer of Personal Property Without Change of Possession.

C.C. 3440 et seq. invalidate transfers of personal property without delivery in prescribed circumstances. A transfer of personal property by a party in possession, unless accompanied by an immediate delivery followed by an actual and continued change of possession, is generally void as against (1) the transferor's secured and unsecured creditors at the time of transfer, those who become creditors while the transferor remains in possession, and the creditors' successors, and (2) subsequent buyers from the transferor for value in good faith. (C.C. 3440(a).) This rule is subject to numerous exceptions. (C.C. 3440.1, 3440.2.) (See C.C. 3440(b) [definition of "creditor"]; C.C. 3440.3 [special rule applicable to buyer in ordinary course of business]; C.C. 3440.4, 3440.5 [conditions under which rights of buyers for value in good faith and secured parties are protected]; C.C. 3440.6 [statute of limitations in action setting aside transfer]; Rutter Group, 1 Enforcing Judgments and Debts §3:357 et seq.; Cal. Civil Practice, 4 Business Litigation, §§47:37 et seq., 47:47 et seq. [forms]; 17 *Pacific L. J.* 642; 37 *Am.Jur.2d* (2001 ed.), *Fraudulent Conveyances* §36 et seq.; for detailed discussion of transfers without change of possession, including what constitutes sufficient change of possession, see 4 *Summary* (10th), *Sales*, §215 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



141 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

D. Transfers Violating Other Statutes.

2. Bulk Sales.

8 *Within Cal. Proc. Enf Judgm § 504*

[§ 504] Bulk Sales.

Under Division 6 of the Uniform Commercial Code, entitled "Bulk Sales" (U.C.C. 6101 et seq.), when a business prepares to sell the bulk of its inventory and equipment, creditors are protected by a requirement that they be put on notice of the impending sale. (See Rutter Group, 1 *Enforcing Judgments and Debts* §3:369 et seq.; Cal. Civil Practice, 4 *Business Litigation*, §§47:1 et seq., 47:17 et seq. [forms]; 22 *Pacific L. J.* 371.) The bulk sales law applies to a seller whose principal business is the sale of inventory from stock, including one who manufactures what he or she sells, or that of a restaurant owner. (U.C.C. 6103(a)(1).) A "bulk sale," which may be conducted by an auctioneer or a liquidator acting on the seller's behalf, is a sale "not in the ordinary course of the seller's business of more than half of the seller's inventory and equipment," valued on the date of the bulk sale agreement. (U.C.C. 6102(a)(3).) Certain sales are expressly exempted. (U.C.C. 6103(c).) A specified notice of an impending bulk sale must be given by the buyer (U.C.C. 6104(b), 6105), and the failure to do so renders the buyer liable to a creditor for damages (U.C.C. 6107). Compliance with the requirements of the bulk sales law does not preclude a creditor from recovering on a claim under the Uniform Fraudulent Transfer Act (see C.C. 3439 et seq., supra, §488 et seq.). (*Monastra v. Konica Business Machines, U.S.A. (1996) 43 C.A.4th 1628, 1635, 51 C.R.2d 528, 4 Summary (10th), Sales, §228.*) (For detailed discussion of bulk sales law, see 4 *Summary (10th), Sales, §219 et seq.*)

SUPPLEMENT: [This section is current through the latest supplement]



142 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

D. Transfers Violating Other Statutes.

3. Avoidance of Preferential Transfers by Assignee for Benefit of Creditors.

8 *Within Cal. Proc. Enf Judgm § 505*

[§ 505] Avoidance of Preferential Transfers by Assignee for Benefit of Creditors.

(1) *General Rule.* The assignee of a general assignment for the benefit of creditors, as defined in *C.C.P. 493.010* (supra, §170), may recover a transfer of the assignor's property if the transfer (a) was made to or for the benefit of a creditor on an antecedent debt, (b) was made while the assignor was insolvent and within 90 days before the assignment (or between 90 days and 1 year before the assignment if the creditor was an "insider" who had reasonable cause to believe the debtor was insolvent), and (c) enabled the creditor to receive more than another creditor of the same class. (*C.C.P. 1800(b)*); see *C.C.P. 1800(a)(3)* [defining "insider"]; *C.C.P. 1802* [notice required for general assignment for benefit of creditors]; *11 Pacific L. J. 342*; *14 Pacific L. J. 496*; on assignor's right to retain exempt property, see *C.C.P. 1801*, supra, §170; on effect of general assignment for benefit of creditors on attachment, see *6 Cal. Proc. (5th), Provisional Remedies*, §§188, 189.)

(2) *Exceptions.* An assignee for the benefit of creditors may not recover certain types of transfers, including a transfer that was intended to be a contemporaneous exchange for new value given to the assignor and was in fact a substantially contemporaneous exchange. (*C.C.P. 1800(c)(1)*.) (See *Angeles Elec. Co. v. Superior Court (1994) 27 C.A.4th 426, 430, 436, 32 C.R.2d 660* [because payment by contractor to obtain release of mechanic's lien does not result in "new value" to contractor, it does not come within exception to recoverability of preferential payment provided in *C.C.P. 1800(c)(1)*].)

(3) *Standing of Assignee To Seek Recovery.* An assignee for the benefit of creditors has standing to seek recovery of a preferential transfer even though recovery will not benefit the assignment estate. (*Blonder v. Cumberland Engineering (1999) 71 C.A.4th 1057, 1061, 84 C.R.2d 216* [assignee had standing to seek recovery of security interests in equipment, even though he had previously sold equipment and recovery of security interests would benefit only buyer, not unsecured creditors].)

(4) *No Preemption by Bankruptcy Code.* *C.C.P. 1800* is not preempted by the federal Bankruptcy Code. Congress generally intended to permit the coexistence of state laws governing voluntary assignments for the benefit of creditors. *C.C.P. 1800* is, by design, virtually identical to the Bankruptcy Code's preferential transfer statute; both provisions serve to ensure equality of distribution and to deter the race to recover assets before insolvency. (*Haberbush v. Charles & Dorothy Cummins Family Ltd. Partnership (2006) 139 C.A.4th 1630, 1635, 43 C.R.3d 814* [disagreeing with

Sherwood Partners v. Lycos (9th Cir. 2005) 394 F.3d 1198]; *Credit Managers Assn. of Calif. v. Countrywide Home Loans* (2006) 144 C.A.4th 590, 598, 50 C.R.3d 259 [following *Haberbush*.])

SUPPLEMENT: [This section is current through the latest supplement]



143 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XIV. ATTACK ON FRAUDULENT TRANSFERS

D. Transfers Violating Other Statutes.

4. Unlawful Transfers of Real Property.

8 Witkin Cal. Proc. Enf Judgm § 506

[§ 506] Unlawful Transfers of Real Property.

C.C. 1227 et seq. state the effect on transfers of real property of certain instruments and provisions:

(1) *Instrument Made With Intent To Defraud.* Generally, every instrument, other than a will, affecting an estate in real property, including every charge on real property, or on its rents or profits, made with intent to defraud prior or subsequent purchasers or encumbrancers, is void as against every purchaser or encumbrancer for value of the same property, or the rents or profits. (C.C. 1227.) However, no instrument may be avoided in favor of a subsequent purchaser or encumbrancer having notice at the time the purchase was made or the lien was acquired unless the person in whose favor the instrument was made was privy to the intended fraud. (C.C. 1228.) (See Cal. Civil Practice, 1 Real Property Litigation, §7:13.)

(2) *Execution of Power To Revoke.* Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property is reserved to the grantor or given to another person, a subsequent grant of or charge on the estate by the person having the power, in favor of a purchaser or encumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of the purchaser or encumbrancer. (C.C. 1229.) Where the person having the power is not entitled to execute it until after the time at which the person makes such a grant or charge, the power is deemed to be executed as soon as he or she is entitled to execute it. (C.C. 1230.)

SUPPLEMENT: [This section is current through the latest supplement]



144 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

A. Payment or Compromise by Judgment Debtor.

8 *Witkin Cal. Proc. Enf Judgm* § 507

[§ 507] Payment or Compromise by Judgment Debtor.

(1) *Discharge by Payment.* Payment in full by the judgment debtor will satisfy and extinguish the judgment. (*Blake v. Arp* (1920) 48 C.A. 715, 717, 192 P. 452; *Salveter v. Salveter* (1936) 11 C.A.2d 335, 337, 53 P.2d 381; see C.C.P. 724.010(a), supra, §387 [money judgment may be satisfied by "payment of the full amount required" to satisfy it].) Mere tender, without deposit in a bank, will not extinguish the judgment, but it will stop the running of interest. (*Ferrea v. Tubbs* (1899) 125 C. 687, 689, 58 P. 308 [tender by defendant debtor to plaintiff pending plaintiff's appeal seeking higher judgment]; on tender as stopping running of interest, see 1 *Summary* (10th), *Contracts*, §770; on deposit in bank as discharging obligation, see 1 *Summary* (10th), *Contracts*, §775.) (See C.C.P. 582.5 [power of court in limited civil case to impose terms and conditions, including installment payments, in satisfaction of money judgment]; 14 U.L.A. (Master Ed.), p. 223 [Uniform Periodic Payment of Judgments Act].)

(2) *Discharge by Compromise.* A compromise or accord and satisfaction, e.g., by part payment, will also satisfy a judgment. (*Armstrong v. Sacramento Valley Realty Co.* (1919) 179 C. 648, 651, 178 P. 516; *Schwartz v. California Claim Service, Ltd.* (1942) 52 C.A.2d 47, 52, 125 P.2d 883; see C.C.P. 724.010(a), supra, §387 [money judgment may be satisfied by "acceptance by the judgment creditor of a lesser sum" in full satisfaction of judgment].) (For general discussion of accord and satisfaction, see 1 *Summary* (10th), *Contracts*, §950 et seq.)

(3) *Effect of Payment on Right of Review.* The effect of payment on the right to attack the judgment by appeal, motion, or other method of review, is as follows:

(a) Voluntary payment by the debtor is a waiver of the right of review; but payment under compulsion, to avoid execution, is not. (*Reitano v. Yankwich* (1951) 38 C.2d 1, 2, 3, 237 P.2d 6; for effect on right of appeal of enforced compliance with judgment generally, see 9 *Cal. Proc.* (5th), *Appeal*, §66.)

(b) Acceptance of payment by the creditor is a waiver of the right to appeal; the creditor cannot take the fruits of the judgment and still complain of its inadequacy or impropriety. (*Union Lithograph Co. v. Bacon* (1918) 179 C. 53, 57, 175 P. 464; on waiver of right to appeal by acceptance of benefits of judgment generally, see 9 *Cal. Proc.* (5th), *Appeal*, §67.)

West's Key Number Digest, Judgment 883(11)

SUPPLEMENT: [This section is current through the latest supplement]



145 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 XV. DISCHARGE OF JUDGMENT
 B. Payment by Joint Obligor or Surety.
 1. Joint Obligor: Contribution.

8 *Witkin Cal. Proc. Enf Judgm* § 508

[§ 508] Joint Obligor: Contribution.

(1) *General Rule of Contribution.* If two or more joint debtors other than joint tortfeasors are jointly liable on a money judgment, one who has satisfied more than that debtor's proportion of the judgment, whether voluntarily or through enforcement procedures, may compel contribution from another joint debtor who has satisfied less than his or her due proportion. (*C.C.P.* 881, *C.C.P.* 882(a); see *Young v. Rosenthal* (1989) 212 *C.A.3d* 96, 129, 260 *C.R.* 369 [order imposing sanctions on client and attorney under *C.C.P.* 128.5 was final order for payment of money, and they were jointly liable judgment debtors within meaning of *C.C.P.* 882]; *Security Pac. Nat. Bank v. Lyons* (1994) 25 *C.A.4th* 706, 711, 30 *C.R.2d* 623 [paying partner's right to contribution from other members of partnership]; Rutter Group, 2 *Enforcing Judgments and Debts* §6:1559 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §7.63; *Cal. Civil Practice*, 1 *Torts*, §§4:8, 4:9; 18 *Am.Jur.2d* (2004 ed.), *Contribution* §33 et seq.; on equitable contribution from co-obligor generally, see 13 *Summary* (10th), *Equity*, §179 et seq.) (On predecessor statute, see *Tucker v. Nicholson* (1938) 12 *C.2d* 427, 430, 84 *P.2d* 1045; *Berylwood Inv. Co. v. Graham* (1941) 43 *C.A.2d* 659, 671, 111 *P.2d* 467; *Woolley v. Seijo* (1964) 224 *C.A.2d* 615, 621, 36 *C.R.* 762.)

A right of contribution likewise exists among tortfeasors where a money judgment has been rendered jointly against them. Contribution is limited to the excess paid over the paying defendant's pro rata share of the judgment and is subject to various limitations, e.g., a wilful wrongdoer has no right of contribution. (See *C.C.P.* 875, 876; on procedure to compel contribution by joint tortfeasor, see *infra*, §510; for general treatment of contribution among joint tortfeasors, see 5 *Summary* (10th), *Torts*, §103 et seq.)

(2) *No Offsets on Unadjudicated Claims.* A joint and several judgment debtor who satisfies the entire debt is entitled to an order of contribution from the other joint debtors free of any offsets the other debtors may have based on unadjudicated claims. (*Security Pac. Nat. Bank v. Lyons*, *supra*, 25 *C.A.4th* 707.)

SUPPLEMENT: [This section is current through the latest supplement]



146 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

B. Payment by Joint Obligor or Surety.

2. Surety: Repayment.

8 *Within Cal. Proc. Enf Judgm § 509*

[§ 509] Surety: Repayment.

Where two or more joint debtors are jointly liable on a money judgment and the judgment is based on an obligation of one judgment debtor as surety for another, a surety who satisfies all or part of the judgment, whether voluntarily or through enforcement procedures, may compel repayment from the principal. (*C.C.P.* 882(b); see Rutter Group, 2 *Enforcing Judgments and Debts* §6:1559 et seq.; C.E.B., 1 *Debt Collection Practice* 2d, §7.63; on reimbursement of surety by principal generally, see 13 *Summary* (10th), *Equity*, §178.) (On predecessor statute, see *Painter v. Berglund* (1939) 31 *C.A.2d* 63, 68, 87 *P.2d* 360.)

SUPPLEMENT: [This section is current through the latest supplement]



147 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XV. DISCHARGE OF JUDGMENT

B. Payment by Joint Obligor or Surety.

3. Procedure To Compel Contribution or Repayment.

8 Witkin Cal. Proc. Enf Judgm § 510

[§ 510] Procedure To Compel Contribution or Repayment.

(1) *Application on Noticed Motion.* A judgment debtor, other than a joint tortfeasor, who is entitled to compel contribution or repayment (see supra, §§508, 509) may apply on noticed motion to the court that entered the judgment for an order determining liability for contribution or repayment. The application must be made any time before the judgment is satisfied in full or within 30 days following satisfaction. (*C.C.P.* 881, 883(a); see Rutter Group, 2 Enforcing Judgments and Debts §6:1560 et seq.; C.E.B., 1 Debt Collection Practice 2d, §7.63; for form of notice of motion, see Cal. Civil Practice, 1 Torts, §4:35.)

(2) *Effect of Order.* An order determining liability for contribution or repayment entitles the judgment debtor to the benefit of the judgment to enforce the liability, including every remedy that the judgment creditor has against the persons liable, to the extent of the liability. (*C.C.P.* 883(b).) In addition, nothing in *C.C.P.* 883 limits any other remedy the debtor might have to enforce contribution or repayment. (*C.C.P.* 883(c).) For example, a joint judgment debtor may take an assignment of the judgment (see infra, §511) or may bring an action to obtain a judgment for contribution. (Law Rev. Com. Comment to *C.C.P.* 883.)

(3) *Joint Tortfeasors.* The general contribution and repayment procedure is not applicable to joint tortfeasors. (*C.C.P.* 881.) A judgment for contribution may be entered by one tortfeasor judgment debtor against another by a noticed motion. Notice of the motion must be given to all parties, including the plaintiff, at least 10 days before the hearing on the motion, and must be accompanied by an affidavit setting forth any information known by the moving party regarding assets of the defendants available for satisfaction of the judgment or claim for contribution. (*C.C.P.* 878; see Cal. Civil Practice, 1 Torts, §§4:6, 4:7; *18 Am.Jur.2d* (2004 ed.), *Contribution* §39 et seq.; on right to contribution among joint tortfeasors, see supra, 508; for general treatment of contribution among joint tortfeasors, see 5 *Summary* (10th), *Torts*, §103 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



148 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

B. Payment by Joint Obligor or Surety.

4. Assignment of Judgment.

8 Witkin Cal. Proc. Enf Judgm § 511

[§ 511] Assignment of Judgment.

The contribution and repayment procedure provided by *C.C.P.* 882 and 883 (see *supra*, §508 et seq.) is not exclusive. (*C.C.P.* 883(c).) A joint obligor or surety who pays the judgment in full may instead take an assignment of it from the judgment creditor. This is a purchase of the judgment, not a satisfaction of it; the judgment is kept alive and the assignee may enforce it by execution or other means to the extent necessary to recover from the other joint obligors or the principal. (See *Tucker v. Nicholson* (1938) 12 *C.2d* 427, 430, 84 *P.2d* 1045; *Tompkins v. Powers* (1930) 106 *C.A.* 464, 466, 289 *P.* 685; *Sun Realty Co. v. Rosenstein* (1930) 107 *C.A.* 484, 487, 290 *P.* 1053; *Woolley v. Seijo* (1964) 224 *C.A.2d* 615, 622, 36 *C.R.* 762; 19 *Cal. L. Rev.* 197.)

West's Key Number Digest, Judgment 878(2)

SUPPLEMENT: [This section is current through the latest supplement]



149 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

C. Equitable Setoff.

1. Nature of Right.

8 *Witkin Cal. Proc. Enf Judgm* § 512

[§ 512] Nature of Right.

(1) *In General.* If a judgment debtor recovers a money judgment against the judgment creditor, or acquires a third person's judgment or any other claim against that creditor, the debtor may use the claim as an offset, thus satisfying, in whole or in part, the judgment the creditor has against the debtor. This equitable right exists independent of statute, and is available against an assignee of the creditor who takes with notice of the debtor's claim. (See *Haskins v. Jordan* (1898) 123 C. 157, 160, 55 P. 786; *Coonan v. Loewenthal* (1905) 147 C. 218, 221, 81 P. 527; *Harrison v. Adams* (1942) 20 C.2d 646, 649, 128 P.2d 9, *infra*, §513; *Highsmith v. Lair* (1955) 44 C.2d 298, 302, 281 P.2d 865; *Brienza v. Tepper* (1995) 35 C.A.4th 1839, 1847, 42 C.R.2d 690, *supra*, §299; *Keith G. v. Suzanne H.* (1998) 62 C.A.4th 853, 860, 72 C.R.2d 525, 5 Cal. Proc. (5th), *Pleading*, §1165; 2 California Affirmative Defenses (2006 ed.), §44:1 *et seq.*; 47 *Am.Jur.2d* (2006 ed.), *Judgments* §828 *et seq.*) (For statutory rules on compensation of cross-demands, see *C.C.P.* 431.70, 5 Cal. Proc. (5th), *Pleading*, §1165; for offset of state claim against amounts owed by state, see *Govt.C.* 12419.5.)

(2) *Methods of Exercising Right.* Three methods of exercising the right have been recognized:

(a) An equitable action by the debtor against the judgment creditor to have the claim offset against the judgment. (*Coonan v. Loewenthal*, *supra*; *Harrison v. Adams*, *supra*.)

(b) A cross-complaint by the debtor in an action that the judgment creditor brings against the debtor. (*Machado v. Borges* (1915) 170 C. 501, 502, 150 P. 351 [counterclaim under former law]; *Miller v. Murphy* (1921) 186 C. 344, 347, 199 P. 525 [same].) (On cross-complaint, see 5 Cal. Proc. (5th), *Pleading*, §1154 *et seq.*)

(c) A motion by the defendant in that action, after judgment has been given in favor of the creditor. (See *Haskins v. Jordan*, *supra* [if appeal is pending from judgment asserted as offset, court should defer decision on motion until appeal is determined]; *Layne v. Superior Court* (1932) 121 C.A. 206, 207, 8 P.2d 895 [mandamus to compel granting of motion]; 15A *Am.Jur.* P.P. Forms (2005 ed.), *Judgments* §511 *et seq.*)

In *Margott v. Gem Properties* (1973) 34 C.A.3d 849, 111 C.R. 1, defendant moved to have an *unsecured* claim against an insolvent plaintiff offset against a proposed judgment announced by the court. Plaintiff then submitted

proposed findings, conclusions, and a judgment that offset a *secured* claim by defendant, and these were signed by the court before hearing defendant's motion. *Held*, reversed. In the absence of some equitable ground established by the judgment creditor, a judgment debtor (a) has a right to offset when the judgment creditor is insolvent (34 C.A.3d 854, citing the text), and (b) also has a right to setoff an unsecured claim and preserve his or her right to a secured claim (34 C.A.3d 855).

SUPPLEMENT: [This section is current through the latest supplement]



150 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XV. DISCHARGE OF JUDGMENT

C. Equitable Setoff.

2. Limitations on Right.

8 *Witkin Cal. Proc. Enf Judgm* § 513

[§ 513] Limitations on Right.

(1) *In General.* The claim that a debtor attempts to use as an offset must be valid and subsisting. (See *Blake v. Arp* (1920) 48 C.A. 715, 718, 192 P. 452 [judgment discharged by payment]; *Murphy v. Davids* (1921) 55 C.A. 416, 424, 203 P. 802 [judgment barred by limitations].)

(2) *Assigned Claim.* An assigned claim presents a more difficult problem. In *Harrison v. Adams* (1942) 20 C.2d 646, 128 P.2d 9, A, the creditor, obtained judgment against H, the debtor, which A assigned to V, his wife, for value, but without notice to H. The payee of a note of A assigned it to H for collection, H to receive one-third of any sum recovered. Plaintiff H then brought an action against defendant A to offset this assigned claim against his liability on A's judgment. *Held*, he was not entitled to do so.

(a) The claims were not mutual; "the judgments must be between the same parties in the same right." (20 C.2d 649.) Here, plaintiff H was merely an assignee for collection, and setoff would mean that his assignor could enforce a claim against defendant A without any corresponding right of A to a setoff against the assignor (A's judgment was against the assignee, H). (20 C.2d 650.)

(b) Plaintiff H, in seeking to use an assigned claim as an offset against his own personal debt, was violating the rule forbidding a trustee to use trust property for private purposes; "a trustee, or one bearing a similar fiduciary relationship, may not set off a claim due the trust estate against his own personal obligation." (20 C.2d 650.)

(c) Permitting an offset here "would ignore the fundamental basis of equitable set-off, which is the right to balance mutual demands between the parties to the action, by allowing a stranger to collect his claim through a nominal party. Moreover, in the present case, this stranger is asserting rights against a bona fide purchaser for value [V]." (20 C.2d 652.) (See *Brienza v. Tepper* (1995) 35 C.A.4th 1839, 1847, 42 C.R.2d 690, supra, §299 [attorney's contractual lien was entitled to priority over subsequently acquired offset through assignment from third-party judgment creditor].)

West's Key Number Digest, Judgment 883(13)

SUPPLEMENT: [This section is current through the latest supplement]



151 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

1. In General.

8 Witkin Cal. Proc. Enf Judgm § 514

[§ 514] In General.

(1) *Discharge in Bankruptcy as Voiding Judgment.* A judgment may be discharged if the debtor has been granted a discharge under the federal Bankruptcy Code (*11 U.S.C.*, §101 et seq.). The discharge in bankruptcy voids any judgment to the extent that it is a determination of the debtor's personal liability for a debt discharged by bankruptcy and operates as an injunction against any act to collect, recover, or offset the debt, whether or not discharge of the debt is waived. (*11 U.S.C.*, §524(a)(1), (a)(2); see *Forsyth v. Jones* (1997) 57 C.A.4th 776, 780, 67 C.R.2d 357 [scope of injunction under *11 U.S.C.*, §524(a) does not affect duties of liability insurers and thus does not prevent action against discharged debtor to establish liability of debtor's insurers]; *Boyer v. Jensen* (2005) 129 C.A.4th 62, 71, 28 C.R.3d 124 [motorist injured in accident could not continue action against other driver, after his discharge in bankruptcy, in order to pursue driver's employer that had potential respondeat superior liability; distinguishing *Forsyth* on ground that Insurance Code there required judgment against insured as condition to pursuing claim against insurer]; Rutter Group, 4 Bankruptcy §§22:30 et seq., 22:80 et seq.; Rutter Group, 1 Enforcing Judgments and Debts §5:1 et seq.; C.E.B., 2 Debt Collection Practice 2d, §12.1 et seq.; C.E.B., 1 Bankruptcy Practice in California, §§2.1 et seq., 2A.1 et seq., 7.1 et seq., 10.1 et seq., 11.1 et seq., 12.1 et seq.; C.E.B., 2 Bankruptcy Practice in California, §§13.1 et seq., 14.1 et seq., 15.1 et seq.; 17 *Pepperdine L. Rev.* 853 [Fifth Amendment limits on debtor's discharge]; 43 *Stanf. L. Rev.* 99 [contract excuse and bankruptcy discharge]; 41 *U.C.L.A. L. Rev.* 1063 [precedent in interpretation of Bankruptcy Code]; 9 *A.L.R. Fed* 2d 431 [wilful violation of discharge injunction provisions of Bankruptcy Code (*11 U.S.C.*, §524(a)(2), (a)(3))]; 9-9E *Am.Jur.*2d (2006 ed.), Bankruptcy; on exemptions in bankruptcy, see *C.C.P.* 703.130, 703.140, supra, §178; on automatic stay on filing of bankruptcy petition, see *11 U.S.C.*, §362, infra, §515.)

For a discharge in bankruptcy, (a) the judgment must involve a "debt" (see *11 U.S.C.*, §101(12), infra, §516); (b) the debt must not be of a kind excepted from discharge (see *11 U.S.C.*, §523, infra, §517 et seq.); and (c) the debtor must not by his or her status or conduct, e.g., obtaining a prior discharge within a prescribed period and in stated circumstances, be subject to denial of discharge (see *11 U.S.C.*, §§727(a), 1141(d)).

(2) *Types of Bankruptcy Cases.* The Bankruptcy Code is divided into numbered chapters. Specific relief is sought under Chapter 7 (liquidation; see *11 U.S.C.*, §701 et seq.), Chapter 9 (adjustment of debts of municipalities; see *11 U.S.C.*, §901 et seq.), Chapter 11 (reorganization; see *11 U.S.C.*, §1101 et seq.), Chapter 12 (adjustment of debts of family farmer or fisherman; see *11 U.S.C.*, §1201 et seq.), Chapter 13 (adjustment of debts of individuals; see *11*

U.S.C., §1301 et seq.), or Chapter 15 (cross-border insolvency; see *11 U.S.C.*, §1501 et seq.). Chapter 1 (general provisions; see *11 U.S.C.*, §101 et seq.), Chapter 3 (case administration; see *11 U.S.C.*, §301 et seq.), and Chapter 5 (creditors, debtor, and estate; see *11 U.S.C.*, §501 et seq.) apply to all types of relief.

The types of relief most generally available are Chapter 7, which involves liquidation of the debtor's nonexempt assets to obtain a discharge of debts; Chapter 11, which involves business reorganization under a creditor-approved plan; and Chapter 13, which permits an individual debtor with regular income to adjust and repay debts under a court-approved plan (with a discharge of debts on completion). Individuals most frequently seek Chapter 7 relief. (See Rutter Group, 2 Bankruptcy, Chap. 10 et seq.; Rutter Group, 1 Enforcing Judgments and Debts §5:15 et seq.; C.E.B., 2 Debt Collection Practice 2d, §§12.13, 12.14.)

(3) *Bankruptcy Abuse Prevention and Consumer Protection Act*. The Bankruptcy Code was extensively revised by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The Act created a means test for persons with primarily consumer debts who seek Chapter 7 debt liquidation, diverting those with incomes above a designated median and able to make prescribed payments into repayment plans, primarily under Chapter 13. Among numerous other changes, the Act imposed credit counseling requirements, placed additional limits on automatic stays, and increased administrative and judicial oversight of small business bankruptcies. (See Pub.L. 109-8, *119 Stat.* 23, April 20, 2005.)

If the debtor seeks Chapter 7 relief and his or her income exceeds a prescribed median, a presumption arises of "abuse" of the provisions of the chapter that, if un rebutted, requires dismissal of the case or its conversion, with the debtor's consent, to a Chapter 11 or 13 proceeding. (*11 U.S.C.*, §707(b).) The prescribed median is based on the median family income for the debtor's state calculated by the United States Census Bureau, based on the number of persons in the debtor's household and adjusted annually to reflect changes in the Consumer Price Index. (*11 U.S.C.*, §101(39A)); for current median income figures, see United States Trustee Program website at: www.usdoj.gov.)

(4) *Distinction: Judgment Lien Perfected Before Bankruptcy*. A judgment lien perfected by recording an abstract of judgment prior to the debtor's filing for bankruptcy survives the debtor's discharge (provided the lien has not been avoided by the trustee in bankruptcy), and the creditor is entitled to a writ of execution following the discharge. (*Songer v. Cooney* (1989) 214 C.A.3d 387, 391, 264 C.R. 1; on avoidance of transfers or encumbrances by trustee, see *11 U.S.C.*, §544 et seq.)

West's Key Number Digest, Bankruptcy 3353(6)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *Discharge in Bankruptcy as Voiding Judgment*. See 31 A.L.R. Fed 2d 29 [concealment, destruction, mutilation, falsification, or failure to preserve record from which debtor's financial condition might be ascertained for purpose of denying discharge].(3) *Bankruptcy Abuse Prevention and Consumer Protection Act*. See 30 A.L.R. Fed 2d 341 [construction and application of filing fee waiver provision of Bankruptcy Abuse Prevention and Consumer Protection Act]; 33 A.L.R. Fed 2d 631 [construction and application of Bankruptcy Abuse Prevention and Consumer Protection Act relating to health care business or patient ombudsman].



152 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law
 XV. DISCHARGE OF JUDGMENT
 D. Bankruptcy of Judgment Debtor.
 2. Automatic Stay.

8 *Within Cal. Proc. Enf Judgm § 515*

[§ 515] Automatic Stay.

Generally, on the filing of a bankruptcy petition, creditor actions against the debtor or against the property of the bankruptcy estate are automatically stayed. (*11 U.S.C.*, §362(a).) "The automatic stay has two broad purposes. First, it provides debtors with protection from hungry creditors by giving them a 'breathing spell' against all harassment, collection efforts and foreclosure actions. Second, it protects the debtor's creditors by preventing a race for the debtor's assets." (*Grant v. Clampitt (1997) 56 C.A.4th 586, 590, 65 C.R.2d 727.*) (See *ECC Const. v. Oak Park Calabasas Homeowners Assn. (2004) 118 C.A.4th 1031, 1035, 13 C.R.3d 580* [automatic stay rendered debtor's appeal from adverse judgment timely; even though stay did not extend time in which to file appeal, it provided 30-day extension of time in which trial court could rule on debtor's motion for new trial, and debtor timely filed notice of appeal after court's ruling on new trial motion]; Rutter Group, 2 Bankruptcy, Chap. 8; Rutter Group, 1 Enforcing Judgments and Debts §5:30 et seq.; C.E.B., 2 Debt Collection Practice 2d, §12.35 et seq.; C.E.B., 1 Bankruptcy Practice in California, §2.13; *17 San Diego L. Rev. 1113* [automatic stay as equitable roadblock to secured creditor relief]; *32 San Diego L. Rev. 1133* [enforceability of prepetition waiver of automatic stay in bankruptcy]; *66 So. Cal. L. Rev. 659* [rethinking bankruptcy's automatic stay over intangible property rights]; *43 U.C.L.A. L. Rev. 1117* [waiver of automatic stay in bankruptcy]; *8 A.L.R. Fed 2d 433* [what constitutes "willful violation" of automatic stay provisions of Bankruptcy Code (*11 U.S.C.*, §362(h)) sufficient to award damages--Chapter 13 cases].)

The automatic stay is inclusive; every proceeding of a judicial or quasi-judicial nature by a creditor against the debtor or estate property is affected. (*Kertesz v. Ostrovsky (2004) 115 C.A.4th 369, 376, 8 C.R.3d 907.*) However, proceedings initiated by the *debtor* are not stayed. (*Shah v. Glendale Fed. Bank (1996) 44 C.A.4th 1371, 1373, 52 C.R.2d 417.*) Thus, the trustee in bankruptcy may prosecute actions on the debtor's behalf. (*Lauriton v. Carnation Co. (1989) 215 C.A.3d 161, 164, 263 C.R. 476.*)

Any judicial proceedings in violation of the automatic stay are void. Accordingly, the trial court lacks power to dismiss the stayed case, and the dismissal is void. (*Sindler v. Brennan (2003) 105 C.A.4th 1350, 1353, 129 C.R.2d 888.*)

The automatic stay is subject to a number of exceptions. (*11 U.S.C.*, §362(b); see *Cavanagh v. California Unemp. Ins. App. Bd. (2004) 118 C.A.4th 83, 90, 13 C.R.3d 7* [Employment Development Department assessments for unpaid unemployment insurance contributions were not subject to automatic stay; *11 U.S.C.*, §362(b)(9) provides exception for

issuance of notice of tax deficiency or making of tax assessment].) Also, the scope of the automatic stay is limited by its underlying purposes; there must be a showing that the proceeding interferes in some manner with the bankruptcy estate or threatens the stay's role in protecting both debtor and creditors. (*Grant v. Clampitt, supra*, 56 C.A.4th 592 [automatic stay does not apply to action under C.C.P. 527.6 (injunction to prevent harassment) unless injunction action interferes with bankruptcy case].)

SUPPLEMENT: [This section is current through the latest supplement]

See 23 A.L.R. Fed 2d 339 [what constitutes "willful violation" of Bankruptcy Code automatic stay provisions sufficient to award damages--Chapter 7 cases].



153 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

3. Dischargeable Debts.

8 *Witkin Cal. Proc. Enf Judgm* § 516

[§ 516] Dischargeable Debts.

(1) *Definitions.* Under the Bankruptcy Code, a "debt" means liability on a claim. (*11 U.S.C., §101(12).*) A "claim" means either (a) a right to payment, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, or (b) a right to an equitable remedy for breach of performance if the breach gives rise to a right to payment, whether or not reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured. (*11 U.S.C., §101(5).*) (See Rutter Group, 4 Bankruptcy §22:10 et seq.; Rutter Group, 1 Enforcing Judgments and Debts §5:57.15 et seq.; C.E.B., 1 Bankruptcy Practice in California, §2.20.)

(2) *Obligation Must Require Payment.* Pursuant to these statutory definitions, an obligation must involve a right to payment for it to constitute a dischargeable "debt." (*Rayan v. Dykeman (1990) 224 C.A.3d 1629, 1635, 274 C.R. 672* [order requiring conveyance of property was not dischargeable].)

In *Ohio v. Kovacs (1985) 469 U.S. 274, 105 S.Ct. 705, 83 L.Ed.2d 649*, plaintiff state obtained an injunction directing defendant, the chief executive of a corporation, to clean up a hazardous waste site. When defendant failed to comply, plaintiff obtained the appointment of a receiver who was directed to take possession of the assets of defendant and the corporation and implement the injunction. However, before the receiver could complete his task, defendant filed a personal bankruptcy petition. Plaintiff filed a complaint in the Bankruptcy Court seeking a declaration that the individual's obligation under the injunction to clean up the site was not dischargeable in bankruptcy because it was not a "debt" or a "liability on a claim" within the meaning of the Bankruptcy Code. *Held*, under the circumstances, defendant's obligation under the injunction was a "debt" or "liability on a claim" subject to discharge.

(a) The appointment of a receiver converted defendant's obligation under the injunction to an obligation to pay money, and hence to a dischargeable debt, because, with the receiver in control of the site, defendant could not perform his obligation except by paying money to defray cleanup costs. (*105 S.Ct. 708, 83 L.Ed.2d 655.*)

(b) There is no indication in the language of former *11 U.S.C., §101(4)(B)* (now *11 U.S.C., §101(5)(B)*) that the right to performance cannot be a claim unless it arises from a contractual arrangement. Thus, the injunction was a claim against defendant for bankruptcy purposes even though his default was a breach of a state statute, not a breach of an

ordinary commercial contract. (*105 S.Ct. 708, 83 L.Ed.2d 655.*)

SUPPLEMENT: [This section is current through the latest supplement]



154 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

a. In General.

8 *Witkin Cal. Proc. Enf Judgm § 517*

[§ 517] In General.

(1) *Automatic Exclusions.* A variety of debts are automatically excluded from a discharge in bankruptcy. (*11 U.S.C.*, §523(a); see Rutter Group, 4 Bankruptcy §22:165 et seq.; Rutter Group, 1 Enforcing Judgments and Debts §5:57.5 et seq.; C.E.B., 2 Debt Collection Practice 2d, §12.40 et seq.; C.E.B., 1 Bankruptcy Practice in California, §7.47 et seq.; for specific debts that are nondischargeable, see *infra*, §518 et seq.)

(2) *Exclusions Determined by Court.* In addition, three categories of debts are excluded from discharge where the court, after notice and a hearing, determines that the debt is so excluded. (*11 U.S.C.*, §523(c)(1).) These are debts arising from the following:

(a) False representation or fraud. (See *11 U.S.C.*, §523(a)(2), *infra*, §518.)

(b) Embezzlement, larceny, or defalcation by a fiduciary. (See *11 U.S.C.*, §523(a)(4), *infra*, §519.)

(c) Wilful and malicious injury. (See *11 U.S.C.*, §523(a)(6), *infra*, §520.)

(3) *Exceptions.* Under *11 U.S.C.*, §523(a)(3), a debt not sufficiently scheduled to permit a creditor without notice or actual knowledge to file a timely claim is not discharged. (See *infra*, §521.)

Some exceptions generally applicable under these provisions do not apply to discharges granted under Chapter 13. (See *11 U.S.C.*, §1328(a).)

(4) *Standard of Proof.* The standard of proof of the applicability of a dischargeability exception is the preponderance of the evidence. (*Grogan v. Garner (1991) 498 U.S. 279, 111 S.Ct. 654, 656, 112 L.Ed.2d 755, 761.*)

West's Key Number Digest, Bankruptcy 3422(11)

SUPPLEMENT: [This section is current through the latest supplement]



155 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

b. False Representation or Fraud.

8 *Witkin Cal. Proc. Enf Judgm* § 518

[§ 518] False Representation or Fraud.

A bankrupt's liabilities are not discharged when they arise from money, property, services, or an extension, renewal, or refinance of credit obtained by (1) false pretenses, false representation, or actual fraud (other than a statement respecting the debtor's or an insider's financial condition), or (2) a materially false statement in writing about the debtor's or an insider's financial condition, caused or published by the debtor with intent to deceive and reasonably relied on by the creditor. (*11 U.S.C.*, §523(a)(2).) (See *11 U.S.C.*, §101(31) [definition of "insider"]; *11 U.S.C.*, §1328(a)(2) [discharges under Chapter 13 are subject to *11 U.S.C.*, §523(a)(2)]; *Cohen v. de la Cruz* (1998) 523 U.S. 213, 118 S.Ct. 1212, 1216, 140 L.Ed.2d 341, 346 [*11 U.S.C.*, §523(a)(2) excepts from discharge in bankruptcy all liability arising from fraud, including award of treble damages (plus attorneys' fees and costs) in fraud action]; Rutter Group, 4 Bankruptcy §22:545 et seq.; 158 A.L.R. Fed 189 [credit card debt as nondischargeable as arising from fraud]; 9E Am.Jur.2d (1999 ed.), Bankruptcy §3306 et seq.; on similar provision under former law, see *Brown v. Felsen* (1979) 442 U.S. 127, 99 S.Ct. 2205, 2211, 60 L.Ed.2d 767, 776; *Wilson v. Walters* (1941) 19 C.2d 111, 121, 119 P.2d 340; *O'Brien v. Appling* (1955) 133 C.A.2d 40, 42, 283 P.2d 289, 7 Cal. Proc. (5th), Judgment, §449; *Heehler v. Eisenhower* (1957) 153 C.A.2d 363, 364, 314 P.2d 526; *Yellow Creek Logging Corp. v. Dare* (1963) 216 C.A.2d 50, 55, 30 C.R. 629; *Stoner v. Walsh* (1972) 24 C.A.3d 938, 942, 101 C.R. 485 [false promise]; on election of fraud theory in original action to preclude possibility of future discharge in bankruptcy, see 5 Cal. Proc. (5th), Pleading, §709.)

The exception to discharge for a liability arising from fraud requires that a creditor be held to a standard of justifiable reliance on the debtor's fraudulent misrepresentation, and not the more demanding standard of reasonable reliance. However, the reasonableness of the reliance is not wholly irrelevant. The greater the distance between the reliance claimed and the limits of reasonableness, the greater the doubt about reliance in fact. Also, reasonableness goes to the probability of actual reliance. (*Field v. Mans* (1995) 516 U.S. 59, 116 S.Ct. 437, 441, 446, 133 L.Ed.2d 351, 359, 365.)

SUPPLEMENT: [This section is current through the latest supplement]



156 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

c. Embezzlement, Larceny, or Defalcation by Fiduciary.

8 Within Cal. Proc. Enf Judgm § 519

[§ 519] Embezzlement, Larceny, or Defalcation by Fiduciary.

Liability on a debt for embezzlement or larceny or arising from fraud or defalcation by a fiduciary is not discharged. (*11 U.S.C.*, §523(a)(4).) (See *11 U.S.C.*, §1328(a)(2) [discharges under Chapter 13 are subject to *11 U.S.C.*, §523(a)(4)]; Rutter Group, 4 Bankruptcy §22:605 et seq.; *15 A.L.R. Fed 2d 337* [who is acting in fiduciary capacity within meaning of fraud or defalcation discharge exception in bankruptcy--fiduciary capacity of debtors involved in sale, purchase, or lease of goods or services other than legal, financial, investment, or banking products or services]; *17 A.L.R. Fed 2d 33* [who is acting in fiduciary capacity within meaning of fraud or defalcation discharge exception in bankruptcy--fiduciary capacity of debtors other than sales, purchasing, or leasing agent debtors]; *9E Am.Jur.2d (1999 ed.)*, Bankruptcy §3351 et seq.; on similar provision under former law, see *Ivy v. Plyler (1966) 246 C.A.2d 678, 683, 54 C.R. 894, 9 Summary (10th)*, *Corporations*, §11; on dischargeability of debt arising from fraud or defalcation by fiduciary of financial institution, see *infra*, §525.)

SUPPLEMENT: [This section is current through the latest supplement]

See 102 Proof of Facts 3d 207 [nondischargeability of debt based on fraud or defalcation by debtor acting in fiduciary capacity].



157 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

d. Wilful and Malicious Injury.

8 *Witkin Cal. Proc. Enf Judgm* § 520

[§ 520] Wilful and Malicious Injury.

(1) *In General.* Liability for wilful and malicious injury to a person or property by the debtor is not discharged. (*11 U.S.C.*, §523(a)(6).) (See *Rutter Group*, 4 *Bankruptcy* §22:660 et seq.; *116 Harv. L. Rev.* 2541 [treatment of tort claims in bankruptcy and deterrence of debtors from taking unreasonable accident risks]; *17 Pacific L. J.* 1511 [meaning of "willful and malicious"]; *78 A.L.R.2d* 1226 [claim or judgment based on malicious prosecution, false imprisonment, or other similar tort, as liability for wilful and malicious injury within Bankruptcy Code, barring discharge of that liability]; *18 A.L.R. Fed* 2d 465 [claim or judgment based on sexual offense or misconduct as liability for wilful and malicious injury within Bankruptcy Code or predecessor statute, barring discharge of that liability]; *9E Am.Jur.2d* (1999 ed.), *Bankruptcy* §3387 et seq.; on similar provision under former law, see *Van Epps v. Aufdemkamp* (1934) 138 C.A. 622, 623, 32 P.2d 1116 [conversion of corporate stock was wilful and malicious]; *Fitzgerald v. Herzer* (1947) 78 C.A.2d 127, 130, 177 P.2d 364 [default judgment in action against defendant automobile driver; complaint alleging reckless driving and wanton conduct]; *Wilcox v. Rohr* (1947) 81 C.A.2d 312, 313, 183 P.2d 916 [workers' compensation claim against uninsured employer was discharged, despite wilfulness of failure to insure]; *Morris v. Drubin* (1958) 165 C.A.2d 467, 468, 332 P.2d 371 [plaintiff did not sustain burden of showing wilful and malicious conversion of bonds]; *Larsen v. Beekmann* (1969) 276 C.A.2d 185, 189, 80 C.R. 654 [stipulated judgment was silent on whether there was wrongful misappropriation and case was remanded to determine that issue]; *Terzian v. California Cas. Indem. Exchange* (1974) 42 C.A.3d 942, 947, 117 C.R. 284 [finding of wilful and malicious injury in judgment resulting from reckless drunk driving].)

The word "wilful" in *11 U.S.C.*, §523(a)(6) modifies the word "injury," indicating that nondischargeability requires a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury. (*Kawaauhau v. Geiger* (1998) 523 U.S. 57, 118 S.Ct. 974, 977, 140 L.Ed.2d 90, 95 [debt arising from medical malpractice judgment, attributable to negligent or reckless conduct, was dischargeable].)

11 U.S.C., §523(a)(6) does not apply in Chapter 13 proceedings. (See *11 U.S.C.*, §1328(a).) However, a debt "for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual" is not discharged in these proceedings. (*11 U.S.C.*, §1328(a)(4).)

(2) *Burden of Proof.* Some tortious acts do not necessarily involve wilfulness or maliciousness, and an issue of fact arises, with the burden on the creditor, when he or she claims that a debt arising from a tort was not discharged. (See *Robinson v. Early* (1967) 248 C.A.2d 19, 56 C.R. 183 [creditor failed to sustain burden of showing judgment for wilful battery rather than negligence].)

(3) *Pleading Alternative Theories To Avoid Loss of Judgment by Bankruptcy.* A personal injury plaintiff may plead on alternative theories of negligence and wilful misconduct, even though the plaintiff does not seek punitive damages. The wilful misconduct count is proper, and the issue must be determined, in order to avoid the possibility of the judgment being wiped out by the defendant's bankruptcy. (*Savage v. Van Marle* (1974) 39 C.A.3d 241, 246, 114 C.R. 51; but see *Brown v. Felsen* (1979) 442 U.S. 127, 99 S.Ct. 2205, 2207, 60 L.Ed.2d 767, 774, *infra*, §530 [in determining dischargeability of debt, bankruptcy court is not confined to review of judgment and record in prior state court proceeding].)

(4) *Operation of Motor Vehicle, Vessel, or Aircraft While Intoxicated.* Liability for death or personal injury caused by the debtor's unlawful operation of a motor vehicle, vessel, or aircraft while intoxicated is not discharged. (11 U.S.C., §523(a)(9); see 11 U.S.C., §1328(a)(2) [11 U.S.C., §523(a)(9) applies to discharges under Chapter 13]; *Terzian v. California Cas. Indem. Exchange, supra* [finding under prior law of wilful and malicious injury in judgment resulting from reckless drunk driving].)

SUPPLEMENT: [This section is current through the latest supplement]

(1) *In General.* See 26 A.L.R. *Fed 2d* 507 [preclusive effect of prior judgment, verdict, or conviction of assault and battery in determining nondischargeability of debt or claim]; 27 A.L.R. *Fed 2d* 1 [claim or judgment based on aggravated or felonious assault and battery or assault or battery using deadly weapon as liability for wilful and malicious injury under Bankruptcy Code]; 28 A.L.R. *Fed 2d* 179 [claim or judgment based on assault and battery other than aggravated or felonious assault and battery or assault or battery using deadly weapon as liability for wilful and malicious injury under Bankruptcy Code].



158 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

e. Unscheduled Debts.

8 *Witkin Cal. Proc. Enf Judgm* § 521

[§ 521] Unscheduled Debts.

(1) *In General.* A debt is not discharged if (a) it is not properly scheduled under *11 U.S.C.*, §521(1), with the creditor's name, if known to the debtor, in time to permit timely action by the creditor to protect the claim, and (b) the creditor did not have notice or actual knowledge in time to do so. (*11 U.S.C.*, §523(a)(3).) (See *11 U.S.C.*, §1328(a)(2) [discharges under Chapter 13 are subject to *11 U.S.C.*, §523(a)(3)]; Rutter Group, 4 Bankruptcy §22:400 et seq.; *9E Am.Jur.2d* (1999 ed.), Bankruptcy §3343 et seq.; on similar provision under former law, see *Dill v. Hamilton* (1946) 73 C.A.2d 881, 884, 167 P.2d 497; *United States Credit Bureau v. Claus* (1947) 79 C.A.2d 85, 87, 179 P.2d 36.) This defect may be waived, and the debt discharged, by the creditor's voluntary participation in the bankruptcy proceedings. (*Van Denburgh v. Goodfellow* (1941) 19 C.2d 217, 224, 120 P.2d 20 [decided under former law].)

(2) *Debts Not Scheduled in Prior Proceeding.* A debt that was or could have been listed or scheduled by the debtor in a prior bankruptcy proceeding in which discharge was waived or denied is not discharged. (*11 U.S.C.*, §523(a)(10).) (See *11 U.S.C.*, §1328(a) [*11 U.S.C.*, §523(a)(10) debt is nondischargeable for purposes of Chapter 13]; Rutter Group, 4 Bankruptcy §22:430 et seq.; *9B Am.Jur.2d* (1999 ed.), Bankruptcy §3350.)

West's Key Number Digest, Bankruptcy 3361

SUPPLEMENT: [This section is current through the latest supplement]



159 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

f. Debts Arising From Dissolution of Marriage or Separation.

8 *Within Cal. Proc. Enf Judgm § 522*

[§ 522] Debts Arising From Dissolution of Marriage or Separation.

(1) *Domestic Support Obligations*. A debt for a "domestic support obligation" is not discharged. (*11 U.S.C.*, §523(a)(5).) "Domestic support obligation" means a debt, including interest, (a) that is owed to or recoverable by a spouse, former spouse, or child of the debtor, by the child's parent, legal guardian, or responsible relative, or by a governmental unit, (b) that is in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) under a separation agreement, divorce decree, or property settlement agreement, an order of a court of record, or a determination made by a governmental unit, and (c) that is not assigned to a nongovernmental entity, other than voluntarily for the purpose of collecting the debt. (*11 U.S.C.*, §101(14A).) (See *11 U.S.C.*, §1328(a)(2) [discharges under Chapter 13 are subject to *11 U.S.C.*, §523(a)(5)]; *In re Marriage of Cordero* (2002) 95 C.A.4th 653, 659, 115 C.R.2d 787 [spousal and child support arrearages are nondischargeable in bankruptcy]; Rutter Group, 4 Bankruptcy §22:230 et seq.; C.E.B., 1 Bankruptcy Practice in California, §16.4 et seq.; 9E *Am.Jur.2d* (1999 ed.), Bankruptcy §3362 et seq.; 2 *U.C.L.A. L. Rev.* 96 [putative spousal support rights]; on similar provision under former law, see *Remondino v. Remondino* (1940) 41 C.A.2d 208, 214, 106 P.2d 437; *Myhers v. Myhers* (1970) 6 C.A.3d 855, 858, 86 C.R. 356.)

In re Marriage of Henderson (1990) 225 C.A.3d 531, 275 C.R. 226, involved the delivery of an earnings withholding order for child support to the father's employer, resulting in a partial satisfaction of a money judgment, obtained by the county family support division. The father subsequently filed a Chapter 7 bankruptcy petition and listed the county as an unsecured creditor without priority. After the father was released from all dischargeable debts, the county filed an application for renewal of judgment. The father moved to vacate the renewal because part of the debt had been discharged in bankruptcy. *Held*, motion to vacate renewal was properly denied.

(a) Under *11 U.S.C.*, §523(a)(5), child support obligations are nondischargeable in bankruptcy, and the county, as a creditor with a debt listed as nondischargeable, could sue on its claim in any appropriate nonbankruptcy forum, even after the close of the prior bankruptcy proceeding. (225 C.A.3d 533.)

(b) The county did not have to first petition the bankruptcy court to revoke the discharge of the child support debt before it could seek renewal of the judgment in the state court. Because child support is a type of *11 U.S.C.*, §523 debt

that is "self-operating," it is not necessary for the bankruptcy court to determine its nondischargeability simply because a debtor lists it. And listing the county on the bankruptcy petition, without filing a complaint, is not tantamount to a request that the bankruptcy court determine the dischargeability of the debt. (225 C.A.3d 534.)

(2) *Debts in Nature of Support but Not So Designated.* A debt in the nature of alimony, maintenance, or support is nondischargeable without regard to whether it is expressly so designated. (11 U.S.C., §§101(14A), 523(a)(5); see Rutter Group, 4 Bankruptcy §22:225 et seq.)

In *Aarons v. Brasch* (1964) 229 C.A.2d 197, 40 C.R. 153, an interlocutory decree awarded the wife all the community property, and also \$ 7,500 as "compensation" for years of work and self-denial to provide means for her husband's pursuit of academic studies. *Held*, because alimony may be a sum in gross, and no other basis for the award could be suggested, this was an alimony award and nondischargeable, despite the absence of express language of "alimony," "support" or "maintenance." (229 C.A.2d 202.)

(3) *Award of Attorneys' Fees in Dissolution or Separation Action.* An award of attorneys' fees in a dissolution or separation action may be sufficiently incidental to a support award to be nondischargeable. (See *Henry v. Henry* (1960) 182 C.A.2d 707, 713, 6 C.R. 418 [dictum citing New York case]; cf. *In re Marriage of Sprague & Spiegel-Sprague* (2003) 105 C.A.4th 215, 219, 129 C.R.2d 261 [where attorney had not obtained relief from automatic bankruptcy stay (see supra, §515) to pursue dissolution action in state court, trial court's order characterizing award of attorneys' fees as nondischargeable was void].)

(4) *Other Debts Incurred in Connection With Dissolution or Separation.* Any debt to a spouse, former spouse, or child of the debtor other than those described in 11 U.S.C., §523(a)(5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree, or other court order or governmental determination is not dischargeable. (11 U.S.C., §523(a)(15); see 11 U.S.C., §1328(a) [Chapter 13 proceedings are not subject to 11 U.S.C., §523(a)(15)]; *Cal-Western Reconveyance Corp. v. Reed* (2007) 152 C.A.4th 1308, 1319, 62 C.R.3d 244 [unlike support obligation, obligation for community property equalization payment is dischargeable in bankruptcy]; Rutter Group, 4 Bankruptcy §22:270 et seq.) (On former rule that debts under property settlement agreement are discharged, see *Tropp v. Tropp* (1933) 129 C.A. 62, 64, 18 P.2d 385; *Fernandes v. Pitta* (1941) 47 C.A.2d 248, 251, 117 P.2d 728; *Smalley v. Smalley* (1959) 176 C.A.2d 374, 375, 1 C.R. 440; *Yarus v. Yarush* (1960) 178 C.A.2d 190, 202, 3 C.R. 50; *In re Marriage of Clements* (1982) 134 C.A.3d 737, 746, 184 C.R. 756; for further discussion of discharge of property settlement debts, see 11 Summary (10th), *Husband and Wife*, §367.)

SUPPLEMENT: [This section is current through the latest supplement]



160 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

g. Taxes, Fines, Penalties, and Restitution.

8 *Witkin Cal. Proc. Enf Judgm* § 523

[§ 523] Taxes, Fines, Penalties, and Restitution.

(1) *Taxes.* Certain tax liabilities are not discharged:

(a) Taxes entitled to priority under *11 U.S.C.*, §507(a)(3), (a)(8), whether or not a claim for the taxes was filed or allowed. (*11 U.S.C.*, §523(a)(1)(A); see *Young v. United States* (2002) 535 *U.S.* 43, 122 *S.Ct.* 1036, 1038, 152 *L.Ed.2d* 79, 83 [federal income tax claim enjoys priority under *11 U.S.C.*, §507(a)(8) and is nondischargeable in bankruptcy under *11 U.S.C.*, §523(a)(1)(A) if return was due within 3 years before bankruptcy petition was filed; "three-year lookback period" is limitations period subject to equitable tolling during pendency of prior bankruptcy petition]; Rutter Group, 4 Bankruptcy §22:190 et seq.)

(b) Taxes for which a required return, or equivalent report or notice, was not filed or given, or was filed or given after the due date, within 2 years before the bankruptcy petition was filed. (*11 U.S.C.*, §523(a)(1)(B); see Rutter Group, 4 Bankruptcy §22:195 et seq.)

(c) Taxes for which the debtor made a fraudulent return or wilfully attempted to evade or defeat the tax. (*11 U.S.C.*, §523(a)(1)(C); see 37 *U.C. Davis L. Rev.* 1147 ["willfulness" exception to discharge of tax debts].) (See *11 U.S.C.*, §1328(a) [*11 U.S.C.*, §523(a)(1) does not apply in Chapter 13 proceedings]; Rutter Group, 4 Bankruptcy §22:210 et seq.; C.E.B., 2 Bankruptcy Practice in California, §17.1 et seq.; 31 *Cal. Western L. Rev.* 1 [avoiding tax liens on personal property in bankruptcy]; 9*E Am.Jur.2d* (1999 ed.), *Bankruptcy* §3290 et seq.)

(d) These provisions also apply to customs duties. (*11 U.S.C.*, §523(a)(1).)

A debt incurred to pay a tax to the United States or another governmental unit that would be nondischargeable under *11 U.S.C.*, §523(a)(1) is likewise not discharged. (*11 U.S.C.*, §523(a)(14), (a)(14A); see *11 U.S.C.*, §1328(a) [these provisions do not apply in Chapter 13 proceedings].)

(2) *Fines, Penalties, and Forfeitures.* A debt for a fine, penalty, or forfeiture (excluding specified tax penalties), payable to a government entity other than in compensation for actual pecuniary loss, is not discharged. (*11 U.S.C.*, §523

(a)(7).) (See Rutter Group, 4 Bankruptcy §22:280 et seq.; *9E Am.Jur.2d (1999 ed.)*, Bankruptcy §3401 et seq.)

11 U.S.C., §523(a)(7) does not apply in Chapter 13 proceedings. (See *11 U.S.C.*, §1328(a).) However, a "criminal fine, included in a sentence on the debtor's conviction of a crime," is not discharged in those proceedings. (*11 U.S.C.*, §1328(a)(3).)

A debt incurred to pay fines or penalties imposed under federal election law is also not discharged. (*11 U.S.C.*, §523(a)(14B); see *11 U.S.C.*, §1328(a) [*11 U.S.C.*, §523(a)(14B) does not apply in Chapter 13 proceedings].)

(3) *Restitution*. A debt for payment of a restitution order issued under the federal criminal code (18 U.S.C.) is not discharged. (*11 U.S.C.*, §523(a)(13); see *11 U.S.C.*, §1328(a)(3) [debt for restitution, or criminal fine, included in criminal sentence is not dischargeable in Chapter 13 proceedings]; Rutter Group, 4 Bankruptcy §22:290 et seq.)

Debts for restitution included in state criminal sentence are likewise nondischargeable. (*11 U.S.C.*, §1328(a)(3) [for purposes of Chapter 13]; *Kelly v. Robinson (1986) 479 U.S. 36, 107 S.Ct. 353, 361, 93 L.Ed.2d 216, 229* [under *11 U.S.C.*, §523(a)(7); Chapter 7 case].) (See *11 U.S.C.*, §1328(a)(4), *supra*, 520 [debts for restitution awarded in civil action against debtor for wilful or malicious injury causing personal injury or death are not discharged in Chapter 13 proceedings]; *43 Hastings L. J. 1517* [reexamination of nondischargeability of criminal restitutive obligations in Chapter 13 bankruptcies].)

SUPPLEMENT: [This section is current through the latest supplement]



161 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

h. Educational Benefit Overpayments and Loans.

8 Witkin Cal. Proc. Enf Judgm § 524

[§ 524] Educational Benefit Overpayments and Loans.

Liability for the following debts is not discharged unless the exemption from discharge would impose an undue hardship on the debtor or the debtor's dependents:

(1) An educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit or made under a program funded by a governmental unit or nonprofit institution. (*11 U.S.C.*, §523(a)(8)(A)(i).)

(2) An obligation to repay funds received as an educational benefit, scholarship, or stipend. (*11 U.S.C.*, §523(a)(8)(A)(ii).)

(3) Any other qualified education loan, as defined in the Internal Revenue Code (see *26 U.S.C.*, §221(d)(1)), incurred by a debtor who is an individual. (*11 U.S.C.*, §523(a)(8)(B).) (See *11 U.S.C.*, §1328(a)(2) [discharges under Chapter 13 are subject to *11 U.S.C.*, §523(a)(8)]; Rutter Group, 4 Bankruptcy §22:300 et seq.; *9E Am.Jur.2d (1999 ed.)*, Bankruptcy §3404 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



162 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

i. Misconduct by Personnel of Financial Institution.

8 *Witkin Cal. Proc. Enf Judgm* § 525

[§ 525] Misconduct by Personnel of Financial Institution.

(1) *Fraud or Defalcation by Fiduciary.* A debt arising from any act of fraud or defalcation by the debtor while acting in a fiduciary capacity with respect to any federal depository institution or insured credit union is not discharged. (*11 U.S.C.*, §523(a)(11); see *11 U.S.C.*, §1328(a) [*11 U.S.C.*, §523(a)(11) does not apply in Chapter 13 proceedings]; Rutter Group, 4 Bankruptcy §22:760 et seq.; on dischargeability of debt for embezzlement or larceny or arising from fraud or defalcation by fiduciary, see *supra*, §519.)

(2) *Undercapitalization.* A debt arising from the debtor's malicious or reckless failure to fulfill a commitment to a federal regulatory agency to maintain the capital of an insured depository institution is not discharged. (*11 U.S.C.*, §523(a)(12); see *11 U.S.C.*, §1328(a) [*11 U.S.C.*, §523(a)(12) does not apply in Chapter 13 proceedings]; Rutter Group, 4 Bankruptcy §22:750 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



163 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

j. Condominium, Cooperative Housing, or Homeowners Association Dues.

8 Within Cal. Proc. Enf Judgm § 526

[§ 526] Condominium, Cooperative Housing, or Homeowners Association Dues.

Liability for the payment of fees or assessments of a membership association with respect to the debtor's interest in a condominium, cooperative housing corporation, or lot in a homeowners association that become due after entry of the order for relief in bankruptcy is not discharged so long as the debtor or trustee in bankruptcy has a legal, equitable, or possessory ownership interest in that condominium, corporation, or lot. (*11 U.S.C.*, §523(a)(16); see *11 U.S.C.*, §1328(a) [*11 U.S.C.*, §523(a)(16) does not apply in Chapter 13 proceedings]; Rutter Group, 4 Bankruptcy §22:390.)

SUPPLEMENT: [This section is current through the latest supplement]



164 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

k. Securities Violations.

8 *Witkin Cal. Proc. Enf Judgm* § 527

[§ 527] Securities Violations.

Debts arising from violations of federal or state securities laws are not dischargeable in prescribed circumstances. (*11 U.S.C.*, §523(a)(19); see *11 U.S.C.*, §1328(a) [*11 U.S.C.*, §523(a)(19) does not apply in Chapter 13 proceedings]; Rutter Group, 4 Bankruptcy §22:740 et seq.) The debt must be for one of the following:

- (1) Violation of a federal or state securities law. (*11 U.S.C.*, §523(a)(19)(A)(i).)
- (2) Violation of a regulation or order issued under such a law. (*11 U.S.C.*, §523(a)(19)(A)(i).)
- (3) Common law fraud, deceit, or manipulation in connection with the purchase or sale of a security. (*11 U.S.C.*, §523(a)(19)(A)(ii).)

In addition, the debt must result from one of the following:

- (a) A judgment, order, consent order, or decree entered in a federal or state judicial or administrative proceeding. (*11 U.S.C.*, §523(a)(19)(B)(i).)
- (b) A settlement agreement entered into by the debtor. (*11 U.S.C.*, §523(a)(19)(B)(ii).)
- (c) A court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor. (*11 U.S.C.*, §523(a)(19)(B)(iii).)

SUPPLEMENT: [This section is current through the latest supplement]



165 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

k. Securities Violations.

8 *Witkin Cal. Proc. Enf Judgm* § 528

[§ 528] (l) Amounts Owed to Retirement Plan.

A debt is not discharged if owed to a pension, profit-sharing, stock bonus, or other plan established pursuant to prescribed sections of the Internal Revenue Code (see 26 *U.S.C.*, §§401, 403, 408, 408A, 414, 457, or 501(c)) under either of the following:

(1) A loan that is (a) permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) (see 29 *U.S.C.*, §1108(b)(1)) or (b) subject to section 72(p) of the Internal Revenue Code (see 26 *U.S.C.*, §72(p)). (11 *U.S.C.*, §523(a)(18)(A).)

(2) A loan from a federal employee thrift savings plan (see 5 *U.S.C.*, §8431 et seq.) that satisfies the requirements of 5 *U.S.C.*, §8433(g). (11 *U.S.C.*, §523(a)(18)(B).) (See 11 *U.S.C.*, §1328(a) [11 *U.S.C.*, §523(a)(18) does not apply in Chapter 13 proceedings]; Rutter Group, 4 Bankruptcy §22:395.)

Nothing in these provisions may be construed to provide that a loan made pursuant to a governmental plan under 26 *U.S.C.*, §414(d), or a contract or account under 26 *U.S.C.*, §403(b), constitutes a claim or a debt for purposes of the Bankruptcy Code. (11 *U.S.C.*, §523(a)(18).)

SUPPLEMENT: [This section is current through the latest supplement]



166 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

4. Nondischargeable Debts.

m. Filing Fees and Costs Assessed Against Criminal Defendant.

8 Within Cal. Proc. Enf Judgm § 529

[§ 529] Filing Fees and Costs Assessed Against Criminal Defendant.

A debt is not discharged where it arises from a fee imposed on a prisoner by a court for filing a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to that filing, regardless of an assertion of poverty by the debtor (under 28 U.S.C., §1915(b) or (f)(2) or a similar nonfederal law) or the debtor's status as a prisoner (as defined in 28 U.S.C., §1915(h) or a similar nonfederal law). (11 U.S.C., §523(a)(17); see 11 U.S.C., §1328(a) [11 U.S.C., §523(a)(17) does not apply in Chapter 13 proceedings]; Rutter Group, 4 Bankruptcy §22:385.)

SUPPLEMENT: [This section is current through the latest supplement]



167 of 170 DOCUMENTS

Witkin California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

5. Showing Dischargeability by Evidence Outside Record.

8 *Witkin Cal. Proc. Enf Judgm* § 530

[§ 530] Showing Dischargeability by Evidence Outside Record.

In determining the dischargeability of a debt, the bankruptcy court is not confined to a review of the judgment and the record in the prior state court proceeding to collect the debt. When the debtor asserts the new defense of bankruptcy (see *infra*, §531), *res judicata* does not bar the creditor from offering additional evidence to meet that defense by showing that the debt is nondischargeable. (*Brown v. Felsen* (1979) 442 U.S. 127, 99 S.Ct. 2205, 2211, 60 L.Ed.2d 767, 776 [debt allegedly arising from fraud; decided under former law].) (See 44 U.C.L.A. L. Rev. 159 [according issue preclusion to determinations of state default judgments in bankruptcy discharge exception proceedings].)

In *United States Credit Bureau v. Manning* (1957) 147 C.A.2d 558, 305 P.2d 970, defendant agent, after misappropriation from his principal was discovered, gave a promissory note for the amount, and the principal obtained a default judgment on the note. Defendant later was discharged in bankruptcy, and set up this defense in the principal's action to renew the judgment. *Held*, bankruptcy was not a defense. A judgment does not necessarily foreclose an investigation into the nature of the obligation and normally a creditor would not intentionally relinquish a nondischargeable claim for a dischargeable claim. Hence, the nondischargeable indebtedness evidenced by the note on which the judgment was obtained could be proved by evidence outside the record. (147 C.A.2d 561.) (See *California Bank v. Clay* (1962) 207 C.A.2d 25, 27, 24 C.R. 185 [plaintiff did not elect to waive fraud and sue on contract and thereby render debt dischargeable in bankruptcy].)

West's Key Number Digest, Bankruptcy 3311

SUPPLEMENT: [This section is current through the latest supplement]



168 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

6. Discharge of Debt as Defense.

8 *Witkin Cal. Proc. Enf Judgm* § 531

[§ 531] Discharge of Debt as Defense.

(1) *Former Law.* Under former law, where a debt was barred by a discharge in bankruptcy before judgment on the debt, the discharge had to be pleaded or was waived. (*Maryland Cas. Co. v. Lipscomb* (1940) 40 C.A.2d 171, 173, 104 P.2d 525; *Davison v. Anderson* (1954) 125 C.A.2d Supp. 908, 911, 271 P.2d 233.) Where the discharge was after judgment, the debtor could prevent execution on the judgment, even though he had made no prior attempt to obtain a stay of the proceedings. (See *Jackson v. Shaw* (1937) 20 C.A.2d 740, 741, 68 P.2d 310; *Pratt v. Fields* (1937) 21 C.A.2d 723, 724, 70 P.2d 268.)

(2) *Bankruptcy Code.* Under the Bankruptcy Code, a discharge in bankruptcy of a debt voids any judgment obtained on that debt at any time, whether or not discharge of the debt is waived. (11 U.S.C., §524(a)(1), supra §514; Rutter Group, 4 Bankruptcy §22:30 et seq.; 9E *Am.Jur.2d* (1999 ed.), Bankruptcy §3269; cf. *Hurley v. Bredehorn* (1996) 44 C.A.4th 1700, 1703, 52 C.R.2d 615 [although judgment in action by plaintiff awarding defendants' attorneys' fees was discharged in bankruptcy, appeal from reduction of award was not moot, because it was possible for creditors, including defendants, to show that plaintiff's property could become available to them in bankruptcy case and for bankruptcy court to modify discharge order to allow appeal to proceed]; on receipt of evidence outside record to determine dischargeability of debt, see supra, §530.)

SUPPLEMENT: [This section is current through the latest supplement]



169 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

7. Estoppel To Set Up Defense.

8 *Witkin Cal. Proc. Enf Judgm* § 532

[§ 532] Estoppel To Set Up Defense.

In *Forman v. Scott* (1964) 231 C.A.2d 340, 41 C.R. 805, plaintiff recovered a default judgment against defendant for damages arising out of an automobile accident, and defendant obtained a discharge in bankruptcy. Then the Department of Motor Vehicles suspended his driver's license and other papers for failure to satisfy the judgment. In order to obtain restoration of his driving privileges and continue his employment, he (a) entered into a written agreement with plaintiff acknowledging the debt and agreeing to pay \$ 10 monthly for its liquidation, and (b) on stipulation with plaintiff had the default judgment amended *nunc pro tunc* to provide that it might be liquidated according to the agreement, "without prejudice to any other legal remedies available to plaintiff." (231 C.A.2d 341.) He was repeatedly delinquent in payments for 6 years. Finally plaintiff made a demand for the arrears, and, on defendant's refusal to pay, sought leave to execute on the original default judgment. *Held*, order for execution affirmed.

(a) A debt barred by bankruptcy may be revived by a new promise. (231 C.A.2d 342; on revival of barred legal obligation by new promise, see 1 *Summary* (10th), *Contracts*, §239 et seq.)

(b) Although the judgment itself was barred by bankruptcy, defendant was estopped to raise the bankruptcy adjudication as a bar. By his conduct, he led plaintiff to believe that the judgment would be treated as valid and enforceable, despite his discharge; in reliance, plaintiff stipulated for modification of the judgment, and suffered detriment from reliance. (231 C.A.2d 344.)

SUPPLEMENT: [This section is current through the latest supplement]



170 of 170 DOCUMENTS

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Witkin Summary of California Law

XV. DISCHARGE OF JUDGMENT

D. Bankruptcy of Judgment Debtor.

8. Action for Fraudulent Conveyance After Close of Bankruptcy.

8 Witkin Cal. Proc. Enf Judgm § 533

[§ 533] Action for Fraudulent Conveyance After Close of Bankruptcy.

In *Brenelli Amedeo, S.P.A. v. Bakara Furniture (1994) 29 C.A.4th 1828, 35 C.R.2d 348*, defendant, a corporate judgment debtor, filed for bankruptcy under Chapter 7, which prevented plaintiff judgment creditor from satisfying any of the judgment (see *supra*, §514). Plaintiff filed a new action against defendant and its individual shareholders for fraudulent conveyance and related claims. The trial judge sustained defendant's demurrer without leave to amend on the ground that only the bankruptcy trustee, not an individual creditor, could pursue a fraudulent conveyance action. *Held*, reversed.

(a) Although only a Chapter 7 bankruptcy trustee may pursue a fraudulent conveyance action under *11 U.S.C.*, §548 during the pendency of a bankruptcy case, defendant's bankruptcy case was already closed. Once the trustee filed his no-asset report and the bankruptcy court closed the case, the trustee was divested of any interest in any claim the estate may have had for fraudulent conveyance. (*29 C.A.4th 1842.*)

(b) With the abandonment of any potential assets of the debtor and the close of bankruptcy, under *11 U.S.C.*, §362(c) the automatic stay from prepetition claims was terminated and plaintiff was no longer precluded from pursuing an action against nondebtors and against property that was no longer property of the estate. (*29 C.A.4th 1843.*)

(c) Even if the case presented facts to reopen the bankruptcy case, the statute of limitations applicable to avoidance of transfers by the trustee in bankruptcy (see *11 U.S.C.*, §546) barred any action by the trustee to set aside an alleged fraudulent conveyance. (*29 C.A.4th 1844.*) (See *Sanwa Bank Calif. v. Chang (2001) 87 C.A.4th 1314, 1317, 105 C.R.2d 330* [discharge in bankruptcy does not bar creditor from pursuing fraudulently conveyed property that was never made part of the bankruptcy estate]; C.E.B., 1 Personal and Small Business Bankruptcy Practice in California, §6.49 et seq.)

SUPPLEMENT: [This section is current through the latest supplement]



1 of 1 DOCUMENT

Within California Procedure, Fifth Edition

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CHAPTER X - Enforcement of Judgment

Within Summary of California Law

X. THIRD-PARTY CLAIMS AND RELATED PROCEDURES

C. Third-Party Claim of Security Interest or Lien.

4A. (New) Action on Undertaking.

8 *Within Cal. Proc. Enf Judgm § 375A*

[§ 375A] (New) Action on Undertaking.

In *Franke v. BAM Bldg. Co. (2009) 172 C.A.4th 224, 91 C.R.3d 212*, a secured third party brought an action for liability on an undertaking against judgment creditors, who had given the undertaking under *C.C.P. 720.260* (text, §375) to proceed against a bankruptcy distribution to the judgment debtor. The trial court entered judgment for the secured party, including losses incurred in the creditors' efforts to enforce the underlying judgment and attorneys' fees. *Held*, judgment affirmed, except for the award of attorneys' fees.

(a) The amount of the undertaking does not cap the amount the secured party may recover. *C.C.P. 720.260(c)(2)* provides recovery for any losses "incurred by reason of the enforcement proceedings." Under *C.C.P. 996.470(a)* (see 6 *Cal. Proc. (5th), Provisional Remedies*, §36), the liability of a principal based on statute is not limited to the amount of the bond, except as otherwise provided by statute. No statute limits the liability of the principal to the amount of an undertaking posted under *C.C.P. 720.260. (172 C.A.4th 230.)*

(b) The secured party may recover even though the creditors failed to create a valid lien against the debtor's distribution and received no money. The only test for recovery under *C.C.P. 720.260* is whether the secured party incurred any losses as a result of the enforcement action. *(172 C.A.4th 231.)*

(c) The secured party's recovery is not limited to costs incurred in the creditors' state court action, but includes costs incurred as a result of the creditors' efforts in bankruptcy court. *(172 C.A.4th 231.)* However, neither *C.C.P. 720.260* nor *C.C.P. 996.470(a)* provides for attorneys' fees in the action on the undertaking. *(172 C.A.4th 236.)*

(On enforcement of bonds or undertakings generally, see 6 *Cal. Proc. (5th), Provisional Remedies*, §35 et seq.)

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