

## Memorandum 77-2

Subject: Study 39.250 - Enforcement of Judgments (Exemptions)

This memorandum presents several basic policy questions regarding exemptions and tracing of exempt funds as a basis for the discussion of the draft of Chapter 7 (Exemptions From Enforcement of Money Judgments) of the Enforcement of Judgments Law, which is attached hereto. The draft statute is essentially the same in substance as existing law; some changes (noted in the Comments or notes following the draft sections) are made in existing law. Several exhibits are also attached hereto:

- Exhibit 1: Uniform Exemptions Act (adopted by the National Conference of Commissioners on Uniform State Laws in 1976)
- Exhibit 2: Code Civ. Proc. §§ 690-690.52 (the bulk of the exemptions in California law)
- Exhibit 3: Miscellaneous California statutes (primarily exemption provisions located in codes other than the Code of Civil Procedure)
- Exhibit 4: Miscellaneous Statutes of Other States (several statutes referred to in this memorandum or the notes following the draft sections)
- Exhibit 5: Exemption provisions from the Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, Pt. II, 93d Cong., 1st Sess. 125-130 (1973)

BASIC POLICY OF EXEMPTION LAWS

General Approach

The aim of the exemption provisions should be to strike a satisfactory balance between the interests of the debtor in supporting himself and his family in some degree of comfort, the interests of creditors in collecting judgments, and the interests of the judicial system as well as debtors and creditors in administrative efficiency. It is generally thought that it is the interests of debtors which is best protected by present California exemption provisions. To a large extent, specific exemptions are a result of lobbying by special interest groups (e.g.,

credit unions, insurance companies, fraternal benefit societies); others reflect a cumulative legislative view of the assets needed by the typical debtor (e.g., the list of household items in Section 690.1). Inequities usually result, however, where the exemption laws favor certain types of assets over others. For example, there is an absolute exemption of proceeds of group life insurance whereas the exemption of private life insurance policies is limited; the head of a family owning a house gets a \$30,000 homestead exemption, whereas a similar head of a household who rents a house gets no exemption; credit union members have a \$1,500 exemption, whereas that amount of money in a bank account is entitled to no exemption.

The staff thinks that the general approach of an exemption statute should be to apply the judgment debtor's property to the satisfaction of the judgment while allowing the debtor and the debtor's dependents an adequate standard of living; the debtor should not be reduced to penury and should not be placed in a position where welfare makes the most financial sense, but a debtor should not be able to maintain himself in luxury.

An analysis of existing exemption provisions reveals three basic criteria which may be used alone or in combination to achieve the purpose of the exemption statute:

(1) Type of property. The characterization of the type of property ranges from the very specific (shotgun, piano, TV, cow, church pew), through the general (tools of trade, personal effects, wearing apparel), to the very general (personal, real). A statute using the very specific designations has the virtue of certainty; the debtor, creditor, and the courts may in most instances determine what is exempt and what is not. Early exemption statutes tended to be very specific in designating the type of exempt property. As is readily apparent, this sort of statute easily becomes obsolete as technology, society, and personal taste change. In addition, to attempt a comprehensive exemption statute listing specifically all types of exempt property is impossible because of the overwhelming variety of items of property which would have to be listed. In special cases, however, this type of exemption may be justified; hence, for example, it may be felt by some that church pews or cemetery lots should be listed as exempt in any statute.

A more general property description makes a statute more flexible and less subject to the vicissitudes of change. Instead of listing items like television sets and shotguns, it seems more desirable to describe such items as "personal effects." (See draft Section 707.720.) Of course, what is gained in flexibility is lost in certainty. Furthermore, where more general categories of property are used, numerical limitations on the number of exempt items cannot be used. For example, the debtor may be allowed one television set, one radio, and so forth (as in Section 690.1), but it would be absurd to provide that "three personal effects" are exempt. The Uniform Act provides an exemption for personal effects with a unit value not exceeding \$500. (See Exhibit 1, p. 19.)

If more general descriptions of property are relied upon, the exemption must be determined by value or by some degree of necessity.

(2) Value. If all debtors are to be treated equally (taking no account of their different occupations, standards of living, or special needs), an exemption statute based only upon value arguably is the best. It does not appear that any state has solely this sort of exemption provision. An exemption statute could simply provide that property of the debtor is exempt to the maximum aggregate amount of X thousand dollars. The virtue of a "pure" value statute is that it would not discriminate between types of assets. All debtors would have the same amount exempt in whatever form desired. This form of exemption could be combined with a procedure where the debtor selects the property he wants as exempt, subject to court review or, if he fails to select the property, the selection would be made by the levying officer. (Draft Section 707.710 applies this sort of procedure to household goods and tools of trade.)

Value limitations may be imposed on exemptions provided for specific items or for more general categories of property. (Section 4-503(b) of the Bankruptcy Commission's proposal contains this feature; see Exhibit 5.) This is probably the most common type of exemption. It combines the certainty of specific property exemptions, the flexibility of general categories, and the prevention of abuse afforded by the value limitation. Often, however, statutory value limitations are not adjusted for the effect of inflation and the rising standard of living and

so tend to become too restrictive. Ideally, the Legislature can be relied upon to periodically review value limits; in California in recent years, the Legislature has several times raised value limits on homesteads, motor vehicles, and mobile homes. However, the Commission may wish to adopt an excalator section such as that proposed in Section 2 of the Uniform Exemptions Act. (See Exhibit 1, p. 5.)

(3) Reasonable necessity test. The necessity standard, whether taken to mean subsistence or something more, allows a flexible application of exemption statutes that takes into account the occupation and peculiar needs of the debtor. Its greatest drawback is that it is vague, lends itself to inequitable application by the courts, and entails a higher administrative cost. Theoretically, an exemption statute might be drafted to provide that the court is to decide what amount of the debtor's assets should be exempt before levy. Note that Section 13 of the Uniform Exemptions Act requires a hearing before an individual's personal effects may be levied upon. (See Exhibit 1, pp. 29-32.) The debtor could be required to file a financial statute, and the creditor could offer evidence to aid the court in its determination.

Usually the reasonable necessity standard is applied to a particular category of exempt property such as wages, tools of trade, or household goods, and which also may have an absolute value limitation. Where the exemption is already limited by property type and maximum value, it may be argued that it is inefficient to also require a determination of reasonable necessity.

Additional factors. In addition to these three primary factors, exemptions may take into account the type of debtor (resident, individual or corporate, single or head of household) and the type of debt (support, secured debt, tax debt, or other money judgment). Section 3 of the Uniform Exemptions Act applies the exemptions only to residents, but the procedural provisions apply to everyone. (See Exhibit 1, p. 7.) Section 10 of the Uniform Exemptions Act provides an exception to the coverage of the exemptions where the claim is for support or taxes. (See Exhibit 1, pp. 24-25.)

#### Staff Suggestions

The staff suggestions for revision of the exemption provisions attempts to incorporate features of the more modern exemption statutes

in an effort to make the exemptions more equitable while retaining most of the substance of existing exemptions. (These recommendations are distinct from the attached staff draft which, as indicated supra, is essentially a redraft of existing law.) The approach reflected below is that the protection of specific items or small classes of property should be minimized; the protection of the exemption laws should be granted to more general categories of property of a certain value so that debtors with different varieties of assets will be treated similarly. We recognize, however, that it may be quite difficult to achieve needed reform in this area. Nevertheless, we propose the following for purposes of discussion as the most important general categories of exempt property:

(1) Dwelling. A home owned by the debtor (\$15,000 or \$30,000) or a rent allowance (\$2,500, \$5,000?) should be exempt. The Bankruptcy Commission proposed an exemption for a home of \$5,000, plus \$500 per dependent, with the possibility of applying the excess of such exemption to property such as clothes, household furnishings, tools, and burial plots. (See Exhibit 5, Section 4-503(b), (c)(1)-(2).) The Uniform Exemptions Act provides a \$10,000 home exemption (\$20,000 where there are multiple claimants). (See Exhibit 1, p. 9.) Should the amount of the exemption not taken be applied to increase limits in other categories? Should the amount of the exemption be the same regardless of the type of housing, such as under existing Sections 690.3 (\$30,000 for housetrailer) and 690.31 (\$30,000 for dwelling house)? Should the amount vary with the number of dependents?

(2) Personal belongings. Household furnishings, appliances, wearing apparel, provisions, fuel, other personal effects up to a maximum value (\$1,000, \$5,000?) or up to a maximum item value (\$500?) should be exempt. The Bankruptcy Commission's proposal gave only \$1,000 for this type of property although it could be increased with the unused portion of the homestead exemption. Should the amount of this exemption vary with the number of dependents?

(3) Tools of trade. Tools, equipment, books, one vehicle or vessel, and so forth, necessary in exercise of a trade, business, or profession up to a maximum value (\$2,500, \$5,000?) should be exempt. While this sort of exemption would apply only to those with tools or other business property, the staff thinks that such a special exemption is justifiable in order to put those depending on such tools for their livelihood in a position equal to that of the wage-earner without tools. This exemption should not be transferable to other types of exemptions, but should other exemptions increase this one? (See Exhibit 5, Section 4-503(b)(2), (c)(1).) The Uniform Exemptions Act provides a \$1,000 maximum aggregate value exemption for tools. (See Exhibit 1, p. 20.)

(4) Transportation. One motor vehicle (\$500, \$1,000?) or a public transportation allowance (\$100, \$500?) should be exempt. This exemption should not be transferable, nor should others increase it. The Bankruptcy Commission proposed a \$1,000 exemption covering motor vehicles and several other types of property, subject to the increase previously discussed. The Uniform Exemptions Act provides a \$1,500 exemption for one motor vehicle. (See Exhibit 1, p. 20.)

(5) Paid money. Paid earnings (including retirement and pension benefits), deposit accounts, and inmate funds up to an aggregate maximum amount (\$2,500, \$5,000?), plus additional amounts essential for support should be exempt. Should this exemption be transferable? Paid earnings are not made specifically exempt under existing law although other items listed here have exemptions of varying amounts. The Uniform Exemptions Act provides a general exemption for this type of property where reasonably necessary for the support of the debtor and his dependents. (See Exhibit 1, p. 14.) The Bankruptcy Commission proposed an exemption of cash and the like in the amount of \$500 and an exemption of \$1,000 per dependent where the debtor dies. (See Exhibit 5, Section 4-503(c)(3), (e)(1).)

(6) Unpaid money. Unpaid wages, retirement and pension benefits, endowments, and annuities should be exempt in the same amount as under the wage garnishment provisions if the benefits are paid periodically; otherwise, they should be subject to a necessity standard. (See Exhibit 1, p. 14; Exhibit 5, Section 4-503(c)(6).)

(7) Health, disability, and unemployment benefits. These items should be exempt to the full amount from whatever source. (See the discussion, infra.) Should the exemption be inapplicable against doctors, hospitals, and drug and equipment suppliers who have a claim arising out of the debtor's condition for which he collects the benefits? (See Exhibit 1, p. 14 (necessity standard); Exhibit 5, Section 4-503(c)(7), (c)(8).)

(8) Life insurance. (See the discussion, infra.)

(9) Aid. Aid and other welfare payments should be completely exempt.

Should the following specific types of property be exempt in addition?

(1) Works of art by or of the debtor or his family.

(2) Prosthetic and orthopedic appliances.

(3) Cemetery lots. By size or value? Should this exemption be transferable? The Bankruptcy Commission proposed an exemption of \$2,500 for a burial plot, subject to increase from the unused portion of the homestead exemption. (See Exhibit 5, Section 4-503(b)(2), (c)(2).)

(4) Church pews.

Provisions exempting retirement system property, vacation credits, merchandise on a vessel, and so forth, should be retained since they are designed to deal with specific problems.

#### INSURANCE BENEFITS

##### Disability, Health, Worker's Compensation, Unemployment Benefits

Under current law and in the draft statute, the exemptions of disability, health, worker's compensation, and unemployment benefits are provided by several different sections as follows:

(1) Disability or health insurance benefits are exempt in an amount represented by, at most, a \$500 annual premium (Section 690.11; draft Section 707.530).

(2) Disability and other benefits received from a governmental entity are entirely exempt (Section 690.18; draft Section 707.560).

(3) Disability benefits payable under a life insurance policy, perhaps, are exempt in an amount represented by a \$500 annual premium plus another such amount in favor of the insured's spouse and minor children (Section 690.9; draft Section 707.540). Group life benefits are entirely exempt (Section 690.10; draft Section 707.550).

(4) Benefits from a fraternal benefit society are entirely exempt (Section 690.14; draft Section 707.620).

(5) Worker's compensation benefits are entirely exempt (Section 690.15; draft Section 707.580).

(6) Unemployment and disability benefits deriving from the Unemployment Insurance Code are entirely exempt (Sections 690.16 and 690.175; draft Sections 707.600 and 707.590).

Health, disability, worker's compensation, and unemployment benefits should be entirely exempt in recognition of the policy that generally such benefits are designed to compensate the recipient for a specific physical loss suffered or for minimal living expenses at a time when through misfortune the recipient is unable to work. The current \$500 annual premium limitation on health and disability insurance serves no identifiable policy and should be eliminated. Section 4-503(c)(7)-(8) of the Bankruptcy Commission's proposal completely exempts "disability benefits" and "proceeds, benefits, or other rights to which the debtor is entitled as a result of any personal injury or unemployment." (See Exhibit 5, Section 4-503(c)(7), (c)(8).) The Uniform Exemptions Act provides an absolute exemption for medical, surgical, or hospital care actually used and an additional exemption based on reasonable necessity. (See Exhibit 1, pp. 12-14.)

In addition, the exemption should be drafted to apply to such benefits regardless of their source; hence, for example, separate provisions for exemptions of disability benefits from fraternal benefit societies, life insurance, disability insurance, unemployment compensation, or worker's compensation are unnecessary.

#### Life Insurance

In marked contrast to health and disability insurance, life insurance is in large measure an investment, and benefits payable are not

directly related to any specific loss. Hence, the policy which indicates that health and disability benefits should be completely exempt does not apply to life insurance benefits. Various reasons for exempting life insurance benefits have been offered:

(1) To allow a person to provide for the reasonable support of dependents after the person's death.

(2) To enable the head of the family to provide a living for the family after death above and beyond his financial conditions before death.

(3) To benefit the beneficiary regardless of any creditor of the insured.

(4) To encourage the rehabilitation of debtors.

(5) To shift the burden of social welfare from the community to creditors.

The staff thinks that the primary policy should be the first--the support of the insured debtor's dependents after his death. It should be noted, however, that the general movement of exemption statutes in the United States has been away from this restrictive policy. California law recognizes both this policy (subject to the \$500 annual premium limitation) and the broader policy of allowing any beneficiary to benefit as long as the annual premiums do not exceed \$500. The \$500 annual premium limitation, dating from 1872, does not make much sense since the benefits resulting from such a policy can vary greatly depending on the type of policy, the maturity date of the policy, and the age of the insured. In addition, in California the exemption applies to the funds in the hands of the beneficiary, too, even where the beneficiary is a business creditor of the insured debtor. This seems overly generous.

The following factors may be manipulated to achieve a particular policy:

(1) Type of policy. The exemption may be made to depend on whether the policy is straight life, endowment, annuity, or some other form.

(2) Type of benefit. The type of benefit may depend on the type of policy but, within a given class of policy, there may be different benefits and privileges, such as the right to assign or change beneficiaries, to surrender the policy for its cash value, to borrow on the cash

value, to choose whether the face value is paid off in a lump sum only on the death of the insured or may be taken while he is alive in installments or as a lump sum.

(3) Amount of benefit. The exemption may have no value limitation or limits may be placed on the amount of the benefit or on the amount of the premium paid. Different exemption amounts may be allowed on distinct types of benefits such as cash surrender value, endowment option, or face value at death of insured. The amount of the exemption may depend on the number of dependent beneficiaries. Since value limitations eventually become obsolete due to inflation, the amount of the exempt benefit may be made to depend on the amount necessary for support as in the Bankruptcy Commission's proposal (see Exhibit 5, Section 4-503(c)(5)) and the Uniform Exemptions Act (see Exhibit 1, p. 14).

(4) Type of insured. The exemption may depend on the age, solvency, or family status of the insured.

(5) Type of beneficiary. The exemption may depend on whether the beneficiary is an individual, a creditor of insured, a spouse, minor child, dependent, the debtor himself, or the insured's estate.

(6) Type of source of premiums. The exemption may depend upon whether the debtor's life is insured by someone else, such as a spouse or creditor.

(7) Type of insurer. The exemption may depend upon the type of insurer, such as private or governmental, mutual association or corporation, and the like. Presently, California law provides an exemption for life insurance generally in Section 690.9 (draft Section 707.540), for group life in Section 690.10 (draft Section 707.550), for public employee death benefits in Section 690.18 (draft Section 707.560), and perhaps for some life coverage from fraternal benefit societies in Section 690.14 (draft Section 707.620).

(8) Extent of exemption. The exemption may protect only the debtor or may include his dependent beneficiaries or any other beneficiary. The exemption may be made ineffective when the policy is assigned.

(9) Insolvency. Some states provide that the exemption is not good if the insurance is purchased by the debtor while insolvent or if purchased with intent to defraud creditors.

Several additional exemption statutes illustrating many of the above factors are attached as Exhibit 4. The Bankruptcy Commission's proposal and the Uniform Exemptions Act limit the exemption to dependent beneficiaries where benefits are necessary for support. The New York statute (Exhibit 4) is an example of a highly detailed provision. The Ohio statute (Exhibit 4) applies to life, endowment, and annuities. The Pennsylvania provisions (Exhibit 4) allow the insured to restrict the access of the beneficiary's creditor to policy benefits; annuity payments are restricted to \$100 per month. The South Dakota provision (Exhibit 4) contains a \$10,000 proceeds limitation.

The following is a proposed staff draft of an exemption for life insurance benefits which seeks primarily to protect the interests of the debtor's dependents.

§ \_\_\_\_\_. (a) The net amount of all death benefits growing out of any life insurance, endowment insurance, disability insurance, or annuity in favor of the surviving spouse or dependents of the insured or annuitant debtor is exempt [in an amount not exceeding twenty thousand dollars (\$20,000) for each such beneficiary].

(b) The net amount payable during the life of the insured, including cash surrender value, loan value, and accumulated dividends, growing out of any life insurance in favor of the spouse or dependents of the insured are exempt [in an amount not exceeding ten thousand dollars (\$10,000) for each such beneficiary][whether or not the right to change the named beneficiary is reserved or permitted].

Should the exemption be limited in amount as suggested in the brackets in both subdivisions (a) and (b)?

Should the exemption apply as well where benefits are payable to the estate, assuming there are dependents?

Nondeath benefits growing out of endowment policies or annuities should be treated with retirement and pension funds, and so are not treated here.

A distinct but related problem concerns the manner of collection of the nonexempt cash value. Under current law and under the Attachment Law (Section 488.380), the insurer is garnished. The staff would like to know the Commission's views on a provision such as that found in the Bankruptcy Commission's proposals (Exhibit 5, Section 4-503(d)) where

insurance with a cash value in excess of \$1,500 is exempt if the debtor pays the amount of the excess to the trustee in bankruptcy within 30 days.

#### DWELLING EXEMPTION

Existing law provides three dwelling exemptions--Civil Code Sections 1237-1304 (designated homestead, see Exhibit 3), Code of Civil Procedure Section 690.3 (housetrailer, and the like), and Code of Civil Procedure Section 690.31 (claimed homestead). Section 707.320 of the draft statute attached hereto combines existing Sections 690.3 and 690.31. We have not proposed any changes in the Civil Code designated homestead. However, we are tempted to suggest, that in view of the new claimed homestead exemption provided in Section 690.31, there is no real need for the old designated homestead provisions in the Civil Code. Some provisions in the Civil Code homestead exemption chapter relate to relations between homestead claimants, and these could be retained, but perhaps the Commission should consider recommending the repeal of the provisions insofar as they relate to obtaining an exemption from enforcement of a money judgment.

Under the Civil Code, before a judgment lien is created, a homestead not exceeding \$30,000 in value over liens and encumbrances may be selected by any head of a family or by any person 65 years old, and a homestead not exceeding \$15,000 in value over liens and encumbrances may be selected by a married person after separation or dissolution or by any other person. Civil Code §§ 1260, 1300. The person selecting the homestead must execute, acknowledge, and file a homestead declaration in order to establish a homestead. Civil Code § 1262. When recorded, the declaration defeats a prior attachment lien and a levy of execution where no judgment lien has been filed prior to declaration. See Yager v. Yager, 7 Cal.2d 213, 60 P.2d 422 (1936). Until the recent amendments, the exemption was lost where a judgment lien or other encumbrance was recorded before the declaration is filed. In addition, the exemption does not apply to encumbrances created by the homestead claimant and is not effective against certain favored claimants such as mechanics, architects, and the like. See Civil Code § 1241. The homestead

is effective over the stated limits if the creditor does not attempt to get the excess value as provided by statute: Within 60 days after levy of execution on the homestead, the creditor petitions for appraisers; within 90 days a copy of notice of hearing must be served on the debtor at least two days before the hearing; at the hearing, three appraisers are appointed who must file a report within 15 days; the court orders exempt property set aside and the remainder is sold if possible, otherwise the entire parcel is sold. Civil Code § 1245 et seq. Funds from sale of homestead are exempt for a period of six months. Civil Code § 1265.

The Commission may want to consider whether the amounts of the exemption allowed various persons is desirable.

If the Civil Code declared exemption is retained, several inconsistencies between it and the new claimed exemption should be resolved. For instance:

(1) Civil Code Sections 1245-1252 provide a cumbersome appraisal procedure through which the judgment creditor applies the excess value to the satisfaction of his judgment, whereas Section 690.31(c)-(f) provides for the determination of value at a hearing on issuance of a writ of execution, with the burden of showing value being on the judgment creditor. If the judgment debtor does not appear at the hearing on the issuance of the writ of execution, he may cause the sale of the property to be cancelled as provided in Section 690.31(h).

(2) Section 690.31(1) prevents a levy within 12 months of the determination of an exemption unless the judgment creditor show changed circumstances. No such provision appears in the Civil Code.

(3) Civil Code Section 1253 provides for partition of the property if the appraisers report that it can be done without material injury and sale of the remainder. Section 690.31 makes no such provision.

(4) The Civil Code contains detained provisions about abandonment of a declared homestead (see Sections 1243, 1244, 1261.1) which do not appear in Section 690.31.

Further study will no doubt reveal additional discrepancies and contradictions.

The staff assumes that the Commission will want to continue present law concerning claims against which the exemption is ineffective. We note that some states provide that the homestead exemption is not good against preexisting debts. This policy makes the homestead exemption largely useless. Some states do not apply the exemption to debts existing before the acquisition of the homestead, but this seems unnecessarily restrictive.

#### TRACING

Two tracing problems need to be considered: The tracing of exempt funds which are commingled with other exempt or nonexempt funds, and the tracing of exempt property through a change of form.

The Commission considered the first problem in the early stages of studying wage garnishment but eventually avoided it by recommending an exemption of paid earnings in an amount essential for the support of the debtor or the debtor's family. However, the problem arises again in cases where exempt funds such as insurance payments, dwelling compensation, and aid are deposited by the debtor in a deposit account. If the total amount of the money in the account and the exempt amount deposited is less than the deposit account exemption, there is no problem. But, if the total amount is more than the deposit account exemption, problems arise. For example, if the debtor has a \$2,000 bank account (assume that \$2,000 is the total allowable deposit account exemption) and then deposits \$15,000 from life insurance proceeds, \$10,000 of which is exempt, and, if no other withdrawals or additions are made, clearly \$5,000 may be reached by the judgment creditor. But, what happens if the debtor spends \$1,000 of the \$17,000 bank account before levy? Did the debtor spend \$1,000 of the exempt \$2,000, of the exempt \$10,000, or of the nonexempt \$5,000? Under the ruling in California U.S. Bond & Mortgage Corp. v. Grodzins, 139 Cal. App. 240, 34 P.2d 193 (1934), the debtor would be held to have spent part of his exempt money on the grounds that otherwise the debtor could defeat the purpose of limited exemptions. In Iowa, the rule is that nonexempt money has been used in such cases since the debtor has no duty to establish his exemptions

until the creditor levies on his property. An alternative rule would be to apportion the expenditure between the exempt and nonexempt funds by some formula. A first-in, first-out rule would find that the expenditures came from the exempt \$2,000 fund. The question would then be whether the deposit account exemption may then be replenished by the nonexempt portion of the insurance proceeds, leaving \$4,000 total nonexempt funds in a \$16,000 account.

The staff thinks that the debtor should be able to take full benefit of the exemptions allowed by statute at the time he makes a claim of exemption. Hence, the Iowa rule would be followed before levy so that, in the example, the nonexempt fund would be reduced to \$4,000. Section 9 of the Uniform Exemptions Act provides an 18-month exemption for certain proceeds and provides for the application of "the principle of first-in first-out, last-in last-out, or any other reasonable basis for tracing selected by the individual." (See Exhibit 1, pp. 23-23.)

This raises another problem which may be simply illustrated with a fully exempt deposit account: When levied upon, the debtor successfully claims the full exemption. He later spends half of it and then replenishes it. The creditor levies on the account again. Should the full exemption apply each time levy is made regardless of the interval between levies and regardless of the source of the funds? The staff thinks that the answer should be yes where a deposit account exemption only is involved. However, to apply the same policy where insurance proceeds are deposited in the same account would allow the debtor in effect to increase his deposit account exemption to the amount of the exempt insurance plus the deposit account exemption as long as the total amount of the account did not dip below the amount of the exempt insurance proceeds. The debtor could save everyone a lot of trouble if he would deposit the exempt insurance proceeds in a separate account to which no additions were made; the principal funds in such an account would remain exempt until exhausted. But, where only one account is maintained, the first-in, first-out rule should apply after levy; before levy, the Iowa rule should apply. In order to prevent a debtor from claiming that insurance funds from 25 years before still reside in his account (something which would be difficult to prove anyway), perhaps a tracing cut-off period such as one year prior to levy should be provided.

It was assumed in the above discussion that the check from the insurance company could be deposited in the bank without destroying its exempt character. This is a threshold aspect of the second problem mentioned earlier--the tracing of exempt property through a change in form. Except in the case of property exempt under the wage garnishment recommendation, the staff thinks that property such as insurance proceeds, dwelling compensation, worker's compensation, unemployment benefits, health and disability insurance proceeds, and aid should retain their exempt status when deposited in a deposit account. However, tracing becomes much too complex where it is provided that any real or personal property purchased with exempt funds is exempt. Therefore, the staff thinks that property purchased with exempt funds should be exempt only where an exemption is allowable for such property.

#### UNIFORM EXEMPTIONS ACT

Various provisions from the Uniform Exemptions Act have been discussed supra. Several other features of the act are worthy of particular note. (See Exhibit 1.)

Section 1(8) defines "serve" so as to require service both by first-class and registered or certified mail. This provides necessary proof of mailing and also improves the chance that a person who refuses registered or certified mail will get notice. Obviously, it increases the cost of service and would be particularly burdensome on a state agency.

Section 4 provides that, if a homestead is sold, the sale is effective only upon confirmation by the court and allows the judgment debtor to repurchase the property within 30 days after the sale. This right is in addition to any right of redemption.

Section 11 requires a secured creditor to obtain an order of court before permitting seizure of exempt property unless the claim is based on a purchase-money security interest.

Section 14 assures that bids less than the exempt amount will not be accepted at a sale of property. If no sufficient bid is received, the costs of making the levy, offering the property for sale, and returning the property are assessed against the creditor.

Section 15 requires that the notice to the debtor state the substance of the exemptions and exemption procedure.

Section 16 permits a spouse or dependent of the judgment debtor "or any other authorized person" to claim an exemption where the judgment debtor fails to do so.

Is the Commission interested in adopting any of these provisions?

Respectfully submitted,

Stan G. Ulrich  
Staff Counsel

EXHIBIT 1

U N I F O R M E X E M P T I O N S A C T

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Drafted by the  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
and by it  
Approved and Recommended for Enactment  
in All the States

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At its  
ANNUAL CONFERENCE  
MEETING IN ITS EIGHTY-FIFTH YEAR  
AT ATLANTA, GEORGIA  
JULY 31 - AUGUST 6, 1976

With Prefatory Note and Comments

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## PREFATORY NOTE

### Need for a Uniform Exemptions Act

Several considerations have made it appropriate for the National Conference of Commissioners on Uniform State Laws to propose a Uniform Exemptions Act. Perhaps the most significant of these is the fact that bills introduced in the 93d and 94th Congresses proposed to prescribe a schedule of federal exemptions allowable to an individual debtor whose estate is being administered under the Bankruptcy Act. The Bankruptcy Act has provided for the allowance of exemptions to any bankrupt in accordance with the laws of his domicile. The Commission on Bankruptcy Laws in 1973 found the deference to state laws in the Bankruptcy Act to be unsatisfactory because of the enormous disparity of treatment of debtors in respect to the allowance of exemptions. The Commission recommended

"that kinds of property that traditionally have been treated as exempt by state governments form the nucleus of the federal exemptions with appropriate federal maximums. This approach avoids the unfairness of existing state exemption laws, most of which are archaic, some of which are unduly generous, and some of which are exceedingly niggardly, particularly as to urban residents."<sup>1</sup>

Congress could probably pre-empt the field of exemptions. It has already, in the Consumer Credit Protection Act, superseded most of the state laws limiting the garnishment of wages, relying in part on its bankruptcy power as well as the power to regulate commerce. The Commission on Bankruptcy Laws considered whether it should recommend federal pre-emption and concluded not to, although the arguments for federal exemptions in bankruptcy go far to support comprehensive coverage of the subject outside as well as in the bankruptcy system. The existence of discrepancies between the exemptions available under the Bankruptcy Act and those provided by state law would furnish an incentive for the invocation of relief under the Act; if the federal exemptions are more generous, a debtor will be encouraged to file a petition under the Act to obtain the enlarged benefits it affords against his creditors; if the federal exemptions are less

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Report of the Commission on Bankruptcy Laws of the United States, House Doc. No. 93-137, Part I, 93d Cong., 1st Sess. 171 (1973).

liberal, creditors may be persuaded to precipitate involuntary bankruptcy in order to reach property not leviable under state law. The greater the size of the discrepancies, of course, the more influential they will be in inducing decisions to opt for bankruptcy.

The Commission on Bankruptcy Laws in 1973 concluded, nevertheless, that the availability of the discharge, the vulnerability of security interests and transfers, and other concomitants of bankruptcy would continue to be the most important factors affecting the choice of relief under the Bankruptcy Act. Accordingly, pre-emption of the field was not viewed as a requisite to attainment of the objectives of sound bankruptcy legislation. Substantial conformity of the exemptions provisions of state law and of the Bankruptcy Act remains a desideratum, however, in order to minimize the impact of an artificial factor on resort to relief in the bankruptcy forum.

Students who have examined the exemptions laws of the several states are always astounded by the enormous disparity that characterizes these laws. Some recognize no homestead exemption, and others allow a homestead to be claimed with hardly any effective limitation on its value. Some allow a practically unlimited exemption in an unmaturing life insurance policy, whereas others restrict such an exemption to a policy of a specified face amount or to a policy acquired by a specified annual premium. Some allow the exemption of an automobile with little or no qualification, and others do not appear to recognize any exemption of an automobile. Liberal homestead and perhaps other exemption provisions were consciously adopted in some states with a view to attracting settlers, and one hears occasionally that the generosity of exemptions in California, Florida, and Texas is an attraction to emigrants from other states having more penurious provisions. There are no known data indicating whether differences in state exemptions laws influence decisions of people to move or stay, but to the extent debtors can affect their creditors' rights of recovery by changing the laws that govern such recoveries, creditors are subject to risks that are not an ineluctable feature of our federalism. The risks are run by local creditors as well as those who extend credit through the channels of interstate commerce.

Some variation in the exemptions provided by state law may be sought to be justified as related to different standards, costs, and modes of life that prevail in the different states. To the extent that the justification has validity, it affords warrant for variations in allowable exemptions within state boundaries, and indeed many state laws do differentiate between the homestead allowable to urban residents and the rural homestead. These differentiations have been widely criticized, however, particularly for their tendency to treat rural residents more favorably than urban dwellers.

A common criticism of state exemption laws is that they are generally archaic, having been enacted with little change during the last century. The result is to provide relatively generous exemptions for those living on farms and engaged in agricultural pursuits, whereas those living in cities, and particularly in rented houses or apartments, are treated with parsimony. Items like bee-hives, spinning wheels, firewood, and livestock abound in this state legislation. If the original objectives of state exemption legislation remain operative, the time for overhaul in the light of the needs of those living in this last quarter of the twentieth century has long since arrived.

### History of the Act

The decision of the National Conference of Commissioners on Uniform State Laws to prepare a draft of the Uniform Exemptions Act was made in 1974. The Uniform Exemptions Act Committee, appointed in that year held five meetings, most of them of two or three days' duration. A member of the staff of the United States Senate Judiciary Committee attended one of these meetings, and members of the Judiciary Committees of both Houses of Congress received drafts of the Uniform Exemptions Act and were kept informed of the Committee's deliberations. Professor Ray David Henson of the University of California Hastings College of Law, who was Chairman of the Section of Corporation, Banking and Business Law of the American Bar Association in 1969-70, served as liaison between the Committee and the American Bar Association Section, and he attended several of the Committee's meetings and participated in the discussions.

The Final Draft of the Uniform Exemptions Act was approved in substance at the meeting of the Special Committee on April 30 and May 1, 1976. The Review Committee considered the Fifth Tentative Draft and the Final Draft, and members of the Review Committee attended the last two meetings of the Special Committee. The Fifth Tentative Draft (the penultimate draft) was checked for style by Judge Eugene Burdick on April 19, 1976. The First Tentative Draft was read at the meeting of the National Conference in August of 1975 in Quebec.

The Final Draft was considered, amended, promulgated and recommended to the several states for enactment at the 85th National Conference of Commissioners on Uniform State Laws meeting at Atlanta, Georgia, on July 31-August 6, 1976.

## Contents of the Act

It is clear that any reform of exemption legislation will be vulnerable to the ravages of economic, technical, and social changes occurring after its enactment. A simple and practical solution of the problem arising from changes in price levels is to provide for an adjustment of dollar amounts wherever they appear in the legislation, such as that found in Section 1.106 of the Uniform Consumer Credit Code, and that is recommended in this Uniform Exemptions Act. The impacts of social and technological changes are less amenable to solution. Some commentators have recommended that exemption legislation allow the debtor to claim property of any kind subject to an overall value limitation. The laws on the books, by prescribing categories of exempt property, encourage acquisitions of the kinds that qualify although not otherwise needed or wanted by the debtor. While acknowledging that such legislation often results in planning for insolvency by debtors who wish to maximize what can be kept out of the reach of their creditors, the Act rejects the view that property of a delinquent debtor should be insulated from levy up to a certain value irrespective of its nature. The Uniform Exemptions Act, like Section 4-503 of the proposed Bankruptcy Act, introduced in the 93d and 94th Congresses, thus does not reflect the view that every debtor is entitled to a minimum grubstake for whatever purpose may please him. Rather the premise of this Act is that in order for a debtor's property to be protected against compulsory application to the payment of his indebtedness, it must be used, or be adaptable for use, in ways and for purposes deemed on balance to be preferable to such application. These ways and purposes have a perceived relation to the provision of shelter, clothing, and other necessities of daily living in this country.

The design of the Uniform Exemptions Act is to define the kinds of property that cannot be subjected to judicial enforcement of creditors' claims. Not only are levies by attachment, garnishment, execution, proceedings supplementary to execution, sequestration, creditor's bill, and trustee process intended to be limited by the proposed Act; the imposition of any lien by judgment or other judicial proceeding is subject to the statutory restraints prescribed. Other kinds of liens--those created by contract, statute, or the maritime or common law--would generally be left intact, but the restrictions imposed by the Uniform Consumer Credit Code on the enforcement of security interests in certain exempt property are carried over into this Act.

In providing for a homestead (Section 4) the Act follows the pattern set by the preponderant number of state legislatures. Only Connecticut, Delaware, the District of Columbia, Maryland, New Jersey, and Pennsylvania have no

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homestead provisions, and three of these jurisdictions, Delaware, the District of Columbia, and Rhode Island, nevertheless include real estate in the categories of property that can be claimed as exempt. Moreover, Delaware, Maryland, and Pennsylvania recognize tenancies by the entirety. The laws of these states enable married persons to acquire and hold residential and other real property free from levy by creditors of either spouse without limitation, except insofar as the law of fraudulent conveyances may impose a restriction on this kind of arrangement. Some other states also recognize the right of married persons to acquire and hold property in tenancies by the entirety free from the claims of the creditors of either spouse and of the trustee in bankruptcy of either of them. The Commission on Bankruptcy Laws and the Conference's Committee on the Uniform Exemptions Act were of the opinion that the virtues of uniform exemptions would be considerably compromised if tenancies by the entirety should remain unimpaired in the twenty or so jurisdictions that do not allow the creditors of one spouse to levy on his interest. Accordingly provision is made in the proposed Acts to enable a creditor of a tenant by the entirety in effect to sever the tenancy by levy and to force a partition sale. The Uniform Exemptions Act also provides that the interest of a spouse in community property shall be leviable at the instance of any creditor of that spouse.

Section 3 extends the exemptions provided by this Act to individuals residing in the state of enactment, but a spouse, dependent, or other authorized person may, under Section 16, assert the rights granted by the Act. The exemptions are not limited to the head of a family, but several provisions recognize use or need by a dependent of the individual debtor as a factor in the determination of the availability of the exemption. See, e.g., Sections 4 and 6. A homestead may be claimed by each of two or more owners of a home, but the maximum allowance of a homestead exemption in a single living unit is \$20,000. This limitation is a safeguard against an unwarranted aggregation of homestead exemptions in a single dwelling by multiple owners.

Section 6 of this Act, like the exemptions section of the proposed Bankruptcy Act introduced in the 93d and 94th Congresses (§ 4-503), accords protection to rights and benefits that provide support for an individual debtor and his dependents, but the Uniform Exemptions Act restricts the exemption to the extent the rights and benefits are reasonably necessary for such support. This Act recognizes

an exemption of an individual's interest in unmatured life insurance and endowment contracts but limits the exemption by authorizing creditor levy on loan values and accrued dividends aggregating more than \$1,500.

The Uniform Exemptions Act does not purport to exempt personal earnings except when included as part of a cash allowance authorized by the Act. The assumption is that personal earnings are now appropriately taken care of by Section 5.105 of the Uniform Consumer Credit Code and Section 303 of the Consumer Credit Protection Act. The Uniform Exemptions Act follows a proposal in the Commission's Bankruptcy Act to provide a cash allowance, or its equivalent, of \$500 for an individual who claims a homestead exemption. An individual claiming no homestead exemption is entitled to protection of an allowance of up to \$1,500 in liquid assets in recognition of his need for additional funds to provide shelter for himself and his dependents.

Liberal tracing rules are provided to enable an individual to claim his exemption in property that is sold or converted. The authorization for tracing the proceeds of most forms of the exempt tangible property is limited to what can be traced within 18 months after the proceeds are received. Such a period is deemed sufficient to enable the individual to replace the exempt property that has been sold or converted.

Section 10 follows most exemption laws in excepting certain claims from those that are generally unenforceable against exempt property. Thus claims for alimony and support, one month's wages, taxes, and the unpaid purchase price of the exempt property are not subject to the bar of the exemption. The proposed Act does not, of course, limit the enforcement of federal tax claims.

The Act contains procedural provisions designed to afford more effective implementation of the objectives of exemption laws. Thus Sections 14 and 15 provide for giving the individual debtor a notice of levy and of his right to exemptions under the Act. Certain property, such as household furnishings, wearing apparel, and other exempt property likely to be found within the individual debtor's home, may not be levied under Section 13 unless a creditor files an affidavit, declaring his belief that the debtor has property of this description that is not protected by the Act, and notifies the debtor of his right to object to the proposed levy. The prop-

erty cannot be removed or disposed of for 30 days after the debtor receives the notice. This section is premised on a presumption that property of the kind to which the procedure applies is exempt. Such property cannot ordinarily be sold on execution without a sacrifice of the substantial part of its value for the debtor without commensurate benefit to the creditor seeking enforcement of his claim. Moreover levy on such property is likely to involve intrusion by the sheriff into the privacy of the debtor's home. Waivers of exemptions in favor of unsecured creditors, executed prior to litigation, are rendered unenforceable by Section 12 of the Act.

If a state has a constitutional provision for an exemption, Section 19 provides for an election by an individual between the constitutional exemptions and those prescribed by the Act.

UNIFORM EXEMPTIONS ACT

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1           SECTION 1. [Definitions.]

2           As used in this Act, unless the context otherwise  
3 requires:

4           (1) "Debt" means a legally enforceable monetary  
5 obligation or liability of an individual, whether arising  
6 out of contract, tort, or otherwise.

7           (2) "Dependent" means an individual who derives  
8 support primarily from another individual.

9           (3) "Exempt" means protected, and "exemption"  
10 means protection, from subjection to a judicial lien,  
11 process, or proceeding to collect an unsecured debt.

12           (4) "Judicial lien" means a lien on property ob-  
13 tained by judgment, levy, sequestration, or other legal  
14 or equitable process or proceeding instituted for the  
15 purpose of collecting an unsecured debt.

16           (5) "Levy" means the seizure of property pursuant  
17 to a writ of attachment, garnishment, execution, seques-  
18 tration, or any similar legal or equitable process issued  
19 for the purpose of collecting an unsecured debt.

20           (6) "Lien" means a security interest, or a judi-  
21 cial, statutory, or common-law lien, or any other interest  
22 in property securing payment of a debt or perfor-  
23 mance of an obligation.

24           (7) "Security interest" means an interest in prop  
25 erty created by contract to secure payment or performance  
26 of an obligation.

27           (8) To "serve" a notice means to give the person  
28 to be served a written personal notice in the manner  
29 a summons in a civil action is served, or to mail the notice  
30 to the person's last known address by first-class mail  
31 and by mailing a form of mail requiring a signed  
32 receipt.

33           (9) "Statutory lien" means a lien arising by force  
34 of a statute under specified circumstances or conditions,  
35 but does not include a security interest or a judicial lien.

36           (10) "Value" means fair market value of an individual's  
37 interest in property, exclusive of valid liens.

#### COMMENT

(1) The definition of "debt" is similar to that in § 1-201(17) of the Bankruptcy Act proposed by the Commission on the Bankruptcy Laws of the United States in 1973. The text of the Act proposed by the Commission is set forth in House Doc. No. 93-137, Part II, 93d Cong., 1st Sess. (1973), and will be referred to hereinafter as the Commission's Proposed Bankruptcy Act. A monetary obligation or liability need not be reduced to judgment in order to constitute a debt for the purposes of this

Act. The definition of "debt" makes clear that the limitations imposed by this Act on collection processes apply as much to tort claims as to contractual obligations. Exemptions have sometimes but not always been disallowed when asserted against tort claimants. Vukowich, Debtors' Exemption Rights, 62 Geo.L.J. 779, 857-59 (1974); Note, 68 Yale L.J. 1459, 1470 n. 81 (1959).

(2) The definition of "dependent" is comparable to that employed in the administration of the Internal Revenue Code. See Fed. Tax Regs. § 1.152-1(a)(1) (1976). See also Vukowich, supra, 62 Geo.L.J. at 871.

(3) The definition of "exempt" and "exemption" makes it clear that the exemptions provided by this Act operate not only to bar a levy but also to bar the imposition of a lien by judgment or other legal or equitable process or proceeding. The definition thus eliminates any basis for argument that a purchaser of exempt property nevertheless takes it subject to a judgment lien that was unenforceable against the judgment debtor-vendor. See S. Riesenfeld, Creditors' Remedies and Debtor Protection 308-15 (2d ed. 1975). Exempt property is not, however, absolutely protected against creditor process by this Act. Section 10 recognizes that exempt property may be subjected to levy for the purpose of enforcing collection of certain claims. Moreover this Act does not restrict the collection of federal tax claims or the leviability of property made subject to the enforcement of any other claim by federal law. Plumb, The Recommendations of the Commission on the Bankruptcy Laws of the United States--Exempt and Immune Property, 61 Va.L. Rev. 1, 5-6 (1975).

(4) The purpose of the definition of "exempt" and "exemption" to extend protection against any form of appropriation of an individual debtor's property through judicial proceedings by an unsecured creditor is consistent with the uniform construction of exemption laws. 31 Am.Jur. 2d Exemptions § 138 (1967). Thus exemption from levy by any final process has been construed to leave the property exempted neither leviable on mesne process nor subject to appropriation by order of a court in an equitable proceeding commenced by creditor's bill or in a statutory proceeding supplementary to execution. Ibid.

(5) The definition of "judicial lien" is similar to that in § 1-201(3) of the Commission's Proposed Bankruptcy Act.

(6) The definition of "levy" excludes any seizure effected for the purpose of enforcing a security interest

or statutory lien or of asserting rights of ownership in property. The term thus does not include replevin. The steps requisite to the making of a valid levy are generally prescribed by other state law, but this Act imposes particular procedural requirements when the debtor is an individual. See §§ 4, 10, 13, 14, and 15.

(7) The definition of "lien" is similar to that in § 1-102(31) of the Commission's Proposed Bankruptcy Act.

(8) The definition of "security interest" is an adaptation of the first sentence of the definition of "security interest" in § 1-201(37) of the Uniform Commercial Code. It differs from that definition in being exclusively applicable to consensual liens in this Act but extending to security interests in real property as well as personal property.

(9) When the Act requires a notice to be served (§§ 10(c), 13, and 14), the definition of "serve" authorizes three alternative modes of service. All of the three modes are consistent with the requirements of due process respecting fair notice. See 4 C.Wright & A.Miller, Federal Practice & Procedure § 1074 (1969); Note, Service of Process by Mail, 74 Mich.L.Rev. 381, 382 (1975). When service is made by mail, it is the intent of the definition that the notice be sent both by regular first-class mail and by certified or registered mail. The requirement of a signed receipt is intended to facilitate proof of service, but failure to obtain a signed receipt does not affect the validity of the service, e.g., when an addressee refuses to accept delivery of the mail. Cf. Federal Rule of Civil Procedure 4(g); Rule of Bankruptcy Procedure 704(g); Note, 74 Mich.L. Rev. 381 (1975).

(10) The definition of "statutory lien" is an adaptation of § 1-102(45) of the Commission's Proposed Bankruptcy Act. Cf. § 1(29a) of the present Bankruptcy Act.

(11) The definition of "value" is similar to that in § 541(g) of the Commission's Proposed Bankruptcy Act. Since exemption of property does not limit the enforceability of a valid lien against the property, and since the interest of an individual in the property that is leviable by his unsecured creditors is limited to the value exceeding the amount required to satisfy the holder of any lien against the property, the amount of debt secured by valid liens is deducted for the purpose of determining the value of the individual's interest under this Act. Exemption statutes with value limitations typically exclude valid liens. See, e.g., Cal. Civ.Code § 1260 (homestead); Cal.Code Civ.Pro. § 690.2 (motor vehicle); *id.* § 690.3 (house trailer or mobile home); Vukowich, *supra*, 62 Geo.L.J. at 800.

1 SECTION 2. [Adjustment of Dollar Amounts.]

2 (a) The dollar amounts in this  
3 Act change, as provided in this section, according  
4 to and to the extent of changes in the Consumer Price  
5 Index for Urban Wage Earners and Clerical Workers: U.S.  
6 City Average, All Items, 1967 = 100, compiled by the  
7 Bureau of Labor Statistics, United States Department of  
8 Labor, and hereafter referred to as the Index. The  
9 Index for December of the year preceding the year in  
10 which this Act becomes effective is the Reference Base  
11 Index.

12 (b) The dollar amounts change on July 1 of  
13 each even-numbered year if the percentage of change,  
14 calculated to the nearest whole percentage point, between  
15 the Index for December of the preceding year and the  
16 Reference Base Index, is 10 percent or more, but:

17 (1) the portion of the percentage change in  
18 the Index in excess of a multiple of 10 percent is  
19 disregarded and the dollar amounts change only  
20 in multiples of 10 percent of the amounts appearing  
21 in this Act on the date of enactment; and

22 (2) the dollar amounts do not change if  
23 the amounts required by this section are those currently  
24 in effect as a result of earlier application of  
25 this section.

26 (c) If the Index is revised, the  
27 percentage of change is calculated on  
28 the basis of the revised Index. If a revision of the

29 Index changes the Reference Base Index, a revised Refer-  
30 ence Base Index is determined by multiplying the  
31 Reference Base Index applicable by the rebasing  
32 factor furnished by the Bureau of Labor Statistics.  
33 If the index is superseded, the Index referred to in  
34 this section is the one represented by the Bureau of  
35 Labor Statistics as reflecting most accurately changes  
36 in the purchasing power of the dollar for consumers.

37 (d) The [appropriate state official] shall adopt  
38 a rule announcing:

39 (1) on or before April 30 of each year in  
40 which dollar amounts are to change, the changes in  
41 dollar amounts required by subsection (b); and

42 (2) promptly after the changes occur, changes  
43 in the index required by subsection (c) including, if  
44 applicable, the numerical equivalent of the Reference  
45 Base Index under a revised Reference Base Index and  
46 the designation or title or any index superseding the  
47 Index.

#### COMMENT

(1) This section is similar to § 1.106 of the Uniform Consumer Credit Code. See also § 1-105 of the Commission's Proposed Bankruptcy Act.

(2) The enacting state may opt for a regional Consumer Price Index in subsection (a) in lieu of the Index for the U.S. City Average. The National Index is recommended in the interest of attaining greater uniformity in the operation of this Act. The discrepancy between the lowest and the highest price indexes prevailing within any state will typically be comparable to, but may even exceed, the differential between the regional and national indexes compiled by the Bureau of Labor Statistics.

(3) A state that has enacted a statute of general application providing for periodic adjustment of dollar amounts by reference to a price or other economic index may amend this section to conform to other laws.

1 SECTION 3. [Protection of Property of Residents  
2 and Nonresidents.]

3 (a) Residents of this State are entitled to the exemp-  
4 tions provided by this Act. Nonresidents are entitled  
5 to the exemptions provided by the law of the jurisdiction  
6 of their residence.

7 (b) The term "resident" means an individual who  
8 intends to maintain his home in this state.

COMMENT

(1) This section is an adaptation of a provision proposed in Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779, 872 (1974). Many states restrict the benefits of their exemption laws to resident debtors, and the full faith and credit clause does not require a state to accord a nonresident debtor the protection of the exemption laws of his domicile. Vukowich, Debtors' Exemption Rights, 62 Geo.L.J. 779, 838-41 (1974); Note, 68 Yale L.J. 1459, 1472-75 (1959). In allowing a nonresident the benefit of the exemption laws of his own residence the section adopts the rule frequently adopted as a matter of comity. Vukowich, *supra*, 62 Geo.L.J. at 839. Cf. Restatement (Second) of Conflict of Laws § 132 (1971) (Forum should apply the exemption laws of another state which, "by reason of such circumstances as the domicile of the creditor and the debtor within its territory, has the dominant interest in the questions of exemption"); Comment, 68 Yale L.J. 1459, 1474 (arguing that a state's exemption laws should be accorded full faith and credit by other states). According to an individual debtor the exemptions provided by the law of his residence will generally conform to the expectations and understanding of his creditors in more cases than an alternate rule would. Vukowich, *supra*, 62 Geo.L.J. at 840; cf. Hanover Nat. Bank v. Moyses, 186 U.S. 181, 189 (1902).

(2) The section does not contemplate that the court is bound to allow exceptions to a nonresident when the result is or may be to permit him to obtain dual or multiple exemptions in respect to property of the same kind. In particular, the Act assumes that an individual may claim an exempt homestead only in property used in the state of his residence as his home, although he should not lose his exemption in a mobile home by virtue of a temporary removal to another state that has enacted this Act.

(3) Although a nonresident individual is not entitled to the exemptions provided by this Act, a creditor is required to comply with the procedural provisions of this Act, including §§ 4, 10, 11, 13, 14, and 15, when proceeding to enforce collection of his claim out of the property of an individual located in this state. If a dispute arises as to the individual's right to claim a particular exemption, it is to be resolved in a proceeding under § 14(e). If an individual debtor relies on the exemption law of another jurisdiction, the court may require disclosure of such information regarding the debtor's assets as may be necessary to avoid the allowance of dual or multiple exemptions.

(4) The definition of "resident" is comparable to the meaning given "domicil" in Restatement (Second) of Conflict of Laws § 11, comment a (1971): "A person's domicil is usually the place where he has his home." See also Art. III of the Interstate Compact on Juveniles: "'[R]esidence' ... means a place at which a home or regular place of abode is maintained." N.Y. Unconsol. Laws § 1801 (McKinley 1975-76 Supp.). See generally Vukowich, *supra*, 62 Geo.L.J. at 840. A definition requiring presence in the state for a particular length of time would raise constitutional questions. See, e.g., *Dunn v. Blumstein* 405 U.S. 330, 338-39 (1972), holding durational residency requirements for eligibility to vote in Tennessee elections to be violative of the equal protection clause of the Fourteenth Amendment; *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969), holding unconstitutional state and District of Columbia statutes denying welfare assistance to residents who had lived less than one year in their respective jurisdictions. An individual may be a resident of a jurisdiction although he is not physically present and does not own a residence within its boundaries, as when, for example, he is living away from home during military or government service or while attending school. See Restatement (Second) of Conflict of Laws § 12, comment i, § 16, comment f, § 17, comments d & h, § 18, comment b (1971); R. Weintraub, Commentary on the Conflict of Laws 13-16 (1971).

1           SECTION 4.   [Homestead Exemption.]

2           (a)   An individual is entitled to an exemption  
3           as a homestead of his interest in property in this State  
4           used as a home by him or his dependents, but the value  
5           of the homestead exemption may not exceed \$10,000.

6           (b)   If property owned jointly, by the entirety,  
7           in common, or as community property is used by one or  
8           more individual owners or their dependents as a home,  
9           each owner is entitled to a homestead exemption of his  
10          interest in the property as provided in subsection (a).  
11          The aggregate value of multiple homestead exemptions  
12          allowable with respect to a single living unit may not  
13          exceed \$20,000.  If there are multiple owners of property  
14          exempt as a homestead, the value of the exemption of each  
15          individual owner may not exceed his aliquot portion of  
16          \$20,000.

17          (c)   A homestead exemption may be claimed in real or  
18          personal property, or both, without regard to the nature  
19          of the individual's interest in the property.  It may be  
20          claimed in an interest in a cooperative that owns property  
21          used as a home by the individual or his dependents.

22          (d)   If property that includes a homestead is sold  
23          under an execution, the sale becomes effective upon  
24          confirmation by order of the court.  The court shall  
25          enter the order of confirmation unless, within 30 days  
26          after the sale, the individual repurchases the property

27 under this subsection of the court extends to  
28 time for confirmation upon the filing of a timely ob-  
29 jection by a party in interest. The individual may  
30 repurchase property, including his homestead, from a  
31 sale on execution before confirmation by paying into  
32 court the costs of the sale plus the lesser of either  
33 (1) the difference between the highest bid and the  
34 amount of the exemption in the property, or (2) the  
35 amount of the creditor's claim. The clerk of the court  
36 shall remit to the creditor the amount to which he is  
37 entitled. For the purpose of collecting a deficiency  
38 remaining unpaid on his judgment after repurchase of  
39 property by an individual pursuant to this subsection,  
40 the creditor or his assignee may not make another  
41 levy on the property repurchased.

#### COMMENT

(1) Subsection (a) is similar to § 4-503(b)(1) of the Commission's Proposed Bankruptcy Act. See also National Commission on Consumer Finance, Consumer Credit in the United States 38 (1973). In construing homestead laws, the courts have uniformly held that temporary absence or removal from the home does not result in loss of the exemption. S.Thompson, Homestead and Exemption laws § 263 et seq. (1878); R.Waples, Homestead and Exemption 562-67 (1893); Vukowich, Debtors' Exemption Rights, 62 Geo.L.J. 779, 805 (1974). Nor does commercial use of property occupied as a home deprive it of its exempt character. S.Thompson, supra at 121-23; R.Waples, supra at 235-38; Vukowich, supra.

(2) The \$10,000 limit set by subsection (a) on the homestead exemption is higher than that prescribed by most state statutes but is comparable to the limit set in a number of states that have recently enacted amendments to their homestead laws: See, e.g., Ill.Stat. Ann. ch. 52 § 1 (1976 Supp.); N.M.Stat. Ann. § 24-6-1 (1975 Supp.). The limitation is to be applied to the value of the individual's equity in the property used as a home, since "value" is defined in § 1(10) to exclude the portion allocable to the payment of valid liens.

(3) Subsection (b) makes clear the availability of the homestead exemption to an individual owner of an undivided interest in property used as a home but limits the aggregate value of multiple homestead exemptions allowable with respect to any single living unit. If the value of the individual's interest in property owned by him and his spouse as tenants by the entirety or as community property exceeds the amount allowable as a homestead exemption, this Act follows the Commission's Proposed Bankruptcy Act (§5-203(c)) and changes the law in a number of jurisdictions by making the interest severable at the instance of a creditor of either of the spouses. See § 18 infra.

(4) Subsection (c) eliminates any doubt that a homestead may be claimed in a mobile home or other personal property and may consist in no more than a lease or right of use and occupancy of property owned by a cooperative. While the availability of the homestead should not depend on the nature of the property or of the legal interest, courts have frequently been prevented from recognizing the debtor's claim by restrictive statutory language. See S. Riesenfeld, Creditors' Remedies and Debtors' Protection 304 n. 14 (2d ed. 1975); Haskins, Homestead Exemptions, 63 Harv. L. Rev. 1289, 1294-96 (1950); Vukowich, supra, 62 Geo. L. J. at 798-99.

(5) Although requiring confirmation of a sale of property that includes a homestead before the sale becomes effective, subsection (d) does not authorize the making of any objection to the validity of the sale not previously recognized by the law of the enacting jurisdiction. It does provide a minimum period of 30 days during which any objection available under that law can be made. If such an objection is made before confirmation is ordered, the court may postpone the confirmation pending disposition of the issues raised by the objection or, if appropriate under the applicable law, enter the order of confirmation at the end of the 30-day period in the event the option to repurchase is not exercised.

(6) The right of repurchase prior to confirmation of the execution sale authorized by subsection (d) is to be distinguished from the statutory right of redemption from a foreclosure or execution sale after it has become final. Such a statutory right of redemption as provided in a substantial number of states is not intended to be affected by this subsection. See S. Riesenfeld, Creditors' Remedies and Debtors' Protection 149-54 (2d ed. 1975).

1 SECTION 5. [Property Exempt without Limitation.]

2 An individual is entitled to exemption of the follow-  
3 ing property:

4 (1) a burial plot for the individual and his family;

5 (2) health aids reasonably necessary to enable the  
6 individual or a dependent to work or to sustain health;

7 (3) benefits the individual has received or is  
8 entitled to receive under federal social security or state  
9 unemployment compensation, or under federal, state, or local  
10 public assistance legislation;

11 (4) benefits paid or payable for medical, surgical,  
12 or hospital care to the extent they are or will be used  
13 to pay for the care;

14 (5) veteran's benefits; and

15 (6) an award under a crime victim's reparations act.

COMMENT

(1) Paragraph (1) is similar to clause (2) of § 4-503(c) of the Commission's Proposed Bankruptcy Act. Nearly half the states provide for an exemption of a burial plot, typically without prescribing any area or value limitation. The one-acre limitation found in some state statutes seems so loose as to be unrealistic. The risk that an unlimited exemption of a burial plot for an individual and his family may be exploited by a debtor to the detriment of his creditors appears to be one easily controlled by judicial construction and one that is minimal in any event.

(2) Paragraph (2) of § 5 is comparable to § 4-503(c) (9) of the Commission's Proposed Bankruptcy Act. See also National Commission on Consumer Finance, Consumer Credit in the United States 38 (1973), recommending exemption of "[a]ll

medical health equipment being used for health purposes by the debtor, spouse, and dependents." The exemption of health aids is not a feature of most exemption statutes which were enacted before the development of medical technology that has made ownership of valuable health aids a relatively common occurrence. The requirement that the aids be "reasonably necessary to enable the individual or a dependent to work or to sustain health" eliminates any basis for claiming an exemption in a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to maintaining good health. Section 5(2) contemplates exemption of such items as a wheel chair for an individual unable to walk to work, an air conditioning unit for an individual afflicted with asthma, or an elevator for an individual unable to climb stairs.

(3) Congressional enactments exempt some but not all of the benefits provided by or pursuant to federal legislation that are covered by paragraph (3). The exemption prescribed by this paragraph is intended to include supplemental security income. The paragraph also comprehensively exempts unemployment compensation and public assistance benefits provided by state law, which are frequently but not always exempt under existing law. See Vukowich, Debtors' Exemption Rights, 62 Geo.L.J. 779, 820-21 (1974). The benefits exempt under § 5(3) are modest in amount, and the exemption is not subject to any monetary limitation. If an individual receives benefits exempt under both §§ 5 and 6, however, the amount of the exemption provided by the latter section may not exceed what is reasonably necessary for the support of the individual and his dependents.

(4) The exemption of benefits for medical, surgical, or hospital care is subject to no specific value limitation but is available only to the extent that the benefits are used or will be used to pay for the care. If the cost of the care is otherwise defrayed, there is no justification for exempting the benefits provided for this purpose from creditors' claims.

(5) Federal legislation conferring veterans' benefits has generally included a provision exempting the benefits from creditors' process, but paragraph (5) extends the protection of this Act to benefits conferred on veterans by state law. To the extent that federal law exempts veterans' benefits and subjects them to liability for claims of the United States, this Act is pre-empted by the federal statute, but creditors' rights governed by state law are subject to the provisions of this and other sections of this Act, including § 9, insofar as veterans' benefits are not exempt under federal law.

(6) The exemption provided by paragraph (6) covers an award under a statute like the Uniform Crime Victims Reparations Act.

1           SECTION 6. {Property Exempt to Extent Reasonably  
2 Necessary for Support.}

3           (a) An individual is entitled to exemption of the  
4 following property to the extent reasonably necessary  
5 for the support of him and his dependents:

6                   (1) benefits paid or payable by reason of  
7 disability, illness, or unemployment;

8                   (2) money or property received, and rights  
9 to receive money or property for alimony, support, or  
10 separate maintenance;

11                   (3) proceeds of insurance, a judgment, or a  
12 settlement, or other rights accruing as a result of  
13 bodily injury of the individual or of the wrongful death  
14 or bodily injury of another individual of whom the indi-  
15 vidual was or is a dependent;

16                   (4) proceeds or benefits paid or payable on  
17 the death of an insured, if the individual was the spouse  
18 or a dependent of the insured; and

19                   (5) assets held, payments made, and amounts  
20 payable under a stock bonus, pension, profit-sharing,  
21 annuity, or similar plan or contract, providing benefits  
22 by reason of age, illness, disability, or length of service.

23           (b) The phrase "property to the extent reasonably  
24 necessary for the support of him and his dependents" means  
25 property required to meet the present and anticipated needs  
26 of the individual and his dependents, as determined by the

27 court after consideration of the individual's  
28 responsibilities and all the present and anticipated  
29 property and income of the individual, including that  
30 which is exempt.

31 (c) This section does not affect property exempt  
32 under Section 5.

#### COMMENT

(1) Provisions comparable to this section are found in § 4-503(c)(4), (5), (6), (7), and (8) of the Commission's Proposed Bankruptcy Act. The Commission's proposal, however, limited the exemption to what is "reasonably necessary for the support of the individual and his dependents" only with respect to life insurance proceeds and rights under retirement plans. The exemptions provided by this section are intended to apply, whether the proceeds or other sums referred to are received by or are payable to the individual in a lump sum or in periodical installments.

(2) Paragraph (1) recognizes that benefits constituting a substitute for an individual's income during a period of temporary disability, illness, or unemployment should be accorded exemption from a creditor's levy to the extent they are reasonably necessary for his support. Workmen's compensation benefits are thus protected from creditors' levy by this section. While state laws generally exempt disability benefits, there are varying results as to the extent of the protection after payment of the proceeds to the beneficiary. Plumb, *supra* at 39-40; Annot., 31 A.L.R. 3d 532 (1970). The benefits remain exempt under this Act after receipt by the beneficiary as provided in § 9(b).

(3) This section authorizes the court to examine the needs of a recipient of an alimony, support, or other award for the purpose of determining whether there may be an excess that should be leviable at the instance of a creditor although another court presumably fixed the amount of the individual's award on the basis of a determination of the same needs. The creditor was not likely to have been a part to the proceeding in which the prior determination was made, and the award may have sufficed to permit an accumulation of an asset surplus not reasonably required for the individual's and dependent's support. See Plumb, The Recommendations of the Commission on the Bankruptcy Laws-- Exempt and Inexempt Property, 61 Va.L.Rev. 1, 34-35 (1975). Moreover, the creditor may have been supplying necessary goods and services on credit while the individual may have diverted the funds provided for support. The section does not authorize such a creditor to collect a claim for necessities previously supplied by levying on funds

currently needed for current support, but the court may protect the creditor against further diversion of funds for purposes not compatible with the policy of the exemption. Cf. 1 G.Glenn, Fraudulent Conveyances and Preferences § 143 (Rev.ed. 1940); Plumb, supra at 35.

(4) Claims of action arising out of bodily injury or wrongful death have generally been held not leviable, although the result has usually been predicated on the unavailability of an appropriate creditor process rather than on a grant of exemption. Plumb, The Recommendations of the Commission on the Bankruptcy Laws--Exempt and Immune Property, 61 Va.L.Rev. 1, 45-47 (1975); 4A W. Collier, Bankruptcy § 70.28[3] (14th ed. 1975). Once a claim for personal injury or wrongful death has been reduced to judgment, award, or a settlement, creditor process is readily available, and the absence of an exemption renders the proceeds of the recovery or agreement readily and unlimitedly leviable. Plumb, supra at 47-48; 4A W. Collier, supra, § 70.28[8]. To preserve some debtor protection, this section makes the proceeds of a judgment or settlement resulting from a bodily injury or wrongful death exempt to the extent they are reasonably necessary for the support of the individual entitled to them.

(5) Section 4-503(c)(6) of the Commission's Proposed Bankruptcy Act exempts rights of a debtor under a retirement plan "which is either (A) qualified under section 401(a) or the Internal Revenue Code, or any successor thereto, or (B) established by federal or state statute, to the extent in either case the debtor's interest therein is reasonably necessary for the support of the debtor and his dependents." Section 401(a) of the Internal Revenue Code covers retirement plans established by corporate employers for their officers and employees and also plans established by individuals and partnerships for themselves and their employees. See Plumb, supra, 61 Va.L.Rev. at 59. Funds or other property held and amounts paid and payable under a retirement plan or contract are exempt under this Act to the extent that the property sought to be subjected to levy is exempt although the plan or contract is not qualified under § 401(a) or another section of the Internal Revenue Code. Benefits provided by reason of illness or disability referred to in paragraph (5) are those incident to retirement for permanent disability, whereas the benefits referred to in paragraph (1) are those paid or payable by reason of a temporary disability or illness. Cf. Plumb, supra at 41-42. The standard of reasonable necessity for support applies to benefits under either paragraph. This section does not authorize a levy on, or sale of, any interest in the corpus of a trust or retirement fund which is not subject to withdrawal or alienation by an individual or to levy by his creditor under any other applicable law. See Plumb, supra, 61 Va.L.Rev. at 54-55 and 59, discussing the immunity from levy of ac-

cumulated credits in some public and private retirement plans. The right of an individual to withdraw or alienate any part of the corpus of a retirement fund ordinarily depends on the terms of the contract or instrument creating the fund.

(6) Money or property exempt under this section continues to be exempt so long as it is traceable within the rules prescribed in § 9. The procedures for claiming the exemptions provided by this section are prescribed by §§ 14 and 16.

(7) It is not contemplated that the courts in determining what is "reasonably necessary for the support of the individual and his dependents" under this section, should read the definition in subsection (b) as adopting the standard generally governing the determination of what is properly allowable to an individual and his dependents as alimony and support or as a distribution to a beneficiary under a support trust. Rather than focusing on the debtor's station in life and the standard of living to which he has been accustomed, the definition requires the court to direct its attention to the individual's needs and responsibilities, including particularly those that may be attributable to the disability, illness, or injury on the basis of which benefits became payable, foreseeable responsibilities for dependents, and the need for providing subsistence for an individual who has reached a mandatory retirement age. If the individual has not reached retirement age, the property or income protected under this section should suffice to permit him to continue his occupation and to maintain a standard of living reasonably consistent with his occupation and his previous history. Cf. D. Stanley & M. Girth, Bankruptcy: Problem, Process, Reform 206 (1971). In appropriate cases a court may retain continuing jurisdiction to adjust the allocation of periodical payments out of benefits in excess of what is reasonably necessary for support, in the light of changing needs and circumstances affecting the individual debtor and his dependents.

(8) This section gives limited protection to certain benefits that are provided pursuant to contract or private arrangements. Subsection (c) clarifies the point that this section does not restrict the unqualified exemption accorded by § 5 to comparable public assistance benefits.

1           SECTION 7. [Exemption of Unmatured Life Insurance  
2           Contracts.]

3           Except as provided in this section, an individual  
4           is entitled to exemption of unmatured life insurance  
5           contracts owned by him. If the contracts  
6           have accrued dividends and loan values aggregating  
7           more than \$1,500 available to the individual, a creditor  
8           may obtain a court order requiring the individual debtor  
9           to pay the creditor, and authorizing the creditor on the  
10          debtor's behalf to obtain payment of, the amount of the  
11          accrued dividends and loan values in excess of \$1,500  
12          or the amount of the creditor's claim, whichever is less.

COMMENT

(1) This section is similar to § 4-503(d) of the Commission's Proposed Bankruptcy Act. See also Int.Rev. Code §§ 6323(c)(9), 6332(b); National Commission on Consumer Finance, Consumer Credit in the United States 38 (1973). Compare Vukowich, Debtors' Exemption Rights, 62 Geo.L.J. 779, 874-75 (1974). Like the second proviso of § 70a(5) of the present Bankruptcy Act, the provision of subsection (a) of this section applicable to policies having a loan value and accrued dividends of more than \$1,500 is intended to enable an insured debtor "to retain insurance which, because of advancing years or declining health, it might be impossible for him to replace." *Burlingham v. Crouse*, 228 U.S. 459, 473 (1913).

(2) An unmatured life insurance contract without any loan value or accrued dividends payable to an individual owner is exempt in its entirety under this section. If an individual owns several contracts having loan values and accrued dividends, it may be appropriate for the debtor, the creditor, or one or more of the insurers to obtain a determination by a proceeding pursuant to § 14(e) as to which loan values

and dividends are being claimed as exempt and which are being subjected to the creditor's claim. Although the determination in such a proceeding would not be binding on a creditor not a party thereto, the individual debtor would be entitled to claim his exemption as against all other creditors after the nonexempt values and dividends had been appropriated by judicial proceedings at the instance of one or more creditors.

(3) The second sentence of the section contemplates that the creditor may obtain an order in proceedings supplementary to judgment directed against the individual to execute a written assignment of the policy or a written surrender that would satisfy the terms of the policy. See *Blinn v. Dame*, 207 Mass. 159, 93 N.E. 601 (1911), where an assignee for the benefit of creditors was permitted to sue an insurer in his own name to recover the cash surrender value of a nonexempt endowment policy owned by the assignor; *V. Countryman, Cases and Materials on Debtor and Creditor* 124 n. 1 (2d ed. 1974).

1                   SECTION 8.   [Exemptions of Personal Property Sub-  
2                   ject to Value Limitations.]

3                   (a) An individual is entitled to exemption of the  
4                   following property to the extent of a value not exceeding  
5                   \$500 in any item of property:

6                               (1) furnishings and appliances reasonably  
7                   necessary for one household;

8                               (2) if reasonably held for the personal use of  
9                   the individual or a dependent, wearing apparel, animals,  
10                  books, and musical instruments; and

11                              (3) family portraits and heirlooms of particular  
12                  sentimental value to the individual.

13                              (b) An individual is entitled to exemption of  
14                  jewelry, not exceeding \$750 in aggregate value, if held  
15                  for the personal use of the individual or a dependent.

16 (c) An individual is entitled to exemption,  
17 not exceeding \$1,000 in aggregate value, of implements,  
18 professional books, and tools of the trade; and to an  
19 exemption of one motor vehicle to the extent of a value  
20 not exceeding \$1500.

21 (d) In addition to any exemption provided by this  
22 Act or other law, an individual is entitled to exemption  
23 of cash and other liquid assets to the extent of a value  
24 not exceeding (1) \$500 if the individual claims a home-  
25 stead exemption (Section 4), or (2) \$1500 if the individual  
26 does not claim a homestead exemption. The term "liquid  
27 assets" includes deposits, securities, notes, drafts,  
28 unpaid earnings not otherwise exempt, accrued vacation  
29 pay, refunds, prepayments, and other receivables.

#### COMMENT

(1) The specific personal property exemptions listed in subsections (a)(1) and (2) and (c) are fairly typical of those found in most state exemption laws and in Internal Revenue Code § 6334(a). See Vukowich, Debtors' Exemption Rights, 62 Geo.L.J. 779, 826-29 (1974). The list is also similar to the catalogue of personal property exemptions in the Commission's Proposed Bankruptcy Act (§ 4-503(c)(1)) and that recommended in the Report of the National Commission on Consumer Finance, Consumer Credit in the United States 38 (1973). The inclusion of family portraits and heirlooms of sentimental value in subsection (a)(3) recognizes that the debt-paying value obtainable by levy and sale of such property by a creditor is unlikely to be proportionate to the deprivation suffered by the individual and his family, and the \$500 value limitation on the exemption allowable in any such item of property is a safeguard against abuse of this provision. While jewelry held for personal use is not often specified as exempt in state statutes, courts have frequently held items of jewelry included in the exemption of "wearing apparel." 1A W. Collier, Bankruptcy ¶ 6.14, at 872 (14th ed. 1974); 31 Am. Jur. 2d Exemptions § 81 (1967). Subsection (b) relieves the courts of the necessity to construe "wearing apparel" to protect such items but places a \$750 aggregate limitation on the property of this category that can be claimed as exempt.

(2) Law review commentators frequently recommend that an exemption statute prescribe a value limitation for personal property without restriction as to the forms or kinds held by the debtor. See, e.g., Joslin, Debtors' Exemption Laws: Time for Modernization, 34 Ind.L.J. 355, 362-75 (1959); Vukowich, *supra* at 829; Note, 53 Corn.L. Rev. 663, 671-83 (1968); Note 69 Yale L.J. 1459, 1507-14 (1959). This approach is rejected by this Act, as it was in the Commission's Proposed Bankruptcy Act. A particular disadvantage of an exemption scheme that allows an individual to claim exemptions in property without restriction as to kind but subject to an aggregate valuation is that it requires an appraisal of all the individual's property whenever a creditor makes a levy on any of the individual's property. While the \$500 value limitation on any item allowable as exempt under subsection (a) may sometimes require appraisal of particular items, most individuals do not have any property within the listed categories having a value close enough to the statutory maximum to warrant appraisal. In the exceptional situations when appraisal may be necessary, the quantity of property to be appraised will not ordinarily be substantial. Thus, if an individual owns no article of household furnishings or household appliance having a value in excess of \$500, all his furnishings and appliances are exempt unless he owns property of these kinds beyond what is "reasonably necessary for one household." Property of these kinds held for resale or commercial use or for use in a second household is not protected by the exemption.

(3) Subsection (a) is clear that if an item within any of the categories listed has a value exceeding \$500, the individual is nonetheless entitled to an exemption in the item to the extent of \$500, and the creditor is entitled to levy only on the excess value. Value, as defined in § 1(11), excludes the individual's interest, if any, that is subject to a valid lien. Section 14(d) prescribes the consequences of a levy on property that fails to draw a bid sufficient to cover the exempt value. Nothing in the Act precludes a tender by the individual and an acceptance by the creditor of the amount of the appraised value in excess of the exemption, thereby avoiding the necessity of a sale and its attendant expenses and risks.

(4) Property of the kinds listed in subsections (a) and (b) is customarily held in the individual owner's home, and most property so held is of insufficient value to exceed the prescribed exemption limitations. To protect the individual against harassment and ill advised levies on such property, special procedures are required to be pursued by a creditor who would levy on property of the kinds described in these two subsections. As used in the section, the word "animals" includes poultry, and "personal use" of animals includes the use or consumption of their produce. See 31 Am.Jur.2d Exemptions § 72 (1967).

(5) The Commission's Proposed Bankruptcy Act imposed a \$1000 value maximum on the allowable exemption in personal property of the kinds listed in subsections (a), (b), and (c). The Commission proposed, however, to allow a debtor to claim as exempt personal property within these categories in lieu of homestead until the aggregate value of such personal property, together with any homestead claimed under the Act, should aggregate the maximum allowable value for the homestead. Subsection (d) recognizes the appropriateness of an additional allowance for an individual who claims no homestead exemption by allowing him a \$1500 exemption in liquid assets. The liquid assets so allowed may be applied to prepayment of rent but need not be so used in order to be available as an exemption.

(6) While motor vehicles are frequently held to be exempt under various state laws, it is often necessary for the debtor to establish that the motor vehicle is a tool of the trade or is used in the debtor's trade or occupation. 31 Am.Jur. 2d Exemptions §§ 62, 65-68 (1967). While most of the statutes prescribe a value limitation, they vary as to whether a motor vehicle having a greater value than the maximum is exempt to the extent of the maximum or is entirely nonexempt. 31 Am.Jur. 2d, supra at § 69. Section 9 makes it clear that the debtor may claim an exemption to the extent of \$1500 in the equity of an automobile having a greater value but does not enable him to claim an exemption in more than one vehicle.

(7) The exemption of liquid assets, including unpaid earnings, provided by this section is independent of the exemption of earnings provided by the Federal Consumer Credit Protection Act (§§ 301-307, 15 U.S.C. §§ 1671-73 (1970)), and the Uniform Consumer Credit Code (§ 5.105) or other state wage garnishment statutes that provide for more limited garnishment than allowed under the Federal Consumer Credit Protection Act. See further the Comments accompanying §§ 24 and 25, infra.

1       SECTION 9. [Tracing Exempt Property.]

2           (a) If property, or a part thereof, that could  
3 have been claimed as an exempt homestead under Section  
4 4, a burial plot under Section 5(1), a health aid under  
5 Section 5(2), or personal property subject to a value  
6 limitation under paragraph (1) or (2) of subsection (a) or sub-  
7 section (c) of Section 8, has been sold or taken by condemnation, or  
8 has been lost, damaged, or destroyed and the owner has been  
9 indemnified therefor, the individual is entitled to an  
10 exemption of proceeds that are traceable for 18 months  
11 after the proceeds are received. The exemption of  
12 proceeds under this subsection does not entitle the  
13 individual to claim an aggregate exemption in excess  
14 of the value limitation otherwise allowable under Section  
15 4 or 8.

16           (b) Money or other property exempt under  
17 paragraph (3), (4), (5), or (6) of Section 5, or  
18 exempt to the extent reasonably necessary for support  
19 under Section 6, remains exempt after its receipt by,  
20 and while it is in the possession of, the individual  
21 or in any other form into which it is traceable,  
22 for example, in a bank or savings account.

23           (c) Money or other property and proceeds exempt  
24 under this Act are traceable under this section by  
25 application of the principle of first-in first-out,  
26 last-in first-out, or any other reasonable basis for  
27 tracing selected by the individual.

COMMENT

(1) This section protects proceeds of the sale or loss of property for the purpose of enabling the individual debtor to replace the property, a feature found in many homestead statutes or implied by the courts in construing the homestead laws. See S. Riesenfeld, Creditors' Remedies and Debtors' Protection 305 n. 21 (2d ed. 1975); R. Waples, Homestead and Exemption 215-16, 291, 438-42 (1893). Subsection (a) extends the policy of these statutes and cases protecting the proceeds of the sale of the homestead to proceeds resulting from its loss and to proceeds derived from other categories of exempt property. The protection is accorded the individual, whether the property is voluntarily or involuntarily sold. Thus when a partition of property pursuant to a severance effected by levy in accordance with § 4(b) occurs, the exemption of the interest of each individual owner may be traced into the proceeds of a sale for 18 months after receipt of the proceeds.

(2) Subsection (b) explicitly adopts the policy that the exemption of benefits under §§ 5(3)-(6) and 6 is to be extended to any form into which they may be traced by any reasonable basis chosen by the individual. The rationale for such an extension is that to limit the protection of the individual to the proceeds in their original form would be to destroy the utility of the protection and defeat the purpose of the exemption statute. See 31 Am. Jur. 2d Exemptions § 87 (1967). See also Riesenfeld, Life Insurance and Creditors' Remedies in the United States, 4 U.C.L.A. L. Rev. 583, 603-04 (1957); Comment, 21 Iowa L. Rev. 153 (1935).

1           SECTION 10. [Claims Enforceable against Exempt  
2           Property.]

3           (a) Notwithstanding other provisions of this Act:

4                   (1) a creditor may make a levy against exempt  
5           property of any kind to enforce a claim for:

27           (c) A creditor having a claim enforceable under  
28 subsection (a) against exempt property, before, at the  
29 time of, or a reasonable time after making a levy on  
30 property of an individual, shall serve on the individual a notice  
31 of the levy and of the basis for the creditor's right to make  
32 a levy on exempt property.

COMMENT

(1) This section authorizes levy by certain creditors against exempt property, both real and personal. Subsection (a) contains exceptions typically found in state exemption statutes. See 31 Am.Jur. 2d Exemptions §§ 122, 127, 131, 134, 135 (1967); Joslin, Debtors' Exemption Laws: Time for Modernization, 34 Ind.L.J. 355, 372-75 (1959).

(2) Garnishment of earnings for personal services is restricted by §§ 302-03 of the Consumer Credit Protection Act, 15 U.S.C. §§ 1671-73 (1970), and §§ 5.105 of the Uniform Consumer Credit Code. The considerations underlying these restrictions also support the exception of claims for unpaid earnings from those that are generally unenforceable against exempt property. A reasonable degree of protection is afforded the claimant by the provision in subsection (a)(1)(ii) allowing recovery from exempt property of one month's compensation or, if the claimant works part-time, an amount of compensation equal to the earnings of one month of full-time employment.

(3) A claim of a kind listed in this section may be enforced against exempt property by an assignee of the original creditor. A creditor seeking to collect such a claim by levy on exempt property must comply with subsection (c) of this section. Enforcement of a lien securing a claim of the kind listed in the section is subject to § 11 of this Act. As noted in the Comment (3) accompanying § 1, this Act does not limit the enforcement of federal tax claims or liens against exempt property.

6 (i) alimony, support, or maintenance;

7 (ii) unpaid earnings of up to one month's  
8 compensation or the full-time equivalent of one month's  
9 compensation for personal services of an employee; or

10 (iii) state or local taxes; and

11 (2) a creditor may make a levy against exempt  
12 property to enforce a claim for:

13 (i) the purchase price of the property  
14 or a loan made for the express purpose of enabling an  
15 individual to purchase the property and used  
16 for that purpose;

17 (ii) labor or materials furnished to make,  
18 repair, improve, preserve, store, or transport the  
19 property; and

20 (iii) a special assessment imposed to de-  
21 fray costs of a public improvement benefiting the prop-  
22 erty.

23 (b) Except as provided in Section 11, limiting  
24 the enforcement of certain security interests, this  
25 Act does not affect any statutory lien or security inter-  
26 est in exempt property.

1           SECTION 11. [Limitation on Enforcement of Certain  
2 Security Interests in Exempt Goods.]

3           (a) This section applies to a security  
4 interest, except a purchase-money security interest,  
5 in an item of goods (1) possessed by an  
6 individual, (2) being used by him or a dependent, and  
7 (3) exempt under this Act.

8           (b) Unless the individual, after written notice  
9 to him of his rights under this section, voluntarily  
10 surrenders to the secured creditor possession of an  
11 item of goods to which this section applies, the  
12 creditor may not take possession of the  
13 item or otherwise enforce the security interest  
14 according to its terms without an order or process of court.

15           (c) The court may order or authorize process  
16 respecting any item of goods to which this section  
17 applies only after hearing upon notice to the individual  
18 of the hearing and of his rights at it. The notice  
19 shall be as directed by the court. The order or author-  
20 ization may prescribe appropriate conditions as to pay-  
21 ments upon the debt secured or otherwise. The court  
22 may not order or authorize process respecting the item  
23 if it finds upon the hearing both that the individual  
24 lacks the means to pay all or part of the debt secured  
25 and that continued possession and use of the item is  
26 necessary to avoid undue hardship for the individual  
27 or a dependent.

28 (d) The court, upon application of the creditor  
29 or the individual and notice to the other and after  
30 a hearing and finding of changed circumstances, may  
31 vacate or modify an order or authorization pursuant to  
32 this section.

33 [(e) This section is in addition to Section 5.116  
34 of the Uniform Consumer Credit Code.]

COMMENT

(1) This section is an adaptation of § 5.116 of the Uniform Consumer Credit Code. It provides protection against potentially oppressive enforcement of a security interest in exempt personal property unless the creditor is seeking collection of the unpaid purchase-money obligation. It goes further than § 5.116 of the Uniform Consumer Credit Code in the protection it affords individual debtors by deleting an exclusion for security interests in motor vehicles. The restrictions of this section, however, like those of the Uniform Consumer Credit Code provision, do not apply to the enforcement of a purchase-money security interest in any variety of property. Restrictions on the enforceability of non-purchase-money security interests in household goods were recommended by the National Commission on Consumer Finance in Consumer Credit in the United States xx (1972). See also § 4-503(f) of the Commission's Proposed Act; FTC's Trade Regulation Rules on Credit Practices § 444.2(a)(4); and FRB's Rules on Uniform Credit Practices § 228.2(a)(4). The premise of the section is that actual or threatened enforcement of the secured creditor's right against exempt goods of the kinds embraced by its provisions may so seriously disrupt the family life of the individual and his dependents that the creditor should first afford the individual notice and an opportunity to be heard in court on whether enforcement of the security interest may create undue hardship.

(2) Subsection (e) is bracketed to indicate that the subsection is to be adopted only in states that have enacted § 5.116 of the Uniform Consumer Credit Code. The protection afforded against security interests by § 11 is not restricted, as is the Code provision, to individual debtors who are consumers under the Code nor to the enforcement of secured claims by lenders making supervised loans, i.e., loans in which the rate of the finance charge exceeds 12 percent per year. States that have adopted the Uniform Consumer Credit Code should adopt § 11 in order to achieve full uniformity with other enacting states. If the enacting state has adopted other legislation restricting enforcement of certain security interests in goods, it should be made clear whether the other legislation is retained or repealed.



12 8(a) or (b) that is not exempt, identifying the property, and  
13 setting forth facts constituting the basis for believing  
14 the property is not exempt; and

15 (2) a request for an order by the court noti-  
16 fying the individual (i) of the creditor's claim of  
17 a right to levy on the property identified as nonexempt,  
18 (ii) of the individual's right to contest the creditor's  
19 claim of a right to levy by filing with the clerk of the  
20 court, on or before a date fixed by the court, but not  
21 exceeding 15 days after the issuance of the order, a  
22 written objection to the proposed levy and a statement  
23 of the grounds of the objection and of his right to describe the property  
24 in lieu of setting its value, and (iii) of the possible consequences of  
25 failure to respond to the notice as provided in subsection (c).

26 (b) Notice of an order issued pursuant to a request  
27 under subsection (a) shall be served on the individual.  
28 The order shall restrain the individual from removing,  
29 encumbering, damaging, or disposing of any property of  
30 the kind listed in Section 8(a) or (b) for 30 days after receipt  
31 of the order, unless the court reduces, extends, or other-  
32 wise modifies the restraining order during the 30-day  
33 period.

34 (c) If exemption of property identified in a notice  
35 served on an individual pursuant to subsection (b) de-  
36 pends on its value, the individual may describe the  
37 property in his responsive statement and indicate the  
38 amount of any indebtedness chargeable against it. If

39 the individual, within the time allowed by the order of  
40 the court, fails to respond to a notice served under sub-  
41 section (b) that the creditor believes the debtor has  
42 nonexempt property of a kind listed under Section 8(a) or (b),  
43 the court may order the individual to appear and dis-  
44 close the description, location, and value of his prop-  
45 erty. If the individual fails to appear and disclose  
46 the information specified in the order, he  
47 waives objection to the creditor's levy on property of  
48 that kind.

49 (d) Except to the extent the procedure is pre-  
50 scribed by this section, Section 14(e) governs a proceeding  
51 for the determination of a contest in respect to a claim  
52 to exemption of property under Section 8(a) or (b).

53 (e) Costs incurred in making, or proposing to  
54 make, a levy on property of a kind listed in Section 8(a) or (b)  
55 shall be paid out of the proceeds of a sale of property  
56 of that kind. If the proceeds of a sale of the prop-  
57 erty are insufficient to cover the costs incurred in pro-  
58 ceedings commenced under this section, the creditor shall  
59 pay the costs and may not recover them  
60 from the debtor, notwithstanding any agreement of the  
61 parties to the contrary.

#### COMMENT

(1) This section is based on the assumption that all of the property owned by an individual of the kinds listed in § 8(a) and (b) is likely to be exempt. Property of an individual of the kinds listed is unlikely to bring at a forced sale under execution

a sum exceeding the amount of the applicable exemption. Another assumption underlying this section is that an effective levy on such property is likely to involve an intrusion by the officer of the court into the privacy of the individual's home. Moreover his creditors do not ordinarily expect to collect their debts out of the sale of such property. A reasonable balance of the rights of individual debtors and creditors in respect to such property is provided by the procedures prescribed in this section. Before any levy is made against these items, the individual is provided a notice of the creditor's belief that he has property of one or more of the kinds listed which is not exempt, and an opportunity to claim the property in these categories as exempt or to indicate which items, if any, are not claimed as exempt. If the individual and his creditor cannot agree as to whether particular items are exempt, the dispute may be resolved by resort by any interested person to the procedure prescribed in § 14(e). If the individual does not respond to a notice of the creditor's belief that the debtor has nonexempt property of the kind listed in § 8(a) or (b), he may be required by court order to appear and submit to a disclosure respecting his property. If the individual fails to appear and submit to a disclosure, he is deemed to have waived any claim of exemption to the property described in the creditor's notice served under this section. The individual is subject to such further processes for disobedience of the court order as may be provided by the laws of the state.

(2) Any costs incurred in proceedings under this section are to be charged against the creditor, unless sufficient proceeds to cover the costs are obtained by a sale of property of a kind listed in § 8(a) or (b).

1           SECTION 14.   [Procedures Applicable to a Levy on  
2           Property of an Individual.]

3           (a) Except in a proceeding under Section 10,  
4           a creditor shall comply with this section in obtaining  
5           a levy on property of an individual. In proceeding  
6           to make a levy on personal property of a kind listed

7 in Section 8(a) or (b), a creditor shall comply with this  
8 section and Section 13.

9 (b) Before, at the time of, or within 3 days after  
10 a levy is made against property of an individual, the  
11 creditor making the levy shall file with the court from  
12 which the process issued an affidavit stating that he  
13 has reason to believe the individual has property that is  
14 not exempt, identifying the property, and setting forth  
15 facts constituting the basis for that belief.

16 (c) Before, at the time of, or within 3 days after  
17 a levy is made, the creditor shall serve on the indi-  
18 vidual a notice under Section 15, including a copy of  
19 the affidavit filed under subsection (b).

20 (d) A bid for property that is less than the amount  
21 of the exempt value is not acceptable at a sale of property  
22 under a levy. If indebtedness secured by a valid lien  
23 is chargeable against the proceeds of the sale, the bid  
24 must exceed the amount of the indebtedness secured plus  
25 the amount of the exempt value. If a sufficient bid is  
26 not received, the officer shall file a notation of the fact  
27 with the clerk of the court and return the property to the  
28 individual. The costs incurred in making the levy, offering the  
29 property for sale, and returning the property shall be assessed  
30 against the creditor and are not recoverable from the individual,  
31 notwithstanding any agreement of the parties to the contrary.

32 (e) If any question arises as to the rights of an  
33 individual entitled to an exemption under this Act, an  
34 interested person may file with the clerk of the court

35 from which the process issued a statement of the claim  
36 of exemptions and the question raised. The statement  
37 shall be referred to the court as soon as practicable  
38 thereafter. The court shall order that notice of a hear-  
39 ing be given. After hearing the matter, the court shall  
40 make findings and issue an appropriate order. The  
41 court may award to the prevailing party costs of a pro-  
42 ceeding under this subsection.

43 (f) An objection to levy on the ground that the  
44 property seized is exempt must be filed with the clerk  
45 of the court within 10 days after the levy. Failure  
46 to file a timely objection may be held to be a waiver  
47 of a claim to exemption in the property, unless for cause  
48 shown the court excuses the failure.

#### COMMENT

(1) This section modifies the procedures heretofore required to be followed by a creditor in proceeding to obtain a levy against property of an individual debtor and subjecting the property to sale. Appropriate cross-references and coordinating amendments of statutes and rules regulating levies and sales may thus be necessary.

(2) A secured creditor who is resorting to judicial process for the purpose of enforcing his lien against goods in the possession of an individual is subject to the requirements of § 11 but need not comply with §§ 13 and 14, since these sections govern only a levy issued as a process for collecting unsecured debt. A secured creditor may nevertheless obtain a levy for the purpose of collecting a deficiency judgment against an individual out of property that is not subject to the creditor's lien and, when doing so, should comply with § 14 and, if appropriate, with § 13.

(3) Subsection (d) applies to a sale under a levy against property that is exempt to the extent its value does not exceed a statutory limit. Such value limitations

are prescribed by § 4 for the homestead exemption and subsections (a), (b), and (c) of § 8 for certain tangible personal property. Provisions comparable in part to subsection (d) are found in Mich.Stat.Ann. §§ 27A.6027, 27A.6033, and 27A.6039 (1962). The restoration of property to an individual debtor under this subsection does not preclude a new levy on the property in accordance with the provisions of this Act and other applicable law.

(4) Subsection (e) is an adaptation of Iowa Code § 628.21 (1971). "An interested person" under this section may be an individual debtor who has been served a notice pursuant to § 13 or § 14 of this Act, a person entitled under § 16 to claim an exemption or object to a levy, a creditor who has levied or attempted to levy on an individual's property, a sheriff or other officer of the court who has made a levy or been requested to make one, or any other person whose rights may be affected by a determination of an individual's claim to an exemption under this Act.

(5) The last sentence of subsection (f) states the possible consequences of delay in filing an objection to a levy but is not to be read as a limitation on the discretion of the court to afford judicial relief under § 17(b). Thus an individual who is deterred from filing a timely objection by a representation by a creditor that he does not intend to pursue collection against a particular asset may present an appropriate case for judicial relief.

1           SECTION 15. [Contents of Notice.]

2           (a) The notice required by Section 14(c) shall  
3 include the following information:

4                   (1) the amount and date of the judgment, if  
5 any, to be enforced by levy and sale or other mode of  
6 appropriating the individual's property;

7                   (2) the name and address of the clerk of the  
8 court with whom objections must be filed;

9                   (3) the name and address of the creditor and of  
10 his attorney, if any;

11                   (4) a copy of the affidavit filed under Section  
12 14(b);

13                   (5) a summary statement of the exemptions  
14 provided by the laws of this State; and

15 (6) a summary of the procedures for claiming  
16 exemptions, objecting to a levy on exempt property,  
17 and exercising the right to repurchase homestead property  
18 from a sale before its confirmation.

19 (b) The [Supreme Court] may prescribe forms to be  
20 used by creditors and court officers under  
21 this Act. A notice substantially complying with this  
22 section is effective even though the notice contains  
23 errors that do not result in any substantial prejudice  
24 to the rights of the individual debtor or his dependents.

#### COMMENT

(1) The notice to the individual required for compliance with §§ 14 and 15 may vary, depending on the nature of the property the creditor proposed to levy on. Thus, a levy on a bank account or other obligation owed the judgment debtor by a third person ordinarily contemplates no sale of the debtor's property. Rather the creditor in such a case proceeds by garnishment or similar process, and the debtor should raise any objection to the creditor's attempt to collect through such means by filing an answer or appropriate motion in the garnishment proceeding. If a creditor is proceeding to levy on property of a kind listed in § 8(a), he must, in addition to serving on the individual a notice that complies with §§ 14 and 15, serve a copy of an order issued pursuant to a request under § 13(a). Permissible modes of service of a notice under the Act are specified in § 1(8).

(2) The court with rule-making authority may appropriately promulgate forms in more than one language when there is a likelihood that the notice required by §§ 14 and 15 will be served on a significant number of individuals unable to understand English. The items of information required to be included in the notice by the section are not intended to be exclusive. Thus, the court with rule-making authority may adopt appropriate requirements to facilitate identification, in the notice, of the proceeding in which the notice is issued.

(3) Following is a suggested form to be used when a judgment creditor is making a levy on tangible property of an individual:

Notice of Levy and Sale of Your Property and  
of Your Right to Exemptions

The purposes of this notice are to tell you that your property is being taken by levy for the purpose of paying the judgment against you for \$....., entered in favor of ..... on ....., 19.., in the ..... Court of ....., and to inform you of your right to exemptions under the laws of this state. These laws protect certain property from being taken for the enforced payment of debts. Such property is called exempt property. If you are a resident of this state, property of the kinds listed below may be exempt and thus may not be taken by levy and sold to pay the judgment except as provided by law. If you are a nonresident, your right to exemptions will be governed by the law of the jurisdiction of your residence.

Property Exempt Under the Laws of This State

(1) Homestead: Any property used as a home for yourself or your dependents if its value (above mortgages and other liens) does not exceed \$10,000. If your home has a value above this amount, it may be taken and sold in accordance with the procedure described below.

(2) Property exempt without value limits: a burial plot for yourself and your family; health aids necessary for yourself and your dependents; benefits provided under federal social security, state unemployment compensation, and other federal, state, and local public-assistance laws; benefits paid and payable for medical, surgical, or hospital care; veteran's benefits; and any award under a crime victims reparations act.

(3) Property exempt only so far as needed for support: alimony, support, and separate maintenance; disability, illness, and other unemployment benefits; proceeds of insurance, a judgment, an award, or settlement of a claim for bodily injury or wrongful death; life insurance proceeds or other benefits payable to a spouse or dependent of the insured; and rights under a retirement plan or contract.

(4) Interests in unmaturred life insurance policies, subject to a total loan value and accrued dividend limit of \$1500. If you have interests in policies with such values in excess of this limit, you may be ordered to pay the amount of the excess in order to keep the policies.

(5) Implements, professional books, and tools of the trade, up to a total value of \$1000.

(6) A motor vehicle, subject to a \$1500 value limit.

(7) Liquid assets, including cash, deposits, securities, notes, drafts, and receivables, subject to a \$500 total limit if you have a homestead, otherwise to a \$1500 limit.

(8) Personal property held for household or personal use, subject to a \$500 value limit on any item of the following: furnishings and appliances reasonably necessary for one household, wearing apparel, animals, books, musical instruments, family portraits, and heirlooms of particular sentimental value.

(9) Jewelry held for personal use, subject to a total value limit of \$750.

Property of the kinds listed in paragraphs (8) and (9) may not be taken prior to service on you of an order giving you an opportunity to claim the exemptions to which you are entitled in the property. Failure to claim property of the kinds listed in paragraph (8) as exempt will permit it to be taken by levy and sale for the purpose of paying the judgment against you.

If you have a homestead in excess of the limit of \$10,000 for each dependent, it may be offered for sale by public auction after advertisement of the time and place of the sale. For 30 days after a sale under an execution against your homestead you can repurchase the property by paying the clerk of the court the costs of the levy and the sale plus the amount of the difference between the highest bid and the value of your homestead or, if that is less, the amount of my judgment. If the highest bid for your homestead at the execution sale is not enough to pay you the value of your exemption, the sale will be cancelled, and you will not be charged for the expenses of the attempted sale.

If you wish to object to the levy made against your property by the officer of the court and his proposed sale for the purpose of paying the judgment, you must file your objection with the clerk of the court, whose address is ....., within 10 days after the levy. In order to save your claim to exemption of any property, it is not enough to notify me or my attorney of your objection to the levy on the property. If you file an objection, you will be notified of the date on which a hearing will be held to determine rights in respect to the property in dispute. Failure to file a timely objection to the levy on your property or to appear at a hearing on your right to an exemption may be regarded as a waiver of any objection to the levy and a consent to

sale of the property for the purpose of paying the judgment against you.

Date of this notice

Creditor's attorney

Judgment creditor

Address

Address

1           SECTION 16. [Assertion of Rights by Persons other  
2 than the Individual Debtor.]

3           If an individual fails to select property entitled  
4 to be claimed as exempt or to object to a levy on the  
5 property or to assert any other right under this Act,  
6 the spouse or a dependent of the individual or any other  
7 authorized person may make the claim or objection or  
8 assert the rights provided by this Act.

COMMENT

(1) This section is an adaptation of the first sentence of § 4-503(j) of the Commission's Proposed Bankruptcy Act. See also Rules of Bankruptcy Procedure 403(f) and the accompanying Advisory Committee's Note.

(2) The reference to "other authorized person" in this section is not intended to enable a creditor to assert the right to exemption merely by reason of the fact that he has an unperfected security interest in exempt property or that he is a creditor with a right to levy on exempt property. "It has been held that, ordinarily, the claim cannot be made by the debtor's mortgagee or assignee, because the right of exemption is personal and not vendible or assignable, but, so far as the selection of statutory exemptions is concerned, there is authority that under a statute permitting the selection to be made by the debtor 'or his authorized agent,' a mortgage . . . , giving the mortgagee the right to make the selection, is not against public policy." 31 Am.Jur. 2d Exemptions 445 (1967). An "authorized person" under this section may also include a guardian or a person holding a power of attorney.

(3) Under § 17(b) the court may take a lack of notice or knowledge on the part of a person authorized by this section to assert rights under the Act and other relevant circumstances into account in affording relief from the consequences of failing to take timely action under the Act.

1           SECTION 17. [Judicial Relief.]

2           (a) An individual or the spouse or a dependent of the individual is  
3 entitled to injunctive relief, damages, or both, against  
4 a creditor or other person to prevent or redress a  
5 violation of this Act. A court may award costs and  
6 reasonable attorney's fees to a party entitled to in-  
7 junctive relief or damages.

8           (b) For cause shown the court may relieve a person  
9 from the consequences of failing to take timely action  
10 to assert rights under this Act.

COMMENT

(1) Generally injunctive relief provides the only adequate and complete protection for the beneficiaries of exemption laws. Sometimes, however, that relief is no longer available, and sometimes both an injunction and an award of damages may be appropriate. See generally 31 Am.Jur.2d Exemptions §§ 173-90 (1967). The section does not authorize or require an award of damages for every violation, in particular one that is merely technical and causes no loss or prejudice to those protected by the exemption laws. Because of the difficulty of proving actual damages for a violation of the Act, an award of costs and reasonable attorney's fees may also be justified. Cf. U.C.C.C. §§ 5.108(6) and 5.201(8) and the accompanying comments.

(2) Subsection (b) enables the court to take into account any special circumstances in granting relief to a party or any other person, including a spouse or dependent of a debtor, for noncompliance with a time limitation prescribed by the Act or fixed by the court in proceedings under the Act. Such circumstances may include not only failure to receive timely notice or knowledge of the right or duty to take action but also inaction induced by a communication received from an adversary party or an officer of the court indicating that no action is necessary.

1           SECTION 18.   [Debtor's Property Owned with Another.]  
2           If an individual and                   another own property in this  
3   State as joint tenants [,] [or] tenants in common, [or tenants by the  
4   entirety,] [or as community property,] a creditor of the individual  
5   subject to the individual's right to claim an exemption under  
6   this Act, may obtain a levy on and sale of the interest of the  
7   individual in the property. A creditor who has obtained a levy,  
8   or a purchaser who has purchased the individual's interest  
9   at the sale, may have the property partitioned or the individual  
10   interest severed.

COMMENT

(1) This section is an adaptation of §§ 4-601(a)(5)(A) and 5-203(c) of the Commission's Proposed Bankruptcy Act. The right of a creditor of an individual who owns property with another to obtain a severance of the individual's interest for the purpose of a forced sale, or of the purchaser at such a sale to have the property partitioned, is subject to considerable doubt and diversity from state to state. Restrictions on the right enable debtors to put property beyond the reach of their creditors and to distort the balance of debtors' and creditors' rights sought to be achieved by exemption laws. The premise of this section is that restrictions on the leviability and sale of an individual's interest in property owned with another must be removed if uniformity in the treatment of debtors' and creditors' rights is to be achieved.

(2) The section works a change of the law governing tenancies by the entirety in a number of states. See 4A R.Powell & P.Rohan, Real Property § 623 (1975). The non-leviability of the interest of a tenant by the entirety has afforded married debtors a means of enlarging the amount

and value of property that may be held by the two spouses free of liability for their separate creditors' claims. Craig, An Analysis of Estates by the Entirety in Bankruptcy, 48 Am. Bankr. L.J. 255 (1974); Huber, Creditors' Rights in Tenancies by the Entirety, 1 B.C. Ind. & Com. L. Rev. 197 (1960). The section leaves to the courts the determination of the value of the interest of each tenant by the entirety after severance. The constitutionality of applying this section to tenancies by the entirety created prior to the enactment of the Act is not settled. Brackets are placed around "or tenants by the entirety" in recognition of the possibility that some states may desire to limit the operation of this section to tenancies by the entirety created after enactment of this Act or to include provisions dealing more particularly with valuation of the interests of the tenants and with the rights of their separate and joint creditors.

(3) While the separate creditors of one spouse have sometimes been denied access to the spouse's interest in community property, recent changes in community property laws appear to have mitigated that problem. Pedlar, The Implications of the New Community Property Laws for Creditors' Remedies and Bankruptcy, 63 Calif. L. Rev. 1610 (1975). Considerable diversity nevertheless characterizes the laws of community property states that govern the rights of individual debtors who are or have been married and their creditors. The reference to "community property" in this section is bracketed in recognition of the possibility that some states may find it desirable to limit the operation of the section in respect to community property acquired prior to the enactment of the Act or to elaborate the provisions of the section insofar as they may deal with rights of different classes of creditors against community property and separate property.

(4) This section is appropriate for enactment in all states whether or not marital property located within the boundaries is generally held by the entirety or as community property. Spouses domiciled in a jurisdiction which accorded them rights in property as tenants by the entirety or as owners of community property presumably retain those rights when they move into another state having a different property system. 4A R. Powell & P. Rohan, Real Property ¶ 625[2] (1975); 2 American Law of Property § 7.18 (1952). This section governs the leviability and sale of such marital property when it can be subjected to creditor process in a jurisdiction that has enacted this Act. The right of the owner to an exemption in the property is governed by § 3 of this Act.

(5) When property used as a homestead is owned by more than one person, the aggregate value of the multiple exemptions allowable with respect to a single living unit is subject to a limitation as provided in § 4(b), but the right of an individual to an exemption under this Act is otherwise not affected by the fact that his interest is owned by him with another.

1           [[SECTION 19. Election between Exemptions under  
2 this Act and Constitutional Exemptions.]  
3           An individual entitled to exemptions provided by  
4 the Constitution of this State may elect to claim the  
5 exemptions provided by Article [ ], Section [ ], of  
6 the Constitution of this State or the exemptions pre-  
7 scribed by this Act, but may not claim exemptions under  
8 this Act in addition to those provided by the Constitution.]

COMMENT

(1) This section is to be enacted in states having constitutional provisions for exemptions. The exemptions provided by a state's constitution may not be waivable, however, and in such a state the legislature may provide for such additional exemptions that the aggregate of the constitutional and statutory exemptions correspond to the complement of exemptions allowable under this Act.

(2) A state's constitution may establish only a homestead exemption. If the constitutional homestead exemption exceeds that provided by this Act, the state legislature in adopting this Act should seek an adjustment of its interrelated provisions applicable to other kinds of property to avoid distortion of its balance of debtors' and creditors' rights.

(3) While most of the state constitutional provisions for homestead exemptions establish minima, a few appear to impose ceilings on the exemptions that may be prescribed by their state legislatures. In such states the legislatures may enact this Act with such modifications as may be required to conform to the constitutionally established policy.

1           SECTION 20. [Uniformity of Construction and Appli-  
2 cation.]

3           This Act shall be applied and construed to effectuate  
4 its general purpose to make uniform the law with res-  
5 pect to the subject of this Act among states enacting  
6 it.

1           SECTION 21. [Short Title.]

2           This Act may be cited as the Uniform Exemptions  
3 Act.

1           SECTION 22. [Severability.]

2           If any provision of this Act or its application  
3 to any person or circumstances is held invalid, the  
4 invalidity does not affect other provisions or appli-  
5 cations of the Act which can be given effect without  
6 the invalid provision or application, and to this end  
7 the provisions of this Act are severable.

1           SECTION 23. [Time of Taking Effect; Applicability  
2 to Pending Cases and Transactions Antedating Enactment.]

3           (a) This Act takes effect . . .

4           (b) All provisions of this Act apply to the col-  
5 lection of claims arising before and after the effective

6 date and to the enforcement of judgments rendered or  
7 entered before and after that date, but do not govern a  
8 levy made before that date.

COMMENT

(1) Since this Act generally governs procedure, it may be and should be made applicable to pending cases as well as all subsequent cases, except when application would interrupt a process or proceeding already in progress by virtue of a prior levy.

(2) Although no constitutional limitation prevents reduction or abolition of exemptions, it has sometimes been held that the enlargement of exemptions or creation of new exemptions runs counter to the constitutional prohibition on impairment of the obligation of a contract. Note, 68 Yale L.J. 1459, 1471-72 (1959). The current vitality of this construction of the impairment-of-obligation clause has often been questioned and the result severely criticized. Countryman, For a New Exemption Policy in Bankruptcy, 14 Rutgers L.Rev. 678, 726-32 (1960); Comment, 1 Stan. L. Rev. 350 (1949); Note, 68 Yale L.J. 1459, 1471-72 (1959). Cf. Sanco Enterprises, Inc., v. Christian, 495 P.2d 404 (Okla. 1972), rejecting an attack on the constitutionality of § 5.103 of the Uniform Consumer Credit Code as applied to a secured creditor who acquired its security interest prior to the enactment of the Code.

1 SECTION 24. [Repeal.]

2 The following acts and all other acts and parts  
3 of acts inconsistent herewith are hereby repealed:

4 (1) [Here should be listed all statutes providing  
5 exemptions and immunities from creditor process.] . . . .

COMMENT

This Act is a comprehensive statute designed to deal exclusively with the exemption of property other than personal earnings from subjection to legal or equitable process to collect creditors' claims. The exemptions under this Act are not intended to be available to survivors of a deceased debtor in addition to exemptions provided by statutes applicable to the affairs of decedents. This Act does not of course supersede federal law prescribing exemptions or authorizing the collection of claims created by or arising under federal law, and the Act does not displace statutory provisions for exemption of personal earnings in the states that have enacted § 5.105 of the Uniform Consumer Credit Code or other provisions extending greater protection against a creditor's levy on personal earnings than is provided by the Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq. This Act also deals with the mode of levy on the property of an individual and the enforcement of creditors' claims against an individual's interest in property owned with another, including that held in tenancy by the entirety or as community property. While most of the homestead and other exemption provisions of the prior law to be repealed ordinarily can be found in closely connected sections, statutes dealing with exemptions in respect to life insurance, pensions, and public assistance programs are likely to be distributed throughout other parts of the statutes of the state.

1        [SECTION 25.    [Laws Not Repealed.]

2            This Act does not repeal or affect the rights of  
3 any person in respect to the redemption of property after  
4 sale as provided in . . . ]

COMMENT

(1) As noted in Comment (6) to § 4, this Act is not intended to affect the statutory right of redemption from an execution sale of real property in the more than 20 states that have provided such a right. Any state having statutory redemption should include a saving reference to the relevant provisions when enacting this Act.

(2) Any jurisdiction that has enacted § 5.105 of the Uniform Consumer Credit Code or any other statute that extends greater protection to personal earnings from creditors' levy than is provided by the Consumer Credit Protection Act (15 U.S.C. §§ 1672, 1673) should include a saving reference in this section to its law exempting personal earnings. See the Comments accompanying §§ 8 and 24, supra.

EXHIBIT 2

Code Civ. Proc. §§ 690-690.52

§ 690. Exemptions; debtor; creditor

*Text of section operative Jan. 1, 1977*

(a) Except as otherwise specifically provided, the property mentioned in Sections 690.1 to 690.29, inclusive, is exempt from execution when claim for exemption is made to the same by the judgment debtor or defendant as hereinafter in Section 690.50 provided.

(b) Whenever it is specifically provided in Sections 690.1 to 690.29, inclusive, that the filing of a claim of exemption is not required, the property so mentioned in each such section shall not be subject to levy of attachment or execution in any manner.

(c) As used in Sections 690.1 to 690.29, inclusive, "debtor" means debtor, claimant, defendant, cross-defendant, or judgment debtor.

(d) As used in Sections 690.1 to 690.29, inclusive, "creditor" means the plaintiff or the person in whose favor the writ runs.

(Amended by Stats.1970, c. 1523, p. 3070, § 8; Stats.1974, c. 1516, p. 3380, § 16, operative Jan. 1, 1977.)

§ 690.1 Exemptions; household furnishings and appliances; apparel; piano; radio, television; provisions and fuel; shotgun; rifle; family art

Necessary household furnishings and appliances and wearing apparel, ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family, including, but not limited to, one piano; one radio and one television receiver; provisions and fuel actually provided for the debtor and his resident family's use, sufficient for three months; one shotgun and one rifle. Works of art shall not be exempt unless of or by the debtor and his resident family.

(Added by Stats.1970, c. 1523, p. 3070, § 10.)

§ 690.2 Exemptions; motor vehicle; distribution of proceeds, priority

(a) One motor vehicle with a value not exceeding five hundred dollars (\$500), over and above all liens and encumbrances on such motor vehicle. The value of such motor vehicle shall be established by reference to used car price guides customarily used by California automobile dealers, or, if not listed in such guides, fair market value, for a motor vehicle of that year and model.

(b) The levying officer shall consult the Department of Motor Vehicles and, if the department's records show that another vehicle is registered in the name of the debtor, the levying officer shall distribute the proceeds of the sale in the following order of priority:

(1) First, the seller, lienholder or encumbrancer shall recover pursuant to paragraph (1) of Section 689c;

(2) Second, to the satisfaction of the judgment; and

(3) Third, the balance, if any, to the debtor.

The levying officer shall notify the debtor if he intends to distribute under this subdivision and shall notify the debtor that the debtor may file a

claim of exemption pursuant to Section 690.50 at any time prior to distribution of the proceeds of the sale. If he does not own another safe and functional motor vehicle which can legally be operated on the public roadway or a motor vehicle which can be made safe, functional, and legally operable on the public roadway, with an expenditure which is reasonable in relation to its fair market value, the claim of exemption shall be sustained.

Any motor vehicle registered to the spouse of the debtor and which is community property shall be deemed to be owned by the debtor when the debtor and the debtors spouse reside together.

If the claim of exemption is sustained the proceeds shall be distributed as provided in subdivision (c).

(c) When the debtor has only one vehicle, the levying officer shall distribute the proceeds of any execution sale or from the undertaking, if necessary, without further order of the court, in the following order of priority:

(1) First, the seller, lienholder or encumbrancer shall recover pursuant to paragraph (1) of Section 689c;

(2) Second, the debtor shall recover five hundred dollars (\$500), the amount of the motor vehicle exemption;

(3) Third, to the satisfaction of the judgment; and

(4) Fourth, the balance, if any, to the debtor.

This distribution shall be made, whether or not the debtor has filed a claim of exemption and regardless of who purchases the motor vehicle.

(d) The levying officer shall not receive any bid at an execution sale under subdivision (c) unless it exceeds the total of:

(1) The motor vehicle exemption;

(2) The aggregate amount of all liens and encumbrances on the motor vehicle; and

(3) The amount necessary to repay the judgment creditor for the fees and costs advanced to the levying officer.

In the event no bid is accepted the levying officer shall release the motor vehicle to the debtor within five days.

(e) Any amount representing the motor vehicle exemption paid to the debtor shall be entitled, for a period of 90 days thereafter, to the same protection against legal process which the law gives to the motor vehicle exemption.

(Added by Stats.1976, c. 1210, p. —, § 2.)

### § 690.3 Exemptions; housetrailer, mobilehome or waterborne vessel

(a) One housetrailer, mobilehome, houseboat, boat, or other waterborne vessel in which the debtor, or the family of such debtor, actually resides, of a value not exceeding the following values:

(1) For any head of a family, of a value not exceeding thirty thousand dollars (\$30,000) in actual cash value, over and above all liens and encumbrances on that housetrailer, mobilehome, houseboat, boat, or other waterborne vessel;

(2) For any person 65 years of age or older of a value not exceeding thirty thousand dollars (\$30,000) in actual cash value, over and above all liens and encumbrances on that housetrailer, mobilehome, houseboat, boat, or other waterborne vessel; and

(3) For any other person, of a value not exceeding fifteen thousand dollars (\$15,000) in actual cash value, over and above all liens and encumbrances on that housetrailer, mobilehome, houseboat, boat, or other waterborne vessel.

(b) The exemption provided by this section shall not apply if such debtor or the spouse of such debtor has an existing homestead as provided by Title

5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code or has obtained a prior judicial determination that the dwelling house of the debtor or the family of the debtor is exempt from execution under Section 690.31.

(Added by Stats.1970, c. 1523, p. 3071, § 14. Amended by Stats.1972, c. 418, p. 743, § 1; Stats.1973, c. 787, p. 1405, § 1; Stats.1976, c. 159, p. —, § 1; Stats.1976, c. 471, p. —, § 2.)

**§ 690.4 Exemptions; tools, equipment, etc., used in commercial activity, trade, calling or profession**

To the maximum aggregate actual cash value of two thousand five hundred dollars (\$2,500), over and above all liens and encumbrances of such items at the time of any levy of attachment or execution thereon, any combination of the following: tools, implements, instruments, uniforms, furnishings, books, equipment, one commercial fishing boat and net, one commercial motor vehicle reasonably necessary to and actually used in a commercial activity, and other personal property ordinarily and reasonably necessary to, and personally owned and used by, the debtor exclusively in the exercise of the trade, calling, or profession by which he earns his livelihood.

(Added by Stats.1970, c. 1523, p. 3071, § 16.)

**§ 690.5 Exemptions; prosthetic and orthopedic appliances**

All prosthetic and orthopedic appliances personally used by the debtor. (Amended by Stats.1970, c. 1523, p. 3071, § 17.)

**§ 690.6 Exemptions; certain earnings; determination of priority and division among levying creditors; hearing**

(a) One-half or such greater portion as is allowed by statute of the United States, of the earnings of the debtor received for his or her personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.

(b) All earnings of the debtor received for his or her personal services rendered at any time within 30 days next preceding the date of a withholding by the employer under Section 682.3, if necessary for the use of the debtor or the debtor's family residing in this state and supported in whole or in part by the debtor, unless the debts are:

(1) Incurred by the debtor, his or her spouse, or his or her family for the common necessities of life.

(2) Incurred for personal services rendered by any employee or former employee of the debtor.

(c) The court shall determine the priority and division of payment among all of the creditors of a debtor who have levied an execution upon nonexempt earnings upon such basis as is just and equitable.

(d) Any creditor, upon motion, shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the priority and division of payment among all the creditors of the debtor who have levied an execution upon nonexempt earnings pursuant to this section.

(Added by Stats.1970, c. 1523, p. 3071, § 19. Amended by Stats.1971, c. 576, p. 1138, § 8.8, urgency, eff. Aug. 13, 1971, operative Oct. 1, 1971; Stats.

1971, c. 1846, p. 3550, § 1; Stats.1971, c. 1684, p. 3614, § 6; Stats.1972, c. 43, p. 61, urgency, eff. April 6, 1972; Stats.1974, c. 1516, p. 3381, § 17, operative Jan. 1, 1977; Stats.1975, c. 1241, p. —, § 7, operative Jan. 1, 1977; Stats. 1976, c. 317, p. —, § 1.)

**§ 690.7 Exemptions; savings; limit**

(a) To the maximum aggregate value of one thousand dollars (\$1,000), any combination of the following: savings deposits in, shares or other accounts in, or shares of stock of, any state or federal savings and loan association; "savings deposits" shall include "investment certificates" and "withdrawable shares" as defined in Section 5061 and 5067 of the Financial Code, respectively.

(b) Such exemption set forth in subdivision (a) shall be a maximum of one thousand dollars (\$1,000) per person, whether the character of the property be separate or community.

(Added by Stats.1970, c. 1523, p. 3072, § 21.)

**§ 690.8 Exemptions; compensation from dwelling taken; homestead exemption**

For a period of six months from the date of receipt, the compensation received from a public entity which acquires for a public use a dwelling actually owned and occupied by the debtor. Such compensation shall be exempt in the amount, over and above all liens and encumbrances, provided by Section 1260 of the Civil Code.

(Added by Stats.1972, c. 861, p. 1530, § 2. Amended by Stats.1974, c. 47, p. 102, § 1, urgency, eff. Feb. 26, 1974.)

**§ 690.8a Exemptions; relocation benefits; attachment and execution**

All relocation benefits for displacement from a dwelling actually owned or rented by the debtor received from a public entity pursuant to Chapter 16 (commencing with Section 7280), Division 7, Title 1 of the Government Code or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970<sup>1</sup>, as amended, shall, in addition to any other exemptions provided for by the law, be exempt from attachment or execution. Such benefits shall be exempt from attachment or execution without filing a claim of exemption, as provided in Section 690.50.

(Added by Stats.1974, c. 47, p. 102, § 2.)

<sup>1</sup> 42 U.S.C.A. § 4601 et seq.

**§ 690.9 Exemptions; life insurance proceeds, benefits, etc.; restriction**

(a) All moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred dollars (\$500), or if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that such five hundred dollars (\$500) bears to the whole annual premium paid.

(b) In addition to the foregoing, all moneys, benefits, or privileges belonging to or inuring to the benefit of the insured's spouse or minor children growing out of life insurance purchased with annual premiums not exceeding five hundred dollars (\$500), or if such annual premiums exceeded that sum, a like exemption shall exist in favor of such persons which

shall bear the same proportion to the moneys, benefits, or privileges growing out of such insurance that five hundred dollars (\$500) bears to the whole annual premiums paid.

(Formerly § 690.19, added by Stats.1935, c. 723, p. 1970, § 19. Amended by Stats.1947, c. 1056, p. 2454, § 1. Renumbered § 690.9 and amended by Stats.1970, c. 1523, p. 3074, § 39.)

**§ 690.10 Exemptions; group life policy**

Except as provided in Sections 10203.5, 10203.6, and 10203.8 of the Insurance Code, a policy of group life insurance, or the proceeds thereof, either before or after payment, paid to the insured employee or the beneficiary.

(Added by Stats.1970, c. 1523, p. 3072, § 26.)

**§ 690.11 Exemptions; disability or health insurance benefits, etc.; restriction**

All moneys, benefits, privileges, or immunities, accruing or in any manner growing out of any disability or health insurance, if the annual premiums do not exceed five hundred dollars (\$500), and if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that such five hundred dollars (\$500) bears to the whole.

(Formerly § 690.20, added by Stats.1935, c. 723, p. 1970, § 20. Renumbered § 690.11 and amended by Stats.1970, c. 1523, p. 3074, § 41.)

**§ 690.12 Exemptions; segregated benefit funds**

The segregated benefit funds of a holder of a certificate of exemption issued pursuant to Section 10497 of the Insurance Code against the holder of a certificate of exemption, except that such funds shall not be exempt from process issued to enforce a claim of benefit.

(Added by Stats.1970, c. 1523, p. 3073, § 29.)

**§ 690.13 Exemptions; fraternal organization funds for sick or unemployment benefits**

All moneys belonging to a fraternal organization not exceeding the sum of five hundred dollars (\$500), and which moneys are used exclusively in the payment of sick or unemployment benefits to bona fide members of such fraternal organizations.

(Formerly § 690.25, added by Stats.1939, c. 728, p. 2257, § 1. Renumbered § 690.13 and amended by Stats.1970, c. 1523, p. 3077, § 46.)

**§ 690.14 Exemptions; aid by fraternal benefit society**

Money or other aid paid or rendered by any fraternal benefit society as defined in Section 10990 of the Insurance Code, either before or after payment.

(Added by Stats.1970, c. 1523, p. 3073, § 32.)

**§ 690.15 Exemptions; workmen's compensation claims**

Any claim for workmen's compensation or compensation awarded, adjudged, or paid, except as provided in the Labor Code. Such claim or award, prior to actual payment, shall be exempt without filing a claim of exemption as provided in Section 690.50.

(Added by Stats.1970, c. 1523, p. 3073, § 34.)

**§ 690.16 Unemployment insurance contributions**

Contributions by workers, payable to the Unemployment Compensation Disability Fund, and by employers, payable to the Unemployment Fund are exempt without filing a claim of exemption as provided in Section 690.60. (Added by Stats.1970, c. 1523, p. 3073, § 36.)

**§ 690.17 Exemptions; building materials; restriction**

All material not exceeding one thousand dollars in value, purchased in good faith for use in the construction, alteration or repair of any building, mining claim or other improvement as long as in good faith the same is about to be applied to the construction, alteration or repair of such building, mining claim or other improvement. (Added Stats.1935, c. 723, p. 1969, § 17.)

**§ 690.175 Exemptions; unemployment compensation**

State unemployment compensation benefits or extended duration benefits or federal-state extended benefits or unemployment compensation disability benefits, incentive payments provided by Division 2 (commencing with Section 5000) of the Unemployment Insurance Code, and payments to an individual under a plan or system established by an employer which makes provision for his employees generally, or for a class or group of his employees, for the purpose of supplementing unemployment compensation benefits. Such benefits or payments, prior to actual payment, shall be exempt without filing a claim of exemption, as provided in Section 690.60. (Added by Stats.1970, c. 1523, p. 3073, § 37. Amended by Stats.1973, c. 1206, p. 2001, § 3; Stats.1973, c. 1207, p. 2662, § 3.)

**§ 690.18 Exemptions; public pension, retirement, disability or death benefits or private retirement plan; exception for court-ordered child or spousal support**

(a) Except with regard to court-ordered child or spousal support payments, all money received by any person, a resident of the state, as a pension, or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon, from the United States government, or from the state, or any county, city, or city and county, or other political subdivision of the state, or any public trust, or public corporation, or from the governing body of any of them, or from any public board or boards, or from any retirement, disability, or annuity system established by any of them pursuant to statute, whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him.

(b) All money held, controlled, or in process of distribution by the state, or a city, city and county, county, or other political subdivision of the state, or any public trust or public corporation, or the governing body of any of them, or by any public board or boards, derived from the contributions by the state or such city, county, city and county, or other political subdivision, or such public trust, public corporation, governing body, or public board or boards, or by any officer or employee thereof, for retirement or pension purposes or the payment of disability, death, or other benefits, or the payment of benefits payable to, or the reimbursement of benefits paid to, employees thereof under the provisions of the Unemployment Insurance Code, and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state, city, city and county, county, or other political subdivision of the state, or any public trust or public corporation for retirement, annuity, or pension

purposes or payment of disability or death benefits, and all vacation credits accumulated by a state employee pursuant to the provisions of Section 18050 of the Government Code, or any other public employee pursuant to any law for the accumulation of vacation credits applicable to such employee. Such moneys, benefits, and credits shall be exempt without filing a claim of exemption as provided in Section 690.50.

(c) All money held, controlled, or in process of distribution by any private retirement plan, including, but not limited to, union retirement plans, or any profit-sharing plan designed and used for retirement purposes, or the payment of benefits as an annuity, pension, retirement allowance, disability payment or death benefit from such retirement or profit-sharing plans, and all contributions and interest thereon returned to any member of any such retirement or profit-sharing plan, are exempt from execution, attachment, or garnishment in any bankruptcy proceeding. Except with regard to moneys withheld from employees' wages and contributions based on wages in employment under provisions of the Unemployment Insurance Code, and except with regard to court-ordered child support payments, the exemption given by this subdivision shall apply to any moneys held in self-employed retirement plans and individual retirement annuities or accounts provided for in the Federal "Employee Retirement Income Security Act of 1974" (P.L. 93-406) <sup>1</sup>.

(Formerly § 690.22, added by Stats.1935, c. 723, p. 1970, § 22. Amended by Stats. 1937, c. 512, p. 1502, § 1. Renumbered § 690.18 and amended by Stats.1970, c. 1523, p. 3075, § 44.5. Amended by Stats.1975, c. 509, p. —, § 2; Stats.1976, c. 948, p. —, § 1.)

<sup>1</sup> 29 U.S.C.A. § 1001 et seq.

#### § 690.19 Exemptions; public assistance

All aid given under a public assistance program to a debtor or for his benefit. However, as against the claim of the county, the real and personal property of a debtor who has received support from public moneys shall be exempt only to the extent provided by and in accordance with the provisions of Section 17409 of the Welfare and Institutions Code. Such aid, prior to payment, shall be exempt without filing a claim of exemption, as provided in Section 690.50.

(Added by Stats.1970, c. 1523, p. 3074, § 40.)

#### § 690.20 Exemptions; hospital endowment funds; extent

To the extent provided for in Section 32508 of the Health and Safety Code, property, of any nature, given to endow an endowment hospital.

(Added by Stats.1970, c. 1523, p. 3075, § 42.)

#### § 690.21 Exemptions; funds of prisoners

*Text of section operative Jan. 1, 1977*

The funds of any person confined in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for him, or to his credit, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, not to exceed the sum of forty dollars (\$40), shall be exempt from execution without filing a claim for exemption as provided in Section 690.50.

(Formerly § 690.235 added by Stats.1959, c. 839, p. 2265, § 1. Renumbered § 690.21 and amended by Stats.1970, c. 1523, p. 3076, § 46. Amended by Stats.1974, c. 1516, p. 3381, § 18, operative Jan. 1, 1977.)

**§ 690.22 Exemptions; public buildings, grounds and personal property**

All courthouses, jails, fire companies, public offices, and public buildings, lots, grounds, and personal property, including automotive and truck equipment, fixtures, furniture, books, papers, and appurtenances belonging to the jail, fire company, and public offices belonging and appertaining to any county of this state; and all cemeteries, public squares, parks, and places, public buildings, town halls, and buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this state.

(Formerly § 690.16, added by Stats.1935, c. 723, p. 1969, § 16. Renumbered § 690.22 and amended by Stats.1970, c. 1523, p. 3073, § 35.)

**§ 690.24 Exemptions; cemetery lots**

*Text of section operative Jan. 1, 1977*

All lots of land, not exceeding one-quarter of an acre in size, owned, used, or occupied by any person, or by any person in joint tenancy or tenancy in common with any other person or persons, in any graveyard, cemetery, or other place for the sole purpose of burying the dead, together with the railing or fencing enclosing the same, and all gravestones, tombstones, monuments, and other appropriate improvements thereon erected, are exempt from levy and forced sale by virtue of any writ, order, judgment, or decree, or by any legal process whatever. In cases of religious or benevolent associations or corporations, the amount of land so exempt may extend to not exceeding five acres.

Not more than one lot owned, used, or occupied by any such person or by any person in joint tenancy or tenancy in common with any other person or persons or such association or corporation in any one cemetery, graveyard or other place is exempted by this section.

This section does not apply to land held by any person or persons, association, or corporation for the purpose of sale or disposition as burial lots or otherwise.

No property dedicated as a cemetery by a cemetery authority shall be subject to execution because of debts due from an individual owner of an interment plot.

All money payable or to become payable as the purchase price or on account of the purchase price of unused cemetery lands, or lands from which all remains have been removed, is not subject to execution if used for the purpose enumerated in Section 7926 of the Health and Safety Code.

(Formerly § 690.51 added by Stats.1955, c. 59, p. 500, § 7. Renumbered § 690.24 and amended by Stats.1970, c. 1523, p. 3080, § 57. Amended by Stats.1974, c. 1516, p. 3381, § 19, operative Jan. 1, 1977.)

**§ 690.25 Exemptions; pews**

All pews in churches and meetinghouses, used for religious purposes, owned and claimed by any person, or held, in accordance with the rules and regulations of such churches shall be exempt without filing a claim of exemption as provided in Section 690.50.

(Formerly § 690.52, added by Stats.1955, c. 59, p. 500, § 8. Renumbered § 690.25 and amended by Stats.1970, c. 1523, p. 3081, § 58.)

**§ 690.26 Exemptions; property of certain boards and districts**

The property of the Reclamation Board and the Sacramento and San Joaquin Drainage District.

(Added by Stats.1970, c. 1523, p. 3077, § 50.)

**§ 690.27 Exemptions; housing authority realty**

The real property of a housing authority, as defined in Part 2 (commencing with Section 84200), of Division 24 of the Health and Safety Code.

(Added by Stats.1970, c. 1523, p. 3077, § 52.)

**§ 690.28 Exemptions; grants for educational purposes; restrictions**

Any property granted to a trustee for educational purposes, pursuant to Section 81051 of the Education Code, if the action under which the execution or attachment is issued, or the proceeding under which the sale is ordered, is not commenced within two years of the filing for record of the grant. No property shall be subject to execution or forced sale under any judgment obtained in any proceeding instituted within two years, if there is other property of the grantor subject to execution or forced sale sufficient to satisfy the judgment. Nothing in this section shall be construed to affect mechanics' or laborers' liens.

(Added by Stats.1970, c. 1523, p. 3077, § 53.)

**§ 690.29 Exemptions; redevelopment agency property**

All property of a redevelopment agency, including funds, owned or held by it for the purposes of Chapter 2 (commencing with Section 88100) of Part 1 of Division 24 of the Health and Safety Code.

(Added by Stats.1970, c. 1523, p. 3078, § 54.)

**§ 690.30 Exemptions; direct deposits of federal payments; excess amounts; court determinations**

With respect to any deposit account maintained with a bank or any investment certificate, share account or withdrawable share maintained with a state or federally chartered savings and loan association in which payments authorized by the Social Security Administration are directly deposited by the United States government pursuant to Public Law No. 92-306 (86 Stats. 506 (1972))<sup>1</sup> and any regulations promulgated thereunder:

(a) The first five hundred dollars (\$500) of such account shall not be subject to levy of attachment or execution in any manner where one depositor to the account is the designated payee of the directly deposited payments. The first seven hundred fifty dollars (\$750) of such account shall not be subject to levy of attachment or execution in any manner where two or more depositors to the account are the designated payees of the directly deposited payments; provided, however, that where two or more such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors, the exemption shall be the first five hundred dollars (\$500) of such account.

(b) Any amounts in excess of those authorized under subdivision (a) are exempt to the extent such amounts consist of payments authorized by the Social Security Administration which are directly deposited by the United States government pursuant to Public Law No. 92-306 (86 Stats. 506 (1972)) and any regulations promulgated thereunder or exempt under any other provisions of law as hereinafter provided:

(1) The financial institution shall either place the amounts in excess of those authorized by subdivision (a) in a suspense account or otherwise prohibit their withdrawal pending notification of the judicial determination of

their exempt status, and advise the levying officer in writing of the nature and balance of the account of the debtor within 10 business days after the levy;

(2) No claim of exemption shall be required with respect to payments authorized by the Social Security Administration which are directly deposited by the United States government pursuant to Public Law No. 92-300 (86 Stats. 508 (1972)). If the judgment creditor delivers an affidavit or declaration alleging that the property is not exempt within the meaning of this subdivision to the levying officer within five days after the levying officer has notified the judgment creditor that all or parts of the amounts being held by the financial institution pursuant to paragraph (1) are nonexempt the procedure in Section 690.50 shall be followed. If no affidavit or declaration is timely delivered by the judgment creditor, then subdivision (d) of Section 690.50 shall apply. For purposes of subdivision (1) of Section 690.50, the judgment debtor has the burden of proving that the moneys are exempt;

(3) No finding shall be required in an exemption hearing under this section. At the conclusion of the hearing, the court shall give judgment determining whether or not the excess moneys are exempt, in whole or in part, and may give judgment determining the priority or division of payment between one or more creditors from nonexempt moneys which judgment shall be determinative as to the right of the creditor to have the moneys held by the financial institution pursuant to the writ. In the judgment, the court shall make all appropriate orders for the prompt disposition of such moneys;

(4) If the court determines that all or part of the excess is exempt, a certified copy of the judgment shall be transmitted forthwith by the clerk to the financial institution in order to permit the financial institution to transfer such moneys from the suspense account to the debtor's account or otherwise release any restrictions on its withdrawal by the debtor. The transfer or release shall be effected within three business days of the receipt of the judgment. If the court has determined that all or part of the excess is nonexempt, a certified copy of the judgment shall be transmitted forthwith by the clerk to the levying officer and the levying officer shall serve the copy of the judgment forthwith upon the financial institution. With respect to any part of the excess which is exempt, the financial institution shall transfer such moneys from the suspense account or otherwise release any restrictions on its withdrawal by the debtor. The transfer or release shall be effected within three business days of the receipt of a certified copy of the judgment by the financial institution.

(c) For purposes of this section, "payments authorized by the Social Security Administration" means regular retirement and survivors benefits, supplemental security income benefits, coal miners health benefits, and disability insurance benefits.

(Added by Stats.1976, c. 910, p. —, § 1.)

§ 81 U.S.C.A. § 402.

**§ 690.31 Exemptions; dwelling house in which debtor resides; exceptions; enforcement of judgment against dwelling house**

**(a) Exemption**

(a) A dwelling house in which the debtor or the family of the debtor actually resides shall be exempt from execution, to the same extent and in the same amount, except as otherwise provided in this section, as the debtor or the spouse of the debtor would be entitled to select as a homestead pursuant to Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the

Civil Code. For the purpose of this section, "dwelling house" means the dwelling house together with the outbuildings and the land on which the same are situated.

(b) Exceptions

(b) The exemption provided in subdivision (a) does not apply:

(1) Whenever the debtor or the spouse of the debtor has an existing declared homestead on any property in this state other than property which is the subject of a proceeding under subdivision (c) of this section. The existence of a homestead declared by the debtor or the debtor's spouse under Section 1800 of the Civil Code shall not affect the right of the other spouse to an exemption under this section.

(2) Whenever a judgment or abstract thereof or any other obligation which by statute is given the force and effect of a judgment lien has been recorded prior to either:

(i) The acquisition of the property by the debtor or the spouse of the debtor; or

(ii) The commencement of residence by the debtor or the spouse of the debtor, whichever last occurs.

(3) Whenever the execution or forced sale is in satisfaction of judgments obtained:

(i) On debts secured by mechanics, contractors, subcontractors, artisans, architects, builders, laborers of every class, or materialmen's or vendors' liens upon the premises;

(ii) On debts secured by encumbrances on the premises executed and acknowledged by husband and wife, by a claimant of a married person's separate homestead, or by an unmarried claimant; or

(iii) On debts secured by encumbrances on the premises, executed and recorded prior to or in connection with the acquisition of the property by the debtor or the spouse of the debtor.

(c) Enforcement of judgment against dwelling house; writ of execution; application; contents; verification; transfer to superior court

(c) Whenever a judgment creditor seeks to enforce a judgment against a dwelling house, the judgment creditor shall apply to the court in the county in which the dwelling house is located for the issuance of a writ of execution. The application shall be verified and describe the dwelling house and state that either or both of the following facts exist:

(1) The dwelling house is not exempt, the reasons therefor, and (i) that a reasonable search of the records of the office of the county recorder has not resulted in the finding of a declared homestead of the debtor or the spouse of the debtor on the subject dwelling house, and further, that a reasonable search of the records of the county tax assessor indicates that there is no current homeowner's exemption claimed by either the debtor or the spouse of the debtor on the subject dwelling house, or (ii) that the records of the county tax assessor indicate that there is a current homeowner's exemption claimed by either the debtor or the spouse of the debtor on the subject dwelling house but the judgment creditor believes for reasons which shall be stated in the application that the debtor or the spouse of the debtor is not entitled to the exemption provided in this section.

(2) The current value of the dwelling house, over and above all liens and encumbrances thereon, exceeds the amount of the allowable exemption.

If an application alleges facts solely pursuant to paragraph (2) or the court determines that a writ may issue only under the circumstances described in paragraph (2), and the court in which the proceeding is pending is a municipal or justice court, the court shall transfer further proceedings to the superior court. There shall be no filing fee imposed in the superior court upon such a transfer.

(d) Hearing; order to show cause, application and notice; service  
(d) Upon receipt of a complete application of a judgment creditor, the court shall set a time and place for hearing and order the debtor to show cause why a writ of execution should not issue. Prior to the hearing, a copy of the order to show cause, a copy of the application filed by the judgment creditor and a copy of the following notice, in at least 10-point bold type, shall be served as prescribed for the giving of notice of sale of real property in Section 692:

**"IMPORTANT NOTICE TO HOMEOWNER AND  
RESIDENT**

1. Your house is in danger of being sold to satisfy a judgment obtained in court. You may be able to protect the house and real property describe in the accompanying application from execution and forced sale if you or your family now actually reside on the property and presently do not have a declared homestead on any other property in the State of California. **YOU OR YOUR SPOUSE MUST COME TO THE HEARING TO SHOW THESE FACTS.**

2. If you or your spouse want to contest the forced sale of this property, you or your spouse must appear at \_\_\_\_\_ on \_\_\_\_\_  
(location set forth in OSC) (date and time)  
and be prepared to answer questions concerning the statements made in the attached application. **THE ONLY PURPOSE OF THE HEARING WILL BE TO DETERMINE WHETHER THE PROPERTY CAN BE SOLD, NOT WHETHER YOU OWE THE MONEY.**

3. **FOR YOUR OWN PROTECTION, YOU SHOULD PROMPTLY SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER."**

(a) **Burden of proof**

(a) The burden of proof at the hearing shall be determined in the following manner:

(1) Where the application of the judgment creditor states a claim of non-exempt status, the debtor or the spouse of the debtor shall have the burden of proving his or her entitlement to the exemption; and

(2) Where the application of the judgment creditor asserts that the current value of the dwelling, over and above all liens and encumbrances thereon, exceeds the amount of the allowable exemption, the judgment creditor shall have the burden of proof on that issue.

(f) **Order for issuance of writ of execution**

(f) Upon a determination by the court that the dwelling house is not exempt or that, although exempt, the judgment creditor is entitled to levy against any excess, it shall make an order directing the issuance of a writ of execution. The order shall state whether or not the dwelling house is exempt and, if not exempt, state that the judgment creditor is entitled only to execution against the excess over the exempt amount. It shall also specify the amount of the exemption.

(g) **Writ of execution; issuance without appearance of debtor; notice; service**

(g) Any such writ of execution issued upon a hearing at which the debtor, the spouse of the debtor, or his or her attorney did not appear shall be served in the manner prescribed for the giving of notice of sale of real property in Section 692 and be accompanied by the following notice in at least 10-point bold type:

**"IMPORTANT NOTICE TO HOMEOWNER AND  
RESIDENT**

1. You were recently served with a court order requiring your presence at a hearing to determine why the court should not issue a writ of execution for the forced sale of your home. YOU AND YOUR SPOUSE FAILED TO APPEAR AT THE HEARING AND THE COURT HAS ORDERED THAT YOUR HOME BE SOLD TO SATISFY A JUDGMENT AGAINST YOU."

2. Your absence at the hearing has contributed to the issuance of the accompanying writ of execution. If the absence of you or your attorney at the hearing was legally excusable and you believe in good faith that your home may be entitled to an exemption from execution, you should complete the form below and date, sign, and return the form below no later than \_\_\_\_\_ (Insert date no later than five days prior to date of sale.)

3. FOR YOUR OWN PROTECTION, YOU SHOULD IMMEDIATELY SEEK THE ADVICE OF AN ATTORNEY.

.....(Cut Out and Return This Form to).....

\_\_\_\_\_ (Name and Title of Levying Officer)

\_\_\_\_\_ (Street Address and City)

\_\_\_\_\_ (Area Code and Telephone Number of Levying Officer)

I declare that my absence from the previous hearing on whether or not this property should be sold was legally excusable. I, or my spouse, currently reside in this property and I wish a further hearing so that I may assert my exemption rights under Code of Civil Procedure Section 690.81 and contest the sale of my home. I understand that the clerk of the court will notify me of the date and place for this hearing if I return this form immediately and that I must attend this hearing.

I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_ at \_\_\_\_\_, California.

\_\_\_\_\_  
Signature of Debtor or Debtor's Spouse

(h) Absence of debtor due to good cause; cancellation of sale; notice; hearing

(h) If the debtor or spouse of the debtor declares that his or her absence or the absence of his or her attorney at the hearing was due to mistake, inadvertence, surprise or excusable neglect and declares that the subject dwelling house may be entitled to an exempt status, the levying officer shall, upon receipt of the declarations of the debtor five days prior to the scheduled sale date, cancel the sale pending further orders of the court and transmit the notice forthwith to the court. Upon receipt of the notice, the clerk shall set a hearing to determine whether the writ of execution should be recalled, and shall give at least 10 days notice to the parties.

(i) Subsequent applications within 12 months of denial of writ of execution

(i) Subsequent applications by a judgment creditor within 12 months of a denial of a writ of execution shall be supported by a statement under oath alleging that there is a material change of circumstances affecting the exemption, and setting forth facts supporting such claimed material change of circumstances.

(j) Execution sale; disposition of proceeds

(j) In the event of an execution sale, the proceeds of the sale shall be applied in the following order and priority: first, to the discharge of all liens

and encumbrances, if any, on the property; second, to the debtor, or the debtor's spouse if such person is the exemption claimant, in the amount of the exemption provided by this section; third, to the satisfaction of the execution; and fourth, to the debtor, or the debtor's spouse if such person is the exemption claimant.

**(k) Exempt proceeds from sale**

(k) That portion of the proceeds from the sale of real property pursuant to an order of the court directing the issuance of a writ of execution pursuant to subdivision (g) of this section, which portion represents the amount of the exemption, shall be exempt for a period of six months from the date of receipt of the proceeds. Where such exempt proceeds are used for the purchase of a dwelling house, in which the debtor or the family of the debtor actually reside, within a period of six months following receipt, the subsequently acquired dwelling shall be exempt from execution and for the purposes of subparagraphs (i) and (ii) of paragraph (2) of subdivision (b). The exemption for the subsequently acquired real property shall have the same effect as if allowed on the date of the acquisition of or the commencement of residence by the debtor or the spouse of the debtor, whichever last occurred, in the property previously determined to be exempt, except with respect to a judgment or other obligation which by statute is given the force and effect of a judgment lien against the subsequently acquired property prior to its acquisition.

(Added by Stats.1976, c. 1000, p. —, § 4, operative July 1, 1977.)

**§ 690.60 Exemptions; affidavits and counteraffidavits; release; hearing; custody and disposition of property; appeal**

(a) If the property mentioned in Section 690.1 to 690.29, inclusive, shall be levied upon under writ of execution, the judgment debtor (herein referred to as "the debtor"), in order to avail himself of his exemption rights as to such property, shall within 20 days, in the case of real property described in Section 690.235, and 10 days, in the case of all other property, from the date such property was levied upon deliver to the levying officer an affidavit of himself or his agent, together with a copy thereof, alleging that the property levied upon, identifying it, is exempt, specifying the section or sections of this code on which he relies for his claim to exemption, and all facts necessary to support his claim, and also stating therein his address within this state for the purpose of permitting service by mail upon him of the counteraffidavit and any notice of the motion herein provided. For purposes of this section, if the property levied upon consists of the earnings of a judgment debtor, each date that earnings are withheld from the judgment debtor shall be deemed to be the date such earnings were levied upon. A judgment debtor shall have the right to file a separate claim of exemption each time that a withholding of earnings occurs, provided, that if a prior claim of exemption has been adjudicated under the same levy, that each separate claim of exemption thereafter be supported by a statement under oath alleging the changed circumstances which support the new claim of exemption. If a claim of exemption be allowed, the judgment creditor shall have the right, at any time during the effective period of the claim of exemption, to move the court for consideration of the claim previously granted on the grounds of a material change of circumstances affecting the debtor's exemption rights. If the judgment creditor does make such a motion, he must support his motion by a statement under oath alleging the changed circumstances which support his motion for consideration.

(b) Forthwith upon receiving the affidavit of exemption, the levying officer shall serve upon the person in whose favor the writ runs (herein

referred to as "the creditor"), either personally or by mail, a copy of the affidavit of exemption, together with a writing, signed by the levying officer, stating that the claim to exemption has been received and that the officer will release the property unless he receives from the creditor a counter-affidavit within 10 days after service of such writing, in the case of real property described in Section 690.235, and within five days after service of such writing, in all other cases.

(c) If the creditor desires to contest the claim to exemption, he shall, within such period of 10 days, in the case of real property described in Section 690.235, and five days, in all other cases, file with the levying officer a counteraffidavit alleging that the property is not exempt within the meaning of the section or sections of this code relied upon, or if the claim to exemption be based on Sections 690.2, 690.3, 690.4, or 690.6, alleging that the value of the property claimed to be exempt is in excess of the value stated in the applicable section or sections, together with proof of service of a copy of such counteraffidavit upon the debtor.

(d) If no such counteraffidavit, with such proof of service, is so filed with the levying officer within the time allowed, the officer shall forthwith release the property.

(e) If such counteraffidavit, with such proof of service, is so filed, either the creditor or the debtor shall be entitled to a hearing in the court in which the action is pending or from which the writ issued for the purpose of determining the claim to exemption, the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 690.8 or the value of the property claimed to be exempt. Such hearing shall be granted by the court upon motion of either party made within five days after the counteraffidavit is filed with the levying officer, and such hearing must be had within 15 days from the date of the making of such motion unless continued by the court for good cause. The party making the motion for hearing shall give not less than five days' notice in writing of such hearing to the levying officer and to the other party, and specify therein that the hearing is for the purpose of determining the claim to exemption. The notice may be of motion or of hearing and upon the filing of the notice with the clerk of the court, the motion is deemed made.

(f) If neither party makes such motion within the time allowed, or if the levying officer shall not have been served with a copy of the notice of hearing within 10 days after the filing of the counteraffidavit, the levying officer shall forthwith release the property to the debtor.

(g) At any time while the proceedings are pending, upon motion of either party or upon its own motion, the court may (1) order the sale of any perishable property held by such officer and direct disposition of the proceeds of such sale, and (2) make such other orders as may be proper under the particular circumstances of the case. Any orders so made may be modified or vacated by the court or judge granting the same, or by the court in which the proceedings are pending, at any time during the pendency of the proceedings, upon such terms as may be just.

(h) The levying officer in all cases shall retain physical possession of the property levied upon if it is capable of physical possession, or in the case of property not capable of physical possession, the levy shall remain in full force and effect, pending the final determination of the claim to exemption. However, no sale under execution shall be had prior to such final determination unless an order of the court hearing the claim for exemption shall so provide.

(i) At such hearing, the party claiming the exemption shall have the burden of proof. The affidavits and counteraffidavits shall be filed by the levying officer with the court and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interests of justice. The affidavit of exemption shall be deemed controverted by the counteraffidavit and both shall be received in evidence. Nothing herein shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action. No findings shall be required in a proceeding under this section. When the hearing is before the court sitting without a jury, and no evidence other than the affidavit and counteraffidavit is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall give judgment determining whether the claim to exemption shall be allowed or not, in whole or in part, and may give judgment determining the priority or division of payment between one or more creditors from nonexempt earnings under the provisions of Section 890.8, which judgment shall be determinative as to the right of the creditor to have the property taken and held by the officer or to subject the property to payment or other satisfaction of his judgment. In such judgment the court shall make all proper orders for the disposition of such property or the proceeds thereof.

(j) A copy of any judgment entered in the trial court shall be forthwith transmitted by the clerk to the levying officer in order to permit such officer to either release the property attached or to continue to hold it to sell it, in accordance with the provisions of the writ previously delivered to him. Such officer, unless an appeal from the judgment is waived, or the judgment has otherwise become final, shall continue to hold such property under attachment or execution, continuing the sale of any property held under execution until such judgment becomes final. However, if a claim to exemption under Section 890.8 is allowed by such judgment, the debtor shall be entitled to a release of the earnings so exempted at the expiration of three days, unless otherwise ordered by the court, or unless the levying officer shall have been served with a copy of a notice of appeal from the judgment.

(k) When any documents required hereunder are served by mail, the provisions of this code relating to service by mail shall be applicable thereto.

(l) Whenever the time allowed for an act to be done hereunder is extended by the court, written notice thereof shall be given promptly to the opposing party, unless such notice be waived, and to the levying officer.

(m) An appeal lies from any judgment under this section. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had.

(Added by Stats.1970, c. 1623, p. 3078, § 56. Amended by Stats.1972, c. 649, p. 1206, § 2, urgency, eff. Aug. 9, 1972; Stats.1974, c. 1261, p. 2706, § 8, operative July 1, 1975; Stats.1976, c. 437, p. —, § 47.)

**§ 690.51 Exemptions; tax liability**

In cases in which a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1756 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 15906, 26191, 30341, or 32366 of the Revenue and Taxation Code, for the collection of tax liability owed to the state, a department or agency thereof, the tax debtor shall be entitled to the exemptions provided in Sections 690.1 to 690.29, inclusive, and all the provisions of Section 690.50 shall be applicable to the assertion and determination thereof. The superior court of the county, or city and county, in which the property levied upon is located shall have jurisdiction to hear and determine the validity of the claim of exemption or the value of the property claimed exempt, whether or not the value of the property determines the right to exemption, in like manner as if the property were levied upon by writ of execution issued by such court.

(Formerly § 690.27, added by Stats.1953, c. 1796, p. 3850, § 6. Amended by Stats.1959, c. 594, p. 2667, § 6; Stats.1961, c. 1029, p. 2712, § 12. Renumbered § 690.51 and amended by Stats.1970, c. 1523, p. 3077, § 5.1; Stats. 1971, c. 878, p. 1716, § 2.)

**§ 690.52 Judgment for price or of foreclosure; no exemption**

Except as provided in Section 690.235, no article, however, or species of property, mentioned in Section 690.1 to 690.29, inclusive, of this code is exempt from execution issued upon a judgment recovered for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

(Formerly § 690.50, added by Stats.1936, c. 723, p. 1971, § 25. Renumbered § 690.52 and amended by Stats.1970, c. 1523, p. 3078, § 55. Amended by Stats.1974, c. 1251, p. 2711, § 5, operative July 1, 1975.)

EXHIBIT 3

Miscellaneous California Statutes

CIVIL CODE §§ 1237-1304

TITLE 5. HOMESTEADS

CHAPTER 1. GENERAL PROVISIONS

§ 1237. Property constituting homestead

The homestead consists of the dwelling house in which the claimant resides, together with outbuildings, and the land on which the same are situated, selected as in this title provided.

The dwelling house may be in a condominium, as defined in Section 783 of the Civil Code, a planned development, as defined in Section 11003 of the Business and Professions Code, a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a community apartment project, as defined in Section 11004 of the Business and Professions Code, or may be situated on real property held under long-term lease rather than a freehold. In such cases, an agreement, covenant, or restriction between or binding upon the owners of a title, interest, or estate in a condominium, planned development, stock cooperative, or community apartment project, or a lien arising under such agreement, covenant, or restriction, or an underlying lease or sublease, indebtedness, security, or other interest or obligation may be enforced in the same manner as if no homestead were declared, and the homestead shall include the interest in and right to use common areas and other appurtenances subject to the terms and conditions applicable thereto. For the purposes of this section "long-term lease" is a lease of 30 years or more.

(Amended by Stats.1970, c. 687, p. 1316, § 1; Stats.1973, c. 281, p. 877, § 1.)

§ 1237.5 Quasi-community property and separate property defined

As used in this title:

(a) "Quasi-community property" means real property situated in this state heretofore or hereafter acquired in any of the following ways:

(1) By either spouse while domiciled elsewhere which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition.

(2) In exchange for real or personal property, wherever situated, which would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

(b) "Separate property" does not include quasi-community property.

(Amended by Stats.1970, c. 312, p. 707, § 1.)

§ 1238. Property from which selected; property defined

If the claimant be married, the homestead may be selected:

(a) From the community property; or

(b) From the quasi-community property; or

(c) From the property held by the spouses as tenants in common or in joint tenancy or from the separate property of the husband or the wife.

When the claimant is not married, but is the head of a family, within the meaning of Section 1261, the homestead may be selected from any of his or her property. If the claimant be an unmarried person, other than the head of a family, the homestead may be selected from any of his or her property. Property within the meaning of this title, includes any freehold title, interest, or estate which vests in the claimant the immediate right of possession, even though such a right of possession is not exclusive, and includes land held under long-term lease, as specified in Section 1237, and ownership rights in a condominium, planned development, stock cooperative, or community apartment project even though the title, interest, or estate of the condominium, planned development, stock cooperative, or community apartment project is in a leasehold or subleasehold.

(Amended by Stats.1970, c. 687, p. 1316, § 2; Stats.1976, c. 463, p. 7, § 1.)

### **§ 1240. Exemption from execution or forced sale**

**EXEMPT FROM FORCED SALE.** The homestead is exempt from execution or forced sale, except as in this Title provided.

(Enacted 1872.)

### **§ 1241. Execution or forced sale; when subject to**

The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead is recorded, and which, at the time of such recordation, constitute liens upon the premises.
2. On debts secured by mechanics, contractors, subcontractors, artisans, architects, builders, laborers of every class, materialmen's or vendors' liens upon the premises.
3. On debts secured by encumbrances on the premises executed and acknowledged by husband and wife, by a claimant of a married person's separate homestead, or by an unmarried claimant.
4. On debts secured by encumbrances on the premises, executed and recorded before the declaration of homestead was filed for record.

(Enacted 1872. Amended by Code Am.1873-74, c. 612, p. 229, § 146; Code Am.1880, c. 41, p. 7, § 17; Stats.1887, c. 71, p. 81, § 1; Stats. 1951, c. 1109, p. 2865, § 1; Stats.1957, c. 1317, p. 2639, § 1; Stats. 1959, c. 1805, p. 4290, § 2.)

### **§ 1242. Conveyance of homestead; restrictions**

Except as provided in Chapter 2a (commencing with Section 1435.1) of Division 4 of the Probate Code where one or more spouses is incompetent, and except in the case of a married person's separate homestead, the homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife or unless each spouse executes and acknowledges a separate instrument so

conveying or encumbering the homestead in favor of the same party or his successor in interest; provided, however, that a conveyance of the homestead between husband and wife need be executed and acknowledged only by the spouse conveying, and unless the one conveying expressly reserves his homestead rights, the spouse to whom the conveyance is made may convey or encumber the homestead property in the same manner and to the same extent as though no homestead had been declared.

(Enacted 1872. Amended by Stats.1951, c. 438, p. 1421, § 1; Stats. 1957, c. 1619, p. 2966, § 1; Stats.1959, c. 125, p. 2016, § 24; Stats. 1959, c. 1805, p. 4281, § 3.)

**§ 1243. Abandonment; declaration or conveyance**

Except as provided in Chapter 2A (commencing with Section 1435.1) of Division 4 of the Probate Code where one or both spouses are incompetent, a homestead can be abandoned only by:

1. A declaration of abandonment executed and acknowledged by the husband and wife, jointly or by separate instruments, if the claimant is married.

2. A declaration of abandonment or a conveyance by the claimant if unmarried.

3. A declaration of abandonment or a conveyance by the grantee named in a conveyance by which one spouse conveys the homestead to the other spouse without expressly reserving his homestead rights.

4. A conveyance or conveyances by both spouses as provided in Section 1242.

5. A declaration of abandonment or a conveyance by the claimant alone in the case of a married person's separate homestead.

(Enacted 1872. Amended by Stats.1949, c. 772, p. 1500, § 1; Stats. 1951, c. 438, p. 1422, § 2; Stats.1959, c. 125, p. 2016, § 25; Stats.1959, c. 1805, p. 4291, § 4; Stats.1959, c. 1960, p. 4564, § 1.)

**§ 1244. Declaration of abandonment; effectual from recording**

A declaration of abandonment is effectual only from the time it is recorded in the office in which the homestead was recorded.

(Enacted 1872. Amended by Stats.1967, c. 79, p. 981, § 4.)

**§ 1245. Execution against homestead; time for application for appointment of appraisers; expiration of liens; subsequent levies prohibited**

When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section one thousand two hundred and forty-one is levied upon the homestead, the judgment creditor may at any time within sixty days thereafter apply to the superior court of the county in which the homestead is situated for the appointment of persons to appraise the value thereof, and if such application shall not be made within sixty days after the levy of such

execution the lien of the execution shall cease at the expiration of said period, and no execution based upon the same judgment shall thereafter be levied upon the homestead.

(Enacted 1872. Amended by Code Am.1880, c. 41, p. 7, § 18; Stats. 1911, c. 436, p. 888, § 1.)

**§ 1246. Execution against homestead; petition; contents**

The application must be made upon a verified petition of the judgment creditor showing:

1. The fact that an execution has been levied upon the homestead within 60 days prior to the filing of said petition.

2. A description of the homestead and the name of the claimant.

3. That the value of the homestead, over and above all liens and encumbrances thereon, exceeds the amount of the homestead exemption.

4. That no previous execution arising out of the same judgment has been levied upon said homestead.

(Enacted 1872. Amended by Stats.1911, c. 436, p. 888, § 2; Stats. 1945, c. 789, p. 1476, § 2.)

**§ 1247. Execution against homestead; petition; filing**

The petition must be filed with the clerk of the superior court.

(Enacted 1872. Amended by Code Am.1880, c. 41, p. 8, § 19.)

**§ 1248. Execution against homestead; service of petition and notice of hearing; failure to serve; termination of execution lien**

Within ninety days from the date of filing the petition, a copy thereof, with the notice of the time and place of hearing, must be served upon the claimant or his attorneys at least two days before the hearing; and if such notice shall not be so served, the lien of the execution shall cease at the expiration of said period of ninety days, and no execution based upon the same judgment shall thereafter be levied upon the homestead.

(Enacted 1872. Amended by Stats.1911, c. 436, p. 889, § 3.)

**§ 1249. Execution against homestead; appointment of appraisers**

At the hearing the Judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents of the county to appraise the value of the homestead.

(Enacted 1872.)

**§ 1250. Execution against homestead; oath of appraisers**

The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same. (Enacted 1872.)

**§ 1251. Execution against homestead; appraisal; determination of divisibility of land**

They must view the premises and appraise the value thereof, and if the appraised value, less the aggregate of all liens and encumbrances thereon, exceeds the homestead exemption they must determine whether the land claimed can be divided without material injury.

(Enacted 1872. Amended by Stats.1945, c. 789, p. 1476, § 3.)

**§ 1252. Execution against homestead; report of appraisers**

Within 15 days after their appointment they must make to the judge a report in writing, which report must show the appraised value, the amount of all liens and encumbrances, and their determination upon the matter of a division of the land claimed.

(Enacted 1872. Amended by Stats.1945, c. 789, p. 1476, § 4.)

**§ 1253. Execution against homestead; order setting off homestead; enforcement against remainder**

If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence and outbuildings, as will amount in value to the homestead exemption over and above all liens and encumbrances, and the execution may be enforced against the remainder of the land.

(Enacted 1872. Amended by Stats.1945, c. 789, p. 1476, § 5.)

**§ 1254. Execution against homestead; order directing sale**

If, from the report, it appears to the judge that the land claimed exceeds in value, over and above all liens and encumbrances thereon, the amount of the homestead exemption, and that it can not be divided, he must make an order directing its sale under the execution.

(Enacted 1872. Amended by Stats.1945, c. 789, p. 1477, § 6.)

**§ 1255. Execution against homestead; minimum bids**

At such sale no bid shall be received, unless it exceeds the amount of the homestead exemption plus the aggregate amount of all liens and encumbrances on the property.

(Enacted 1872. Amended by Stats.1945, c. 789, p. 1477, § 7.)

**§ 1256. Execution against homestead; sale; distribution of proceeds**

If the sale is made, the proceeds thereof must be applied in the following order of priority, first, to the discharge of all liens and encumbrances, if any, on the property, second, to the homestead claimant to the amount of the homestead exemption, third, to the satisfaction of the execution, and fourth, the balance, if any, to the homestead claimant.

(Enacted 1872. Amended by Stats.1945, c. 789, p. 1477, § 8.)

**§ 1257. Execution against homestead; protection of money paid claimant**

The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband or wife, which the law gives to the homestead.

(Amended by Stats.1976, c. 463, p. —, § 3.)

**§ 1258. Persons who may select homesteads; valuation; automatic increase in value**

Homesteads may be selected and claimed:

1. By any head of a family, of not exceeding thirty thousand dollars (\$30,000) in actual cash value, over and above all liens and encumbrances on the property at the time of any levy of execution thereon.

2. By any person 65 years of age or older, of not exceeding thirty thousand dollars (\$30,000) in actual cash value, over and above all liens and encumbrances on the property at the time of any levy of execution thereon.

3. By any other person, of not exceeding fifteen thousand dollars (\$15,000) in actual cash value, over and above all liens and encumbrances.

Any declaration of homestead which has been filed prior to January 1, 1977 shall be deemed to be amended on such date by increasing the value of any property selected and claimed to the value permitted by this section on such date to the extent that such increase does not impair or defeat the right of any creditor to execute upon the property which existed prior to such date.

(Amended by Stats.1970, c. 319, p. 714, § 1, operative Jan. 1, 1971; Stats. 1976, c. 182, p. —, § 1.)

**§ 1261. Head of family defined**

The phrase "head of a family," as used in this title, includes within its meaning:

1. The husband or wife, when the claimant is a married person.

2. Every person who has residing on the premises with him or her, and under his or her care and maintenance, either:

(a) His or her minor child, or minor grandchild, or the minor child of his or her deceased wife or husband;

(b) A minor brother or sister, or the minor child of a deceased brother or sister;

(c) A father, mother, grandfather, or grandmother;

(d) The father, mother, grandfather, or grandmother of a deceased husband or wife;

(e) An unmarried sister or brother, or any other of the relatives mentioned in this section, who have attained the age of majority, and are unable to take care of or support themselves.

(Amended by Stats.1976, c. 463, p. —, § 4.)

## CHAPTER 2. HOMESTEAD OF THE HEAD OF A FAMILY

### § 1262. Declaration of homestead; execution and acknowledgment; recording

In order to select a homestead, either spouse or head of a family must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record.

(Amended by Stats.1976, c. 463, p. —, § 5.)

### § 1263. Declaration of homestead; contents; evidence

The declaration of homestead must contain:

1. A statement showing that the person making it is the head of a family, and if the claimant is married, the name of the spouse; or, when the declaration is made by a married person without the joinder of his or her spouse in the execution and acknowledgment of the declaration, showing that the other spouse has not made such declaration and that he or she therefore makes the declaration for their joint benefit;

2. A statement that the person making it is residing on the premises, and claims them as a homestead;

3. A description of the premises;

4. Such declaration of homestead may further contain a statement of the character of the property sought to be homesteaded, showing the improvement or improvements which have been affixed thereto, with sufficient detail to show that it is a proper subject of homestead, and that no former declaration has been made, or, if made, that it has been abandoned and if it contains such further statement and the declaration is supported by the affidavit of the declarant, annexed thereto, that the matters therein stated are true of his or her own knowledge, such declaration, when properly recorded, shall be prima facie evidence of the facts therein stated, and conclusive evidence thereof in favor of a purchaser or encumbrancer in good faith and for a valuable consideration.

The declaration of a homestead shall not affect the property rights of spouses as between themselves other than as provided by this title.

(Amended by Stats.1970, c. 80, p. 93, § 1; Stats.1976, c. 463, p. —, § 6.)

### § 1264. Declaration of homestead; place of recording

**DECLARATION MUST BE RECORDED.** The declaration must be recorded in the office of the Recorder of the county in which the land is situated.

(Enacted 1872.)

**§ 1265. Establishment of homestead; descent on death of claimant; exemption**

From and after the time the declaration is filed for record, the premises therein described constitute a homestead. If the selection was made by a married person from the community property, or from the quasi-community property, or from the separate property of the spouse making the selection or joining therein, and if the surviving spouse has not conveyed the homestead to the other spouse by a recorded conveyance which failed to expressly reserve his homestead rights as provided by Section 1242 of the Civil Code, the land so selected, on the death of either of the spouses, vests in the survivor, except in the case of a married person's separate homestead, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to the heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it, or the products, rents, issues or profits thereof be held liable for the debts of the owner, except as provided in this title; and should the homestead be sold by the owner, the proceeds arising from such sale to the extent of the value allowed for a homestead exemption as provided in this title shall be exempt to the owner of the homestead for a period of six months next following such sale.

(Enacted 1872. Amended by Code Am.1873-74, c. 612, p. 231, § 158; CodeAm.1880, c. 41, p. 8, § 20; Stats.1909, c. 637, p. 972, § 1; Stats.1911, c. 45, p. 61, § 1; Stats.1951, c. 438, p. 1422, § 3; Stats. 1959, c. 1805, p. 4291, § 5; Stats.1961, c. 636, p. 1842, § 13.)

**§ 1265a. Reinvestment of proceeds of sale; effect of new declaration**

If the proceeds arising from the sale of property selected as a homestead are used for the purchase of real property within the period of six months following such sale, the property purchased may be selected as a homestead in the manner provided in this title within the period of six months following such sale, and such selection, when the declaration has been filed for record, shall have the same effect as if it had been created at the time the prior declaration of homestead was filed for record.

(Added by Stats.1939, c. 515, p. 1902, § 1.)

**Chapter 3**

**HOMESTEAD OF OTHER PERSONS**

**§ 1266. Declaration of homestead; execution and acknowledgment**

**MODE OF SELECTION.** Any person other than the head of a family, in the selection of a homestead, must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a "Declaration of Homestead."

(Enacted 1872.)

**§ 1267. Declaration of homestead; contents; evidence**

The declaration shall contain everything required by the second and third subdivisions of Section 1263, and in addition thereto may contain the statement and affidavit provided for by subdivision 4 of such section, with like effect as therein provided. If the homestead is selected and claimed pursuant to subdivision 2 of Section 1260, the declaration shall also contain a statement that the person making it is 65 years of age or older.

(Enacted 1872. Amended by Stats.1927, c. 491, p. 829, § 1; Stats. 1969, c. 564, p. 1190, § 2; Stats.1969, c. 1099, p. 2098, § 3.)

**§ 1268. Declaration of homestead; place of recording**

**DECLARATION MUST BE RECORDED.** The declaration must be recorded in the office of the County Recorder of the county in which the land is situated.

(Enacted 1872.)

**§ 1269. Establishment of homestead**

**EFFECT OF FILING FOR RECORD THE DECLARATION OF HOMESTEAD.** From and after the time the declaration is filed for record, the land described therein is a homestead.

(Enacted 1872.)

**CHAPTER 5. MARRIED PERSON'S SEPARATE HOMESTEAD**

**§ 1300. Declaration following decree of legal separation or dissolution of marriage; execution and acknowledgment**

Following the entry of a judgment decreeing legal separation of the parties or an interlocutory judgment of dissolution of a marriage, each spouse may execute and acknowledge in the same manner as a grant of real property is acknowledged, a declaration of a married person's separate homestead from the separate property of the spouse so declaring same, or from any property awarded to such spouse by said judgment.

(Amended by Stats.1971, c. 1210, p. 2325, § 2.)

**§ 1301. Contents of declaration**

The declaration must contain:

(1) A statement that the declarant is a married person, and that there is in existence a judgment decreeing legal separation of the parties or an interlocutory judgment of dissolution of the marriage between declarant and his or her spouse.

(2) A statement showing that declarant is the head of a family, as defined in this chapter, if such is the case.

(3) The matters required by the second and third subdivisions of Section 1263, and in addition thereto may contain the statement and affidavit provided for by subdivision 4 of said section, with like effect as therein provided.

(Amended by Stats.1971, c. 1210, p. 2325, § 3.)

**§ 1302. Head of a family; definition**

For the purpose of this chapter, the phrase "head of a family" includes every person who has residing on the premises with him or her and under his or her care and maintenance one or more of the persons enumerated in paragraphs (a), (b), (c), (d) and (e) of subdivision 2 of Section 1261, and such person shall receive the exemption allowed the head of a family by Section 1260. Any married person declaring a homestead under this chapter who is not the head of a family, as defined in this section, shall receive the exemption allowed other persons by Section 1260.

(Added by Stats.1959, c. 1805, p. 4290, § 1.)

**§ 1303. Recordation of declaration; establishment of homestead**

From and after the time the declaration is recorded in the office of the recorder of the county in which the land is situated, the land described therein is a homestead.

(Added by Stats.1959, c. 1805, p. 4290, § 1.)

**§ 1304. Subsequent reconciliation of parties; dismissal of dissolution action; joint protection homestead; reduction of exemption**

When a homestead has been declared under this chapter by a married person following the entry of an interlocutory judgment of dissolution of a marriage upon property awarded to such person by such judgment, a subsequent reconciliation of the parties when evidenced by a dismissal of such dissolution action executed by both parties or their attorneys of record shall transform such homestead into a joint protection homestead, which shall thereafter have the force and effect of a homestead selected under Chapter 2 of this title. If each such married person has selected a homestead under this chapter, and such a dismissal has been filed after reconciliation, one of the homesteads must be abandoned or the exemption under each shall be reduced by one-half.

(Amended by Stats.1971, c. 1210, p. 2326, § 4.)

**EDUCATION CODE**

21100. Any person desiring in his lifetime to promote the public welfare by founding, endowing, and maintaining within this state a university, college, school, seminary of learning, mechanical institute, museum, botanic garden, public park, or gallery of art, or any or all thereof, may, for such purposes, by grant in writing convey to a trustee, or any number of trustees, named in the grant, and to their successors, any property, real or personal, belonging to him and situated within this state. If he is married and the property is community property, then both husband and wife shall join in the grant.

21114. The grant shall be executed, acknowledged, and recorded in the same manner as is provided by law for the execution, acknowledgment, and recording of grants of real property.

21115. No suit, action, or proceeding shall be commenced or maintained by any person to set aside, annul, or affect the conveyance, or to affect the title to the property conveyed, or the right to the possession, or to the rents, issues, and profits thereof, unless the action is commenced within two years after the date of filing the grant for record. No defense shall be made to any suit, action, or proceeding commenced by the trustee or trustees named in the grant, or their successors, privies, or persons holding under them, which involves the legality of the grant, or affects the title to the property conveyed, or the right to the possession, or the rents, issues, and profits thereof, unless the defense is made in a suit, action, or proceeding commenced within two years after the grant has been filed for record.

21116. The property conveyed by the grant shall not, after a lapse of two years from the date of the filing for record of the grant, be subject to forced sale, under execution, or judicial proceedings of any kind, against the grantor or his privies, unless the action under which the execution is issued, or the proceedings under which the sale is ordered, has been commenced within two years after the grant has been filed for record. No property shall be subject to execution or forced sale under any judgment obtained in any proceedings instituted within two years, if there is other property of the grantor, subject to execution or forced sale sufficient to satisfy the judgment. Nothing in this section contained shall be construed to affect mechanics' or laborers' liens.

21140. Any person intending in his lifetime or by will or trust deed, to operate after his death, to found, maintain, and perpetuate in this state a public library, museum, gallery of art, or any or all thereof, for the diffusion of mechanical, scientific, artistic, and general knowledge, may for that purpose, convey in writing by words denoting a gift or grant to one or more trustees named in the gift or grant, and to their successors, any library or collection of books and works, for the public library, or any museum, or gallery of art in this state.

21188. No suit, action, or proceeding shall be commenced or maintained by any person to set aside, annul, or affect any gift, grant, or conveyance, or to affect the title to the property conveyed, or the right to the possession or to the rents, issues, and profits thereof, unless the action is commenced within two years after the date of the filing of the grant for record.

22005. The right of a person to an annuity, a retirement salary, or a retirement allowance, to the return of contributions, the annuity, retirement salary, or retirement allowance itself, any optional benefit, any other right or benefit accrued or accruing to any person under this part, and the moneys in the fund created under this part are not subject to execution, garnishment, attachment, or any other process whatsoever, and are unassignable except as specifically provided in this part.

## FINANCIAL CODE

### § 16406. Exemption from execution

The shares and certificates for funds received of members of any credit union and all the accumulation on such shares and certificates are exempt from sale on execution and proceedings supplementary thereto, to the amount of one thousand five hundred dollars (\$1,500). The procedure set forth in Section 600.50 of the Code of

Civil Procedure shall be followed in claiming the exemption from execution pursuant to this section.

(Amended by Stats.1971, c. 625, p. 1220, § 1.)

### § 17410. Execution; attachment; status of funds

Escrow or trust funds are not subject to execution or attachment in any claim against the licensee or person acting as escrow agent, and in no instance shall such escrow or trust funds be considered or treated as an asset of the licensee or person performing the functions of an escrow agent. (Stats.1951, c. 364, p. 1112, § 17410, as amended Stats. 1961, c. 475, p. 1571, § 35.)

## GOVERNMENT CODE

**§ 9359.3 Exemption from process; nonassignability.** The right of a person to any benefit or other right under this chapter and the money in the Legislators' Retirement Fund are not subject to execution, garnishment, attachment, or any other process whatsoever, and are unassignable except as specifically provided in this chapter. (Added Stats.1947, c. 879, p. 2068, § 1.)

**§ 21201. Exemption from process, unassignability.** The right of a person to any benefit or other right under this part and the money in the Retirement Fund is not subject to execution, garnishment, attachment, or any other process whatsoever, and are unassignable except as specifically provided in this part. (Added Stats.1945, c. 123, p. 601, § 1.)

### § 31452. Retirement allowances exempt from taxation and other process

The right of a person to a pension, annuity, retirement allowance, return of contributions, the pension, annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under this chapter, the money in the fund created or continued under this chapter, and any property purchased for investment purposes pursuant to this chapter, are exempt from taxation, including any inheritance tax, whether state, county, municipal, or district, and from any law relating to bankruptcy or insolvency. They are not subject to execution, garnishment, attachment, or any other process of court what-

soever, and are unassignable except as specifically provided in this chapter. (Added Stats.1947, c. 424, p. 1263, § 1, as amended Stats. 1949, c. 199, p. 430, § 1; Stats.1955, c. 1503, p. 2745, § 1.)

**§ 31913. Exemption from taxation; bankruptcy or other process; assignment prohibited**

That portion of the wages of any peace officer deducted or to be deducted under this chapter, the right of a peace officer or other person to an annuity or pension, and all his rights in the fund are exempt from taxation and from the operation of any law relating to bankruptcy or insolvency and shall not be attached or taken upon execution or other process of any court. An assignment of any right in or to the funds or to any pension or annuity is void. (Added Stats.1947, c. 424, p. 1266, § 1.)

**§ 32210. Title to property; exemption from taxation, bankruptcy or other process; assignment prohibited**

The title to all property acquired pursuant to this chapter shall be taken in the name of the county. The title to any money which becomes due to any member shall not pass from the county or county fire protection district to him until he is entitled thereto under this chapter. That portion of the wages of any member deducted or to be deducted under this chapter, the right of a member or other person to an annuity or pension, and all of his rights in the fund are exempt from taxation and from the operation of any law relating to bankruptcy or insolvency and shall not be attached or taken upon execution or other process of any court. An assignment of any right in or to the funds, or to any pension or annuity is void. (Added Stats.1947, c. 424, p. 1297, § 1.)

**HARBORS & NAVIGATION CODE**

**§ 485.4 Execution of writ by officer; authority of officer**

The sheriff, marshal, or constable to whom the writ is directed and delivered shall execute it without delay, and shall attach and keep in his custody the vessel, named therein, with its tackle, appurtenances, appliances, furnishings, and furniture, until discharged in due course of law; but the sheriff, marshal, or constable is not authorized by any such writ to interfere with the discharge of any merchandise on board of such vessel or with the removal of any trunks or other property of passengers, or of the captain, mate, seamen, steward, cook, or other persons employed on board.

(Added by Stats.1970, c. 1341, p. 2403, § 11.)

**HEALTH & SAFETY CODE**

**§ 7925. Proceeds of sale of land; use**

Money payable or to become payable as the purchase price or on account of the purchase price of unused lands, or lands from which all remains have been removed is not subject to garnishment, attachment or execution, but shall be used exclusively for any or all of the following purposes:

(a) Acquisition of lands and improvements for cemetery purposes.

(b) Disinterment, removal, and reinterment of bodies, pursuant to this chapter.

(c) Endowment care of graves, markers, and cemetery embellishments.

(d) The payment of expenses incidental to the disinterment, removal, and reinterment.

(e) Any other purpose consistent with the objects for which the cemetery authority owning the cemetery is created or organized.

(Stats.1939, c. 60, p. 692, § 7925. Amended by Stats.1939, c. 1071, p. 2996; Stats.1951, c. 176, p. 424, § 8.)

**§ 32508. Limitation period for suit affecting conveyance or rights in connection therewith**

No suit, action, or proceeding shall be commenced or maintained by any person to set aside, annul, or affect the conveyance or the title to the property conveyed, or the right to the possession, rents, issues, and profits thereof, unless it is commenced within two years after the date of filing the grant for record. Nor in any suit, action, or proceeding commenced by the trustee named in the grant, his successor, privy, or any person holding under him shall any defense be made involving the legality of the grant, or affecting the title to the property thereby conveyed, the right to its possession, or the rents, issues, and profits thereof, unless the suit, action, or proceeding is commenced within two years after the grant is filed for record. After such filing the property shall be exempt from execution and forced sale.

(Added by Stats.1953, c. 82, p. 805, § 1.)

**§ 33124. Exemption of agency's property from levy and sale**

All property of an agency, including funds, owned or held by it for the purposes of this part shall be exempt from levy and sale by virtue of an execution or other judicial process. Execution or other judicial process shall not issue against such property of an agency nor shall any judgment against an agency be a charge or lien upon such property. This section does not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance of an agency or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an agency on its rents, fees, or revenues.

(Added by Stats.1963, c. 1812, p. 3684, § 3.)

**§ 34217. Exemption of authority realty from execution, judicial process, and judgment lien**

Execution or other judicial process shall not issue against the real property of an authority nor shall any judgment against an authority be a charge or lien upon its real property. This section does not apply to or limit the right of obligees to foreclose or otherwise

enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, or revenues.

(Added by Stats.1951, c. 710, p. 1950, § 1.)

## **INSURANCE CODE**

### **§ 10497. Issuance of certificate**

If the commissioner finds that an applicant for a certificate of exemption meets the applicable requirements of this article and those requirements of this code, made applicable to such an applicant by this article, and that the applicant is not formed, conducted or operated for profit or as a commercial insurance enterprise for the benefit of any group or person rather than the relatively equal benefit of its members, he shall register the applicant and issue to it a certificate of exemption.

(Added by Stats.1941, c. 1060, p. 2728, § 2. Amended by Stats.1943, c. 957, p. 2840, § 7.)

### **§ 10990. Fraternal benefit society; society defined**

Any incorporated society, order or supreme lodge, without capital stock, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

When used in this chapter, the word "society," unless otherwise indicated, shall mean fraternal benefit society.

(Added by Stats.1951, c. 1193, p. 3007, § 2.)

### **§ 11045. Exemption from creditors' claims**

Money or other aid paid or rendered by any such society shall not be liable, either before or after payment, to attachment, or to be applied by any legal or equitable process or operation of law to pay any liability of a member or any person having a right thereto.

(Added by Stats.1951, c. 1193, p. 3016, § 2.)

## **LABOR CODE**

### **§ 270.5 Logging; operating saw mill; required deposit; violation; misdemeanor**

No person, agent or officer thereof, or logging contractor, or sawmill operations contractor, engaged in the business of logging or operating a sawmill for converting logs into lumber, except in the case of logging or sawmill operations of persons having a free and unencumbered title to the fee of real property in this State, of a market value sufficient to pay the wages of every person employed in connection with such operations in any period for which a single payment of wages is made, shall fail or neglect, before commencing work

In any period for which such single payment of wages is made, or for four calendar weeks, whichever is the longer, (a) to have on hand or on deposit with a bank or trust company, in the county where such business is conducted, or if there is no bank or trust company in the county, then in the bank or trust company nearest such operations, cash or readily salable securities of a market value sufficient to pay the wages of every person employed in connection with such operations for such period, or (b) to deposit with the Labor Commissioner the bond of a surety company authorized to do business within the State, acceptable to him, conditioned upon the payment of all wages found by the Labor Commissioner to be due and unpaid in connection with such operations.

The cash and securities on deposit hereinbefore referred to shall not be commingled with other deposits, securities or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. Such moneys so held in trust shall not be subject to garnishment, attachment or execution by any other creditor of the employer.

Any person, agent or officer thereof, or logging contractor, or sawmill operations contractor, who violates this section is guilty of a misdemeanor.

(Added by Stats.1957, c. 593, p. 1690, § 1. Amended by Stats.1961, c. 318, p. 1359, § 1; Stats.1963, c. 178, p. 911, § 1.)

**§ 270.6 Door-to-door selling or telephone solicitation; required deposit; violation; misdemeanor**

No person or agent or officer thereof, without a permanent and fixed place of business or residence in this state who uses or employs any person in the door-to-door selling of any merchandise, or in any similar itinerant activity, or in any telephone solicitation, shall fail or neglect before commencing work in any period for which any single payment of wages is made or for four calendar weeks, whichever is longer.

(a) To have on hand or on deposit with a bank or trust company in the county where such business is conducted, or if there is no bank or trust company in the county, then in the bank or trust company nearest such operations, cash or readily salable securities of a market value sufficient to pay the wages of every person employed in connection with such operations for such period, or

(b) To deposit with the Labor Commissioner the bond of a surety company authorized to do business within the state, acceptable to him, conditioned upon the payment of all wages found to be due and unpaid in connection with such operations under any provision of this code, or

(c) To deposit with the Labor Commissioner a time certificate of deposit indicating that the person, agent or officer subject to the provisions of this section has deposited with a bank or trust company cash payable to the order of the Labor Commissioner sufficient to pay the wages of every person employed in connection with such operations for such period.

The cash and securities on deposit hereinbefore referred to shall not be commingled with other deposits, securities, or property of the employer and shall be held in trust and shall not be used for any other purpose than paying the wages due employees. Such moneys so held in trust shall not be subject to garnishment, attachment or execution by any other creditor of the employer.

Any person, or agent or officer thereof, who violates this section is guilty of a misdemeanor.

(Added by Stats.1965, c. 329, p. 1437, § 1.)

**§ 404. Garnishment, attachment, and execution; return of cash; bond**

Any money put up as a bond under Sections 401, 402 and 403 shall be \* \* \* :

(a) Exempt from execution except in an action between the employer and the employee or applicant, or their successors or assigns :

(b) Returned to the employee or applicant together with accrued interest thereon, immediately upon the return of the money or property entrusted to the employee or applicant and upon the fulfillment of the agreement, subject only to the deduction necessary to balance accounts between the employer and employee or applicant.

(Amended by Stats.1974, c. 1516, p. 3380, § 32, operative Jan. 1, 1977.)

**§§ 4900-4909**

**Part 3**

**COMPENSATION CLAIMS**

**Chapter 1**

**PAYMENT AND ASSIGNMENT**

**§ 4900. Nonassignability**

No claim for compensation, except as provided in Section 96, is assignable before payment, but this provision does not affect the survival thereof.

(Stats.1937, c. 90, p. 287, § 4900. Amended by Stats.1953, c. 555, p. 1814, § 2.)

**§ 4901. Exemption from debts**

No claim for compensation nor compensation awarded, adjudged, or paid, is subject to be taken for the debts of the party entitled to such compensation except as hereinafter provided.

(Stats.1937, c. 90, p. 287, § 4901.)

**§ 4902. Prohibition against payment to attorney or agent**

No compensation, whether awarded or voluntarily paid, shall be paid to any attorney at law or in fact or other agent, but shall be paid directly to the claimant entitled thereto unless otherwise ordered by the appeals board. No payment made to an attorney at law or in fact

or other agent in violation of this section shall be credited to the employer.

(Stats.1937, c. 90, p. 287, § 4902. Amended by Stats.1965, c. 1513, p. 3582, § 102, operative Jan. 15, 1966.)

### **§ 4903. Allowable liens**

The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (g) of this section. If more than one such lien be allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens which may be allowed hereunder are as follows:

(a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith.

(b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 of Chapter 2 of Part 2 of this division.<sup>1</sup>

(c) The reasonable value of the living expenses of an injured employee or of his dependents, subsequent to the injury.

(d) The reasonable burial expenses of the deceased employee, not to exceed the amount provided for by Section 4701.

(e) The reasonable living expenses of the wife or minor children of the injured employee, or both, subsequent to the date of the injury, where such employee has deserted or is neglecting his family. Such expenses shall be allowed in such proportion as the appeals board deems proper, under application of the wife or guardian of the minor children.

(f) The amount of unemployment compensation disability benefits which have been paid under or pursuant to the Unemployment Insurance Code in those cases where, pending a determination under Division 4 of this code,<sup>2</sup> there was uncertainty whether such benefits were payable under the Unemployment Insurance Code or payable hereunder; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(g) The amount of unemployment compensation benefits and extended duration benefits paid to the injured employee for the same day or days for which he receives, or is entitled to receive, temporary total disability indemnity payments under this division; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(Stats.1937, c. 90, p. 287, § 4903. Amended by Stats.1945, c. 507, p. 1007, § 1; Stats.1947, c. 833, p. 1998, § 1; Stats.1949, c. 488, p. 837, § 1; Stats.1957, c. 1977, p. 3524, § 1; Stats.1963, c. 1556, p. 3140, § 1; Stats.1965, c. 1513, p. 3582, § 103, operative Jan. 15, 1966; Stats.1967, c. 1721, p. 4289, § 2.)

**§ 4903.1 Reimbursement for benefits paid or services provided**

The appeals board, before issuing its award or approval of any compromise of claim, shall determine, on the basis of liens filed with it, whether any benefits have been paid or services provided by a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract, and its award or approval shall provide for reimbursement for benefits paid or services provided under such plans as follows:

(a) When the referee issues an award finding that an injury or illness arises out of and in the course of employment, but denies the applicant reimbursement for self-procured medical costs solely because of lack of notice to the applicant's employer of his need for hospital, surgical, or medical care, the appeals board shall nevertheless award a lien against the employer's recovery, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract.

(b) When the referee issues an award finding that an injury or illness arises out of and in the course of employment, and makes an award for reimbursement for self-procured medical costs, the appeals board shall allow a lien, to the extent of benefits paid or services provided, for the effects of the industrial injury or illness, by a health care service plan, a group disability policy, a self-insured employee welfare benefit plan, or a hospital service contract.

(c) When the parties propose that the case be disposed of by way of a compromise and release agreement, in the event the lien claimant does not agree to the amount allocated to it, then the referee shall determine the potential recovery and reduce the amount of the lien in the ratio of the applicant's recovery to the potential recovery in full satisfaction of its lien claim.

(Added by Stats.1975, c. 1109, p. —, § 1.)

**§ 4904. Notice of lien; approval by appeals board; determination of amount; effect of determination; payment**

If notice is given in writing to the insurer, or to the employer if uninsured, setting forth the nature and extent of any claim that is allowable as a lien, the claim is a lien against any amount thereafter payable as compensation, subject to the determination of the amount and approval of the lien by the appeals board. In determining the amount of lien to be allowed for unemployment compensation disability benefits under subdivision (f) of Section 4903 the appeals board shall allow such lien in the amount of benefits which it finds were paid for the same day or days of disability for which an award of compensation for temporary disability indemnity is made. In determining the amount of lien to be allowed for unemployment compensation benefits and extended duration benefits under subdivision (g) of Section 4903, the appeals board shall allow such lien in the amount of benefits which it finds were paid for the same day or days for which an award of compensation for temporary total disability is made. In the case of agreements for the compromise and release of a disputed claim for compensation, the applicant and defendant may propose to the appeals board, as part of the compromise and release agreement, an amount out of the settlement to be paid to any lien claimant claiming under subdivision (f) or (g) of Section 4903. The determination of the appeals board, subject to petition for reconsideration and to the right of judicial review, as to the amount of lien allowed under subdivision (f) or (g) of Section 4903, whether in connection with an award of compensation or the approval of a compromise and release agreement, shall be binding on the lien claimant, the applicant, and the defendant, insofar as the right to benefits paid under the Unemployment Insurance Code for which the lien was claimed.

The appeals board may order the amount of any lien claim, as determined and allowed by it, to be paid directly to the person entitled, either in a lump sum or in installments.

Where unemployment compensation disability benefits have been paid pursuant to the Unemployment Insurance Code while reconsideration of an order, decision or award is pending, or has been granted the appeals board shall determine and allow a final amount on such lien as of the date the board is ready to issue its decision denying a petition for reconsideration or affirming, rescinding, altering or amending the original findings, order, decision or award.

(Stats.1937, c. 90, p. 288, § 4904. Amended by Stats.1957, c. 1977, p. 3524, § 2; Stats.1965, c. 157, p. 1116, § 6; Stats.1965, c. 691, p. 2073, § 1; Stats.1965, c. 1513, p. 3582, § 104, operative Jan. 15, 1966; Stats.1967, c. 125, p. 1155, § 6; Stats.1967, c. 1721, p. 4290, § 3; Stats. 1970, c. 985, p. 1757, § 1.)

**§ 4904.1 Effect of payment of liens upon immediate payment of balance of award**

The payment of liens as provided in Section 4904, shall in no way affect the commencement of immediate payments on any balance of the award to the injured claimant where an installment payment for his disability has been determined.

(Added by Stats.1957, c. 1241, p. 2548, § 1.)

**§ 4905. Order for payment of claim without notice**

Where it appears in any proceeding pending before the appeals board that a lien should be allowed if it had been duly requested by the party entitled thereto, the appeals board may, without any request for such lien having been made, order the payment of the claim to be made directly to the person entitled, in the same manner and with the same effect as though the lien had been regularly requested, and the award to such person shall constitute a lien against unpaid compensation due at the time of service of the award.

(Stats.1937, c. 90, p. 288, § 4905. Amended by Stats.1965, c. 1513, p. 3583, § 105, operative Jan. 15, 1966.)

**§ 4906. Reasonableness of claim for legal and medical services**

No charge, claim, or agreement for the legal services or disbursements mentioned in subdivision (a) of Section 4903, or for the expense mentioned in subdivision (b) of Section 4903, is enforceable, valid, or binding in excess of a reasonable amount. The appeals board may determine what constitutes such reasonable amount.

(Stats.1937, c. 90, p. 288, § 4906. Amended by Stats.1965, c. 1513, p. 3583, § 106, operative Jan. 15, 1966.)

**§ 4907. Suspension of privilege of appearing as representative of party to proceedings**

The privilege of any person, including attorneys admitted to practice in the Supreme Court of the state to appear in any proceeding as a representative of any party before the appeals board, or any of its

referees, may, after a hearing, be removed, denied, or suspended by the appeals board for a violation of this chapter or for other good cause.

(Stats.1937, c. 90, p. 288, § 4907. Amended by Stats.1965, c. 1513, p. 3583, § 107, operative Jan. 15, 1966.)

**§ 4908. Priority of compensation claim**

A claim for compensation for the injury or death of any employee, or any award or judgment entered thereon, has the same preference over the other debts of the employer, or his estate and of the insurer which is given by the law to claims for wages. Such preference is for the entire amount of the compensation to be paid. This section shall not impair the lien of any previous award.

(Stats.1937, c. 90, p. 288, § 4908. Amended by Stats.1939, c. 649, p. 2076, § 2.)

**§ 4909. Payment and acceptance of payment of amount not due or pending dispute of right to compensation**

Any payment, allowance, or benefit received by the injured employee during the period of his incapacity, or by his dependents in the event of his death, which by the terms of this division was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be an admission of liability for compensation on the part of the employer, but any such payment, allowance, or benefit may be taken into account by the appeals board in fixing the amount of the compensation to be paid. The acceptance of any such payment, allowance, or benefit shall not operate as a waiver of any right or claim which the employee or his dependents has against the employer.

(Stats.1937, c. 90, p. 288, § 4909. Amended by Stats.1965, c. 1513, p. 3583, § 108, operative Jan. 15, 1966.)

**PUBLIC UTILITIES CODE**

**§ 12337. Exemption of benefits from claims of creditors**

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, is unassignable, and is exempt from execution \* \* \* and attachment \* \* \* as provided in Section 090.18 of the Code of Civil Procedure.

(Amended by Stats.1970, c. 1523, p. 3064, § 02.)

**§ 25337. Received benefits not subject to legal process; nonassignability**

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, is unassignable.

assignable, and is exempt from execution and attachment pursuant to Section 690.18 of the Code of Civil Procedure.

(Added by Stats.1955, c. 1080, p. 1963, § 2. Amended by Stats.1970, c. 1523, p. 3084, § 83.)

**§ 28896. Exemption of benefits from legal process; nonassignability**

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, is exempt from execution, garnishment, or attachment and is unassignable.

(Added by Stats.1957, c. 1056, p. 2304, § 3.)

**§ 50146. Exemption from legal process; assignability**

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, is exempt from execution, garnishment, or attachment and is unassignable.

(Added by Stats.1963, c. 839, p. 2050, § 1.)

**§ 95836. Assignability of moneys received by members from system; exemption from execution, garnishment or attachment**

All money received by any person as an annuity, pension, retirement allowance, disability payment or death benefit, from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such member or deposited, loaned, or invested by him, is exempt from execution, garnishment, or attachment and is unassignable.

(Added by Stats.1965, c. 1835, p. 4243, § 1.)

**§ 98196. Exemption from legal process; nonassignability**

All money received by any person as an annuity, pension, retirement allowance, disability payment or death benefit, from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such member or deposited, loaned, or invested by him, is exempt from execution, garnishment, or attachment and is unassignable.

(Added by Stats.1967, c. 978, p. 2548, § 1.)

## UNEMPLOYMENT INSURANCE CODE

### § 988. Exemption from garnishment, attachment or execution

Contributions by workers, payable as provided in this article, shall be exempt from attachment and execution pursuant to Section 690.16 of the Code of Civil Procedure, and from garnishment or any other remedy for the collections of debts, and in the event of the insolvency or bankruptcy of an employer shall not be considered any part of his assets and shall be paid to the director prior to the payment of any other claim against the employer.

(Stats.1958, c. 308, p. 1486, § 988. Amended by Stats.1970, c. 1523, p. 3084, § 64.)

## WATER CODE

### § 8537. Exemption from execution and attachment

The property of the board and of the drainage district is exempt from execution or attachment.

(Added by Stats.1943, c. 369, p. 1896.)

### § 22142. Exemption of annuities, pensions, retirement allowances, etc., from execution, garnishment or attachment

All money received by any person as an annuity, pension, retirement allowance, disability payment or death benefit from the retirement or pension plan or system and all contributions and interest thereon returned to any member of such plan or system, whether in the actual possession of such person or deposited, loaned or invested by him, is exempt from execution, garnishment or attachment. (Added Stats.1965, c. 796, p. 2128, § 1.)

## WELFARE & INSTITUTIONS CODE

### § 17408. Exempt property; emergency hospital or medical care

*Text of section operative Jan. 1, 1977.*

There shall be exempt from the transfers and grants authorized by Section 17109 and from . . . execution on claims under Section 17403 against property acquired by persons for the support of whom public moneys have been expended all of the following property:

- (a) Cash to the amount of fifty dollars (\$50).
- (b) Personal effects and household furniture to the value of five hundred dollars (\$500).
- (c) An interment space, crypt, or niche intended for the interment of the applicant or recipient of aid.
- (d) Funds placed in trust for funeral or burial expenses to the extent that such funds do not exceed the sum of five hundred dollars (\$500).
- (e) Insurance policies having an actual cash surrender value of not to exceed five hundred dollars (\$500).
- (f) Real or personal property of a recipient of public assistance, with respect to aid or county hospital care granted after May 21, 1963.
- (g) For a period of six months from the date of receipt, the compensation received from a public entity which acquires for a public use a dwelling actually owned and occupied by the recipient. Such compensation shall be exempt in the amount, over and above all liens and encumbrances, provided by Section 1280 of the Civil Code.

(h) Relocation benefits for displacement from a dwelling actually owned or rented by the debtor received from a public entity pursuant to Chapter 16 (commencing with Section 7200), Division 7, Title 1 of the Government Code and from the federal government under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

No county shall withhold emergency medical or hospital care from any person pending his giving security for reimbursement to the county for the care or hospitalization to be provided to him.

(Amended by Stats.1974, c. 47, p. 104, § 8, urgency, eff. Feb. 28, 1974; Stats.1974, c. 1516, p. 3394, § 47, operative Jan. 1, 1977.)

EXHIBIT 4

HAWAII--Haw. Rev. Stat. § 651-61

§651-61 Exemption, how claimed. Where an officer is about to levy an attachment, execution, or other process on personal property, some of which is claimed as exempt, he shall demand of the defendant in writing that he make selection of such property as is exempt to him and in reference to which he has the right of selection and the defendant shall then and there make his selection; or, failing so to do, the officer shall make it for him, and any selection so made shall be conclusive on the defendant. [L. 1901, c. 9, §11; RL 1925, §2455; RL 1935, §4156; RL 1945, §10183; RL 1955, §233-60]

NEW YORK--N.Y. Ins. Law § 166 (McKinney 1966, Supp. 1976-77)

§ 166. Exemption of proceeds and avails of certain insurance and annuity contracts

1. If any policy of insurance has been or shall be effected by any person on his own life in favor of a third person beneficiary, or made payable, by assignment, change of beneficiary or otherwise, to a third person, such third person beneficiary, assignee or payee shall be entitled to the proceeds and avails of such policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the person effecting the insurance. If any policy of insurance has been or shall be effected by any person upon the life of another person in favor of the person effecting the same or made payable, by assignment, change of beneficiary or otherwise, to such person, the latter shall be entitled to the proceeds and avails of such policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the person insured; if the person effecting such insurance shall be the spouse of the insured, he or she shall be entitled to the proceeds and avails of such policy as against his or her own creditors, trustees in bankruptcy and receivers in state and federal courts. If any policy of insurance has been or shall be effected by any person on the life of another person in favor of a third person beneficiary, or made payable, by assignment, change of beneficiary or otherwise, to a third person, such third person beneficiary, assignee or payee shall be entitled to the proceeds and avails of such policy as against the creditors, personal representatives, trustees in bankruptcy and receivers in state and federal courts of the person insured and of the person effecting the insurance. The term "proceeds and avails" shall include death benefits, cash surrender and loan values, premiums waived, and dividends, whether used in reduction of the premiums or in whatsoever manner used or applied, excepting only where the debtor has, subsequent to the issuance of the policy, actually elected to receive the dividends in cash. The person insured in a case under the first sentence of this subsection or the person effecting the insurance other than the spouse of the insured in a case under the second sentence, and the person effecting the insurance under the third sentence thereof, or the executor or administrator of any such persons, or a person entitled to the proceeds or avails of such

policy in trust for such persons shall not be deemed a third person beneficiary, assignee or payee. A policy shall be deemed payable to a third person beneficiary if and to the extent that, a facility-of-payment clause or similar clause, in the policy permits the insurer to discharge its obligation after the death of the person insured by paying the death benefits to a third person as herein defined. The provisions of this section shall be applicable whether or not the right is reserved in any such policy to change the beneficiary therein designated, and whether or not the policy is made payable to the person whose life is insured if the beneficiary, assignee or payee shall predecease such person; and no person shall be compelled to exercise any rights, powers, options or privileges under such policy.

2. No money or other benefits payable or allowable under any policy of insurance against disability arising from accidental injury or bodily infirmity or ailment of the person insured, shall be liable to execution for the purpose of satisfying any debt or liability of the insured, whether incurred before or after the commencement of the disability, except as provided in subsection four, and except further that (a) with respect to debts or liabilities incurred for necessities furnished the insured after the commencement of disability, the exemption shall not include any income payment benefits payable as a result of any disability of the insured, and (b) with respect to all other debts or liabilities incurred after the commencement of disability of the insured, the exemption of income payment benefits payable as a result of any disability of the insured shall not at any time exceed payment at rate of four hundred dollars per month for the period of such disability. When a policy provides for lump sum payment because of a dismemberment or other specific loss of insured, such payment shall be exempt from execution of insured's creditors. The provisions of this subsection shall not affect the assignability of any benefit otherwise assignable.

3. The benefits, rights, privileges and options which, under any annuity contract, heretofore or hereafter issued are due or prospectively due the annuitant, who paid the consideration for the annuity contract, shall not be subject to execution nor shall the annuitant be compelled to exercise any such rights, powers or options contained in said annuity contract, nor shall creditors be allowed to interfere with or terminate the contract, except (a) as provided in subsection four and except (b) that the court may order such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such portion of such benefits, as to the court may appear just and proper, after due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders. The benefits, rights, privileges or options accruing under such contract to a beneficiary or assignee shall not be transferable nor subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions and exceptions contained herein for the annuitant, shall apply with respect to such beneficiary or assignee.

An annuity contract within the meaning of this section shall be any obligation to pay certain sums at stated times, during life or lives, or for a specified term or terms, issued for a valuable

consideration, regardless of whether or not such sums are payable to one or more persons, jointly or otherwise, but does not include payments under a life insurance policy at stated times during life or lives, or for a specified term or terms.

4. Every assignment or change of beneficiary, or other transfer, shall be valid, except in cases of transfer with actual intent to hinder, delay or defraud creditors, as such actual intent is defined by article ten of the debtor and creditor law<sup>1</sup>; in case of transfer with such actual intent, creditors shall have all the remedies provided by said article ten. Where a policy of insurance, theretofore payable to the estate of the insured, is, by assignment, change of beneficiary or otherwise, made payable to a third person beneficiary, such assignment, change of beneficiary or other transfer shall be valid, unless made with such actual intent. Subject to the statute of limitations, the amount of premiums or other consideration paid with actual intent to defraud creditors as provided in said article ten, together with interest on such amount, shall enure to the benefit of creditors from the proceeds of the policy or contract; but the insurer making or issuing such policy or contract shall be discharged of liability thereunder by making payments thereunder in accordance with its terms, or in accordance with any assignment, change of beneficiary or other transfer, unless before any such payment such insurer shall have received written notices, by or on behalf of any such creditor, of a claim to recover any such benefits or portion thereof on the ground of a transfer or payment made with intent to defraud such creditor. Such notice shall specify the amount claimed or such facts as will enable the insurer to ascertain such amount, and shall set forth such facts as will enable the insurer to ascertain the insurance or annuity contract, the person insured or annuitant and the transfers or payments sought to be avoided on the ground of fraud.

5. The term "creditor" as used in this section shall include every claimant under a legal obligation contracted or incurred after the effective date of this chapter.<sup>2</sup> The term "execution" as used in this section shall include execution by garnishee process and every action, proceeding or process whereby assets of a debtor may be subjected to the claims of creditors. The rights of creditors whose claims were contracted or incurred prior to the effective date of this chapter<sup>3</sup> shall be governed by sections fifty-five-a, fifty-five-b and fifty-five-c of chapter twenty-eight of the consolidated laws.<sup>3</sup> This section insofar as it may differ, in form, language or substance, from said sections, is not intended, in any way, to affect the interpretation or construction of said sections as applied to such rights.

6. The provisions of this section applicable to any insurance policy or annuity contract shall likewise apply to group insurance policies or annuity contracts, to the certificates or contracts of fraternal benefit societies, and to the policies or contracts of cooperative life and accident insurance companies. L.1939, c. 882; amended L.1962, c. 310, § 195, eff. Sept. 1, 1963.

**§ 3911.10 Proceeds exempt from claims of creditors.**

All contracts of life or endowment insurance or annuities upon the life of any person, or any interest therein, which may hereafter mature and which have been taken out for the benefit of, or made payable by change of beneficiary, transfer, or assignment to, the wife or children, or any relative dependent upon such person, or any creditor, or to a trustee for the benefit of such wife, children, dependent relative, or creditor, shall be held, together with the proceeds or avails of such contracts, subject to a change of beneficiary if desired, free from all claims of the creditors of such insured person or annuitant. Subject to the statute of limitations, the amount of any premium upon said contracts, endowments, or annuities, paid in fraud of creditors, with interest thereon, shall inure to their benefit from the proceeds of the contracts, but the company issuing any such contract is discharged of all liability thereon by the payment of its proceeds in accordance with its terms, unless, before such payment, written notice is given to it by a creditor, specifying the amount of his claim and the premiums which he alleges have been fraudulently paid.

PENNSYLVANIA--Pa. Stat. Ann., Tit. 40, §§ 514, 515, 517  
(Purdon 1971, Supp. 1976-77)

**§ 514. Retaining proceeds under policy; anticipating or alienating; rights of creditors**

Whenever under the terms of any annuity or policy of life insurance, or under any written agreement supplemental thereto, issued by any insurance company, domestic or foreign, lawfully doing business in this State, the proceeds are retained by such company at maturity or otherwise, no person entitled to any part of such proceeds, or any instalment of interest due or to become due thereon, shall be permitted to commute, anticipate, encumber, alienate, or assign the same, or any part thereof, if such permission is expressly withheld by the terms of such policy or supplemental agreement; and if such policy or supplemental agreement so provides, no payments of interest or of principal shall be in any way subject to such person's debts, contracts, or engagements, nor to any judicial processes to levy upon or attach the same for payment thereof; and, further, that such company shall not be required to segregate such funds, but may hold them as a part of its general corporate funds.

1919, May 17, P.L. 208, § 1; 1923, April 26, P.L. 104, § 1.

**§ 515. Exemption of insurance and annuities**

Any policy or contract of insurance, or annuity, hereafter taken out, or issued by any insurance company, domestic or foreign, lawfully doing business in this Commonwealth, to any solvent citizen thereof, whereof the said insured or purchaser of said annuity shall be the beneficiary or annuitant, not exceeding an income or return therefrom one hundred dollars (\$100) per month, and any annuity or pension, whether by way of a gratuity or otherwise, granted or paid by any private corporation or employer or out of a trust fund established by any private corporation or employer to a retired employe, being a citizen of this Commonwealth, under an agreement, plan or trust indenture which provides that the same shall not be assignable or subject to execution or attachment, shall be exempt and free and clear from the claims of all his or her creditors, and from all legal and judicial processes of execution, attachment, or otherwise, whatsoever.

1917, May 3, P.L. 112, § 1; 1935, July 15, P.L. 1024, § 1.

**§ 517. Exemption of proceeds of life insurance or annuity**

The net amount payable under any policy of life insurance or under any annuity contract upon the life of any person, heretofore or hereafter made for the benefit of or assigned to the spouse or children or dependent relative of such person, shall be exempt from all claims of the creditors of such person arising out of or based upon any obligation created after the passage of this act, whether or not the right to change the named beneficiary is reserved by or permitted to such person.

As amended 1972, Oct. 26, P.L. 1024, No. 250, § 1.

**SOUTH DAKOTA--S.D. Compiled Laws Ann. §43-45-6 (1967)**

**43-45-6. Proceeds of life insurance payable to estate of decedent—Rights of surviving spouse or minor children—Amount of exemption—Payment discharging insurer from liability.—**The proceeds of any insurance upon the life of any person residing in this state, at the time of his death and who leaves a surviving widow, husband, or minor child or children, payable upon his death to his estate, executor, or administrator, and not assigned to any other person, shall, to any amount not exceeding ten thousand dollars, inure to the use of such surviving widow, husband, minor child or children; and such amount shall not be subject to the payment of any debt of such decedent, or of such surviving widow, husband, minor child or children. Whenever the proceeds of such insurance become payable and the insurer makes payment thereof to the administrator or executor of the estate of such person, such payment shall fully discharge the insurer from all claims under the policy or contract, and such insurer need not follow the distribution of such payment.

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EXHIBIT 5

REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES  
H.R. Doc. No. 93-137, Part II, 93d Cong., 1st Sess., 125-130 (1973)

*Section 4-503. Exemptions.*

(a) *Controlling Law.* An individual debtor, who has filed a petition for relief or against whom relief has been directed under this Act, shall be allowed exemptions of property as provided in this section. Property allowed as exempt under this section is exempt from creditors holding claims allowable against the debtor's estate, other than claims excepted from discharge under section 4-506(a)(6).

(b) *Homestead or Property in Lieu Thereof.*

(1) An individual debtor shall be allowed an exemption of property which he owned and was used at the date of the petition as a home for the debtor, his spouse, or a dependent or any or all of them. The aggregate value so allowable shall not exceed \$5,000 plus \$500 for each dependent of the debtor.

(2) If no property is allowed as exempt under paragraph (1) or if the property allowed has an aggregate value less than the maximum allowed under paragraph (1), an individual debtor shall be allowed additional exemptions of property of the kinds described in clauses (1) and (2) of subdivision (c) until the aggregate value of such additional property and property allowed as exempt under paragraph (1) of this subdivision equals the maximum value allowable under paragraph (1).

(c) *Other Property.* The following property shall be allowed as exempt in addition to any property allowed as exempt under subdivision (b):

(1) livestock, wearing apparel, jewelry, household furnishings, tools of the trade or profession, and motor vehicles, to the aggregate value of not more than \$1,000;

(2) a burial plot to the value of \$2,500;

(3) cash, securities, and receivables, including unpaid personal earnings, accrued vacation pay, and income tax refund, to the aggregate value of not more than \$500;

(4) payments for alimony, support, and separate maintenance;

(5) the identifiable proceeds or benefits from any life insurance policy if the debtor is the spouse or a dependent of the insured, to the extent the proceeds or benefits are reasonably necessary for the support of the debtor and his dependents;

(6) before or after retirement, such rights as the debtor may have under a profit sharing, pension, stock bonus, annuity, or similar plan which is established for the primary purpose of providing benefits upon retirement by reason of age, health, or length of service, and which is either (A) qualified under section 401(a) of the Internal Revenue Code, or any successor thereto, or (B) established by federal or state statute, to the extent in either case the debtor's interest therein is reasonably necessary for the support of the debtor and his dependents;

(7) disability benefits;

(8) proceeds, benefits, or other rights to which the debtor is entitled as a result of any personal injury or unemployment; and

(9) health aids reasonably necessary to enable the debtor to work or to sustain his health.

*(d) Exemption of Life Insurance Policy with Cash Surrender Value.*

A policy or policies of life insurance having an aggregate cash surrender value of not more than \$1,500 payable to the debtor, together with such value, are exempt. If the debtor has a policy or policies with an aggregate cash surrender value in excess of \$1,500, the policies shall nevertheless be exempt if the debtor pays the amount of such excess value to the trustee within 30 days after it has been ascertained and stated to the trustee by the insurer or insurers.

*(e) Family Allowance.*

(1) If a debtor dies after the date of the petition, the surviving spouse and minor and dependent children are entitled to an allowance out of the property of the estate remaining undistributed at the date of notice to the trustee of the death. The allowance shall be the amount necessary for their support but not more than \$1,000 per person. An allowance shall be reduced in the amount by which the proceeds of life insurance on the debtor's life payable to the person or persons entitled to the allowance exceed \$10,000.

(2) The allowances provided for by paragraph (1) are payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children. If the surviving spouse is not living, the allowances are payable to the children or the persons having their care and custody. If any minor or dependent child is not living with a surviving spouse, an allowance may be made to the child, his guardian or other person having his care and custody, and to the spouse, as their needs may appear.

(3) The family allowances provided for by paragraph (1) are exempt from and have priority over allowable claims and claims of creditors of the surviving spouse and dependent children.

*(f) Waiver; Liens.* A waiver of exemptions is unenforceable by a creditor without security in the property allowed to the debtor pursuant to this section. A lien obtainable by legal or equitable proceedings and, with respect to wearing apparel, household goods, and health aids, any lien created by an agreement to give security other than for a purchase money obligation, is unenforceable against the property allowed to the debtor pursuant to this section as exempt, except that such lien may be preserved for the benefit of the debtor.

*(g) Definition of Value.* For the purpose of this section, value is fair market value as of the date of the petition, less all indefeasible liens.

*(h) Exemptions Allowed out of Recovered Property.* No property recovered under the provisions of this Act shall be allowed as exempt if the property recovered was concealed or voluntarily transferred by the debtor, unless so transferred to secure a debt and then only to the extent the value of the property exceeds the debt.

*(i) Administrative Costs.* The exemptions allowed by this section are not subject to administrative claims other than those for the cost of (1) recovering property that was involuntarily transferred and thereafter allowed as exempt and (2) setting aside liens on property allowed as exempt.

(j) *Procedures.* The exemptions allowable by this section may be claimed by the debtor, his spouse, his dependents, or anyone on behalf of any of them. The exemptions shall not be denied because of a failure to claim them. The administrator shall give notice of the disallowance of a claim to an exemption to the claimant and of the allowance of exemptions to the debtor and to other persons as provided in section 4-307(c). Procedures for appraising and allowing the debtor's exemptions shall be prescribed by rules of the administrator, and procedures for contesting the administrator's allowance or failure to allow exemptions shall be prescribed by the Rules of Bankruptcy Procedure.

#### NOTE

1. Section 4-503 is derived from §§6, 8, and 70a of the Act. The reference to nonbankruptcy law to determine the exemptions is abandoned to eliminate diversity, reduce the amount of litigation having no direct relationship to the policy underlying exemptions, and because state exemption laws seem generally archaic and unduly generous in some states and exceedingly niggardly, particularly as to urban residents, in others. See generally Countryman, *For a New Exemption Policy in Bankruptcy*, 14 Rutgers L. Rev. 678 (1960); Marler, *Bankruptcy Exemptions: A Full Scale Circle Back to the Act of 1800?*, 53 Corn. L.Q. 663 (1968); Note, *Bankruptcy Exemptions: Critique and Suggestions*, 68 Yale L. J. 1459 (1959). But see Kennedy, *Limitation of Exemptions in Bankruptcy*, 45 Iowa L. Rev. 445 (1960). The effect of this section taken in conjunction with §§2-201(a)(2) and 4-601 of the proposed Act, is to overrule the holding in *Lockwood v. Exchange Bank*, 190 U.S. 294 (1903), that exempt assets are not administered or subject to the bankruptcy court's jurisdiction after set apart to the bankrupt. It is intended that generally the allowance of exemptions be a ministerial act by the administrator, since the debtor is not required to claim his exemptions in order to be entitled to have them set apart to him. The debtor will have to choose the items to be exempted when he owns property in a category of a value higher than the maximum allowed to him, but his failure to exercise his right of choice is not intended to result in any loss of the right of the debtor and his family to the exemptions allowable under this section. Under subdivision (d), however, there is a loss of the \$1,500 exemption of cash surrender values as to any policies having a cash surrender value exceeding \$1,500 unless the debtor pays the excess to the trustee within 30 days of its determination.

2. *Subdivision (a)* limits exemptions allowed by §4-503 to natural persons. The section controls what property of the debtor is to be set aside to the debtor; conflicting laws are superseded. Thus, the fact a debtor could claim additional or less property under state or other federal law is immaterial. Federal laws thereby superseded include Internal Revenue Code §6334 and garnishment restrictions of the Federal Consumer Credit Protection Act (15 U.S.C. §§1671-77) to the extent they constitute exemptions. The exemptions are effective against all creditors of the debtor that may share in the proceeds of the estate under §4-405, but are subject to certain claims excepted from discharge under §4-506(a)(6) of the Act. The right to the exemption is unqualified; it does not depend on whether the debtor receives a discharge and is not forfeited by "bad conduct" of the debtor. See, e.g., *White v. Stump*, 266 U.S. 310 (1924); *Sampson v. Straub*, 194 F.2d 228 (9th Cir. 1951) cert. denied, 343 U.S. 927 (1952). The

exemption is available as to the property specified regardless of when acquired or the source of the consideration paid for the property claimed.

3. By eliminating the reference to nonbankruptcy law much litigation and considerable inequity due to state procedural requirements are avoided. Questions as to the applicable law, its scope, and whether a law provides an exemption within the meaning of §6 of the Act are mooted.

4. *Subdivision (b)* creates a homestead exemption. The test of qualifying property is whether it is used as a home. The legal label given the property, i.e., whether real, chattel real, fixture, or personal property is immaterial. Thus, a boat, a trailer, or a structure erected on leased land or real estate held by a fee simple title is equally available if used as a home. The property may be the debtor's home, his family's home, or the home of a dependent.

5. Paragraph (1) limits the exemption to \$5,000 for a debtor without a dependent. But the value that can be allowed is increased by \$500 for each dependent of the debtor. The definition of dependent has been left to a case-by-case development by the courts. Any person qualifying as a dependent under §151 of the Internal Revenue Code of 1954 would qualify under paragraph (1).

6. In recognition of the fact that many debtors do not acquire homes or have only a small equity, paragraph (2) allows the debtor certain other property having an aggregate value not exceeding the maximum allowed by paragraph (1).

7. *Subdivision (c)* recognizes additional exemptions in types of property often exempt under state and federal nonbankruptcy law. Clauses (1), (2), and (3) contain limitations to specified aggregate values, but the exemptions allowable thereunder, as well as those allowable under the remaining clauses of subdivisions (c) and subdivisions (d) and (e), are in addition to the exemptions allowed by paragraphs (1) and (2) of subdivision (b).

8. The value of property exempted by clauses (4), (5), (7), (8), and (9) of subdivision (c) is not limited. Benefits or rights under a retirement plan are exempt under clause (6) if the plan is qualified under I.R.C. §401(a). A limit is placed on the exemption since it is recognized that members of professional corporations and officers will have very substantial benefits. The exemption is limited to benefits "reasonably necessary for the support of the debtor and his dependents." This treatment is similar to that accorded interests in spendthrift trusts by §4-601(b) of the proposed Act. For a discussion of the options of the trustee as to reaching excess benefits, see the Note to §4-601.

9. *Subdivision (d)*. The cash surrender value of life insurance policies payable to the debtor, together with the policies themselves, is exempt if it does not exceed \$1500. Any excess is available to creditors, unless it is allowed as exempt under clause (2) of subdivision (c). This alters the approach of §70a(5) of the Act, which exempts the policy but not the cash surrender value. Exemption of the cash surrender value of life insurance policies has heretofore been left to nonbankruptcy law by the Act.

10. *Subdivision (e)* replaces and revises the proviso to §8 of the Act. It is unnecessary to add that the exemptions of the debtor are not affected by death. The entitlement to exemptions as against creditors of the debtor having claims at the date of the petition is determined by this section; death in no way affects the situation. The exemption of property from levy by creditors holding claims against the debtor arising after the filing of the petition, which were not payable out of the estate, is determined by nonbankruptcy law. Thus, to the extent §8 implied that the exempt property devolved to the spouse or dependent children regardless of other law, the rule is altered.

11. This subdivision goes further, however, and carves out of the property or proceeds of the estate remaining undistributed at the time of notice of the death of a debtor a cash allowance for the spouse and dependents. This is a reversion to the pre-1938 language of §8 of the Act, which was clumsily amended to cope with *Siegel v. Wells*, 55 F.2d 877 (6th Cir.), cert. denied, 286 U.S. 549 (1932).

12. The subdivision is an adaptation of the language of §2-403 of the Uniform Probate Act. It recognizes a general policy in the United States to give the surviving widow or widower and children an allowance prior to the rights of creditors. Notice of death must occur prior to a distribution (since the allowance can only be satisfied out of undistributed assets). The allowance is limited to \$1,000 for the surviving spouse and for each minor or dependent child, and the amount of the allowance is reduced by life insurance proceeds in excess of \$10,000 payable to the beneficiaries of the allowance.

13. *Subdivision (f)* is new. It avoids one of the means by which the policy of §6 of the Act was frustrated. Exemptions under this section cannot be affected by judicial liens or agreement other than an indefeasible security agreement. For a discussion of waivers of exemptions under state law see Countryman, *supra*, at 708-13; Currie, *Exempt Property and Bankruptcy: Secured and Waiver Claims*, 31 La. L. Rev. 73 (1970); Kennedy, *supra*, at 462-72; and Note, *supra*, at 1494-97. The right to exemptions under this section cannot be affected by a judicial lien or any agreement other than an indefeasible security agreement. Nonpurchase-money security agreements are unenforceable as to wearing apparel, household goods, and health aids (to the extent they cover property that is allowable as exempt). The reference to purchase-money obligations that are not affected by this subdivision has a well understood meaning. See, e.g., §9-107 of the Uniform Commercial Code. The exemptions are, however, subject to statutory liens not vulnerable under §4-606.

14. *Subdivision (g)* provides that value is to be determined as of the date of the petition. For the purpose of this section, e.g., determining whether property set aside as exempt is within the \$1,000 limit set by subdivision (c)(1), value is the debtor's equity, i.e., the fair market value of the property as reduced by all liens that cannot be set aside by the trustee.

15. *Subdivision (h)* is derived from the proviso to §6 of the Act. It differs, however, in that the debtor's right to an allowance out of transferred property is barred only if the transfer was voluntary. Thus, if a motor vehicle transferred by the debtor to a creditor is recovered as a preference under §4-607, the motor vehicle or its value is not available to the debtor as an exemption. But if the creditor acquired the vehicle by judicial process, the vehicle or its value, after recovery by the trustee, may be set aside as exempt. This adopts, but greatly expands, the policy of the holding in *Chicago, B. & Q. R. R. v. Hall*, 229 U.S. 511 (1913), which was probably codified in 1938 in §67a(3) of the Act. But see MacLachlan §§207-08 (1956).

16. *Subdivision (i)* makes it clear that property to be set aside as exempt is not subject to costs of administration, except to the extent of the cost of recovering property transferred or freeing property of a lien for the benefit of the debtor.

17. *Subdivision (j)* precludes loss of exemptions by the debtor not claiming them. The mechanics are left to rules to be promulgated by the administrator. If a contest develops, it is to be resolved by the court and the procedure is to be prescribed by rules promulgated by the court.

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CHAPTER 7. EXEMPTIONS FROM ENFORCEMENT OF  
MONEY JUDGMENTS

Article 1. General Provisions

§ 707.110. Property subject to enforcement of money judgments

707.110. Except as otherwise provided in this chapter or by other law, the following property is subject to the enforcement of a judgment for the payment of money:

(a) All property owned by the judgment debtor.

(b) All property no longer owned by the judgment debtor but subject to an attachment lien, judgment lien, execution lien, or other lien arising from the enforcement of the judgment when the property was owned by the judgment debtor.

Comment. Section 707.110 supersedes subdivision (a) of Section 688. Deletion of the reference in former law to "any interest" in property and of the enumeration of certain types of property ("goods, chattels, moneys or other property") is not intended to limit in any way the scope of property subject to the enforcement of a money judgment. The introductory clause of Section 707.110 refers to exemptions from enforcement of a money judgment provided in this chapter (see Sections 707.310-707.650) or by any other law. See Emeric v. Gilman, 10 Cal. 404 (1858) (assets of citizen of county not liable for county debt); Health & Saf. Code § 7053 (misdemeanor to attach human remains for debt). Property in custodia legis is not subject to execution under certain circumstances. E.g., Robbins v. Bueno, 262 Cal. App.2d 79, 68 Cal. Rptr. 347 (1968); North v. Evans, 1 Cal. App.2d 64, 36 P.2d 133 (1934); Haw Mill & Plantation Co. v. Leland, 56 Cal. App. 224, 205 P. 485 (1922); 5 B. Witkin, California Procedure Enforcement of Judgment §§ 21-24, at 3402-3405 (2d ed. 1971). See Estate of Lawrence, 267 Cal. App.2d 77, 72 Cal. Rptr. 851 (1968) (spendthrift trust). See also Sections 703.130 (property subject to enforcement by writ of execution), 704.110-704. (wage garnishment), 705.110-705.720 (special enforcement procedures).

Subdivision (b) continues various provisions of former law. See the last portion of subdivision 1 of former Section 682 (real property

subject to judgment lien); Riley v. Nance, 97 Cal. 203, 31 P. 1126 (1893) (property subject to attachment lien when owned by eventual judgment debtor); Puissegur v. Yarbrough, 29 Cal.2d 409, 412-413, 175 P.2d 830, \_\_\_-\_\_\_ (1946) (property subject to execution lien when owned by judgment debtor); Nordstrom v. Corona City Water Co., 155 Cal. 206, 212-213, 100 P. 242, \_\_\_-\_\_\_ (1909) (judgment in supplementary proceedings or creditor's suit relates back to time of garnishment of debt by service of writ of execution); Canfield v. Security-First National Bank, 13 Cal.2d 1, 29-30, 87 P.2d 830, \_\_\_-\_\_\_ (1939) (creditor's suit creates equitable lien on property sought to be reached from time of service of process). Subdivision (b) does not refer to the enforcement by foreclosure of liens securing loans or liens such as mechanic's liens. See Sections 707.120(b), 707.320; Civil Code § 1241.

100/916

§ 707.120. Exemptions from other process

707.120. (a) Except as otherwise provided by statute, property that is exempt pursuant to this chapter is exempt from all procedures for the enforcement of a judgment for the payment of money.

(b) The exemptions provided by this chapter do not apply where the judgment to be enforced is for the purchase price of the property or upon a judgment of foreclosure of a mortgage or other lien on the property.

Comment. Subdivision (a) of Section 707.120 makes clear that the provisions of Article 3 (commencing with Section 707.310) and Article 4 (commencing with Section 707.710) exempt property from any process for the collection of debts whatsoever unless a statute otherwise provides. See also Section 487.020 (execution exemptions incorporated by Attachment Law).

Subdivision (b) of Section 707.120 provides an exception to this general principle where a writ of execution or other enforcement process is issued on a judgment recovered for the purchase price of the property which would otherwise be exempt. Subdivision (b) also makes clear that the exemptions provided by this chapter do not apply where the judgment

is one foreclosing a mortgage or other lien on the property. Subdivision (b) is the same in substance as former Section 690.52. See also Section 707.320 (specific exceptions to homestead exemption); Civil Code § 1241 (specific exceptions to declared homestead exemption).

100/915

§ 707.130. Exemptions cumulative

707.130. Except as otherwise provided by statute, the exemptions provided by this chapter are cumulative.

Comment. Section 707.130 makes clear that the judgment debtor is entitled to claim as many exemptions for his property as the law permits. Hence, for example, if a motor vehicle which the judgment debtor uses in a trade meets the criteria of the exemption provided in Section 707.350, the judgment debtor may obtain an exemption under that section and apply the entire \$2,500 exemption of Section 707.730 to tools.

100/918

§ 707.140. Exemptions from tax liability

707.140. Where a warrant or notice of levy is issued by the State of California, or a department or agency thereof, pursuant to Section 1755 or 1785 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 26191, 30341, or 32365 of the Revenue and Taxation Code, for the collection of tax liability owed to the state, a department or agency thereof, the tax debtor is entitled to the exemptions provided in this chapter, and the provisions of this chapter are applicable to the assertion and determination thereof. The superior court of the county, or city and county, in which the property is located has jurisdiction to hear and determine the validity of the claim of exemption or the value of the property claimed exempt, whether or not the value of the property determines the right to exemption, in like manner as if the property were levied upon under writ of execution issued by such court.

Comment. Section 707.140 is the same in substance as former Section 690.51.

Article 2. Procedure for Claiming Exemptions

§ 707.210. Claim of exemption; notice of opposition; hearing

707.210. (a) Except as otherwise provided in Sections 707.320, 707.350, and 707.710, if any property described as "exempt" in Article 3 (commencing with Section 707.310) or Article 4 (commencing with Section 707.710) is levied upon or otherwise sought to be applied to the satisfaction of a judgment for the payment of money, the judgment debtor may claim an exemption therefor as provided in this section.

(b) The judgment debtor shall, within 10 days from the date of levy or service of other process, file with the levying officer a claim of exemption executed under oath by the judgment debtor or the agent of the judgment debtor, together with a copy thereof, which contains all of the following:

- (1) A description of the property which is claimed to be exempt.
- (2) A citation of the section in this chapter or other law upon which the claim is based.
- (3) A statement of the facts necessary to support the claim.
- (4) Points and authorities supporting any legal issues raised.
- (5) An address within this state where service by mail may be made upon the judgment debtor of the notice of opposition to the claim of exemption.

(c) Upon the filing of the claim of exemption, the levying officer shall promptly send to the judgment creditor at the address stated in the application for the writ or in other process, by first-class mail, postage prepaid, both of the following:

- (1) A copy of the claim of exemption.
- (2) A notice of claim of exemption which states that the claim of exemption has been filed and that the levying officer will release the property unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption.

(d) A judgment creditor who desires to contest the claim of exemption shall, within 10 days after the date of the mailing of the notice

of claim of exemption, file with the levying officer a notice of opposition to the claim of exemption. The notice of opposition shall be executed under oath and shall include all of the following:

- (1) The name and address of the judgment creditor.
- (2) The date of mailing of the notice of claim of exemption.
- (3) An allegation that the property is not exempt within the meaning of the section of this chapter or other law relied upon or that the value of the property claimed to be exempt is in excess of the value stated in the applicable section.
- (4) The factual and legal grounds for the judgment creditor's opposition to the claim of exemption.

(e) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period, the judgment creditor is entitled to a hearing on the claim of exemption. If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion shall be held not later than 15 days from the date the notice of motion was filed unless continued by the court for good cause. Not less than five days prior to the hearing, the judgment creditor shall give written notice of the hearing to the levying officer and shall serve on the judgment debtor a notice of the hearing and a copy of the notice of the opposition to the claim of exemption. Service of the notice of the hearing and the copy of the notice of opposition to the claim of exemption on the judgment debtor shall be by first-class mail, postage prepaid, sent to the address of the judgment debtor stated in the claim of exemption, and is deemed made when deposited in the mail. The judgment creditor shall file proof of service on the judgment debtor of the notice of the hearing and the copy of the notice of opposition to the claim of exemption. After receiving the notice of the hearing and before the date set for the hearing, the levying officer shall file the claim of exemption and the notice of opposition to the claim of exemption with the court.

(f) If the levying officer does not receive a notice of opposition to the claim of exemption within the 10-day period after the date of mailing of the notice of claim of exemption and a notice of the hearing not later than 10 days after the filing of the notice of opposition to the claim of exemption, the levying officer shall immediately release the lien on and custody of the property.

(g) The claim of exemption and notice of opposition to the claim of exemption filed by the levying officer with the court constitute the pleadings, subject to the power of the court to permit amendments in the interests of justice. The judgment debtor's claim of exemption shall be deemed controverted by the judgment creditor's notice of opposition to the claim of exemption.

(h) At any hearing under this section, the judgment debtor has the burden of proof.

(i) When the hearing is before the court sitting without a jury and no evidence other than the claim of exemption and the notice of opposition to the claim of exemption is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(j) At the conclusion of the hearing, the court by order determine whether or not the property is exempt, in whole or in part. The order is determinative of the right of the judgment creditor to have the property levied upon by the levying officer or otherwise to subject the property to the satisfaction of the judgment. In the order, the court shall provide for the disposition of the property or the proceeds thereof. No findings are required in a proceeding under this section.

(k) A copy of any order entered in the court shall be immediately transmitted by the clerk to the levying officer in order to permit the levying officer to either release the property or to continue the levy in order to apply the property to the satisfaction of the judgment. Unless an appeal from the order is waived or the order has otherwise become final, the levying officer shall maintain the levy until the order becomes final.

(l) An appeal lies from any order under this section. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had.

(m) Nothing in this section shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action.

Comment. Section 707.210 generally continues the substance of former Section 690.50. Section 707.210, however, does not provide that the judgment debtor may seek a hearing as was provided in subdivision (e) of former Section 690.50. If the judgment creditor fails to oppose the claim of exemption and file a motion for a hearing, within the time provided, the judgment debtor prevails on the exemptions claimed without any need for a hearing. Section 707.230 makes clear that the exemption obtained by default is as valid as an exemption determined at a hearing. See also Sections 704.\_\_\_\_ (judgment debtor's claim of exemption under earnings withholding order), 707.250 (opposition to selection of exemption). Note that the normal 10-day period within which exemptions must be claimed does not apply to homestead exemptions claimed pursuant to Section 707.320. The form of the documents described in this section is prescribed by the Judicial Council. Section 702.300(b). The provisions of Section 1013 pertaining to extension of time where notice is served by mail do not apply to service under this section.

100/909

§ 707.220. Maintenance of levy, orders, during pendency of proceedings.

707.220. (a) The levying officer shall maintain the levy on all property levied upon pending the final determination of the claim of exemption. The property shall not be sold prior to such final determination except pursuant to an order of the court hearing the claim of exemption.

(b) At any time while the proceedings are pending, upon motion of the judgment creditor or the judgment debtor or upon its own motion, the court may (1) order the sale of any perishable property held by the

levying officer and direct the disposition of the proceeds of the sale and (2) make such other orders as may be proper under the particular circumstances of the case.

(c) An order made under subdivision (b) may be modified or vacated by the court that granted it or by the court in which the proceedings are pending at any time during the pendency of the proceedings upon such terms as may be just.

Comment. Subdivision (a) of Section 707.220 is substantively similar to former Section 690.50(h); however, this subdivision uses the term "maintain the levy" in place of the provision of former law that the levying officer "retain physical possession of the property . . . capable of physical possession" and that the levy on "property not capable of physical possession . . . remain in full force and effect." This usage reflects a change in levy procedures from former law. See Section 703.310. Subdivision (a) of Section 707.220, as did former Section 690.50(h), simply requires the levying officer to preserve the status quo by maintaining the levy in whatever form it takes.

Subdivisions (b) and (c) continue the substance of subdivision (g) of former Section 690.50.

100/913

§ 707.230. Prohibition against levy on property determined to be exempt

707.230. If property is determined to be exempt pursuant to Section 707.210 or if the judgment creditor fails to oppose a claim of exemption within the time allowed by Section 707.210 or oppose a selection within the time allowed in Section 707.250, the exempt property may not be levied upon or sought to be applied to the satisfaction of the judgment in any other manner unless the judgment creditor shows, upon noticed motion, that a change in circumstances occurring after the property was determined to be exempt or after the time for opposing a claim of exemption or opposing a selection has expired makes the exemption invalid, in whole or in part.

Comment. Section 707.230 is new. This section makes clear that the judgment creditor may subject property to the satisfaction of the judgment where it has been determined to be exempt in a hearing on a

claim of exemption, where the judgment creditor has not filed a notice of opposition to a claim of exemption within the time provided, or where the judgment creditor has not opposed a judgment debtor's selection of exempt property under Article 4 (commencing with Section 707.710) within the time provided. Section 707.230 prohibits the application of such property only to the enforcement of the same judgment. However, the judgment creditor may again levy upon or otherwise seek to reach the property if the judgment creditor shows that a change in circumstances makes the property nonexempt.

100/905

§ 707.240. Property exempt without making a claim; claim of exemption

707.240. If property described in Article 3 (commencing with Section 707.310) as "exempt without a claim" is levied upon, the judgment debtor may obtain its release from levy or enforcement of other process for the satisfaction of a judgment for the payment of money by following the procedure provided by Section 707.210 except that the procedure may be initiated at any time [prior to sale or other disposition of the property].

Comment. Section 707.240 provides that the procedure for claiming exemptions provided by Section 707.210 applies as well where the judgment creditor levies upon property which by statute is specifically stated to be "exempt without making a claim." Levy on such property should occur only rarely, if ever. Note that the 10-day period within which a claim of exemption under Section 707.210 normally must be made is not applicable to claims under Section 707.240.

Note. Should the sale or other disposition of the property be invalid? Should the judgment creditor be made strictly liable for levying on property that is exempt without a claim of exemption?

100/906

§ 707.250. Opposition to selection of exemptions

707.250. (a) The judgment creditor may oppose the selection or the valuation of the property selected by the judgment debtor pursuant to Article 4 (commencing with Section 707.710) as provided in this section.

(b) The judgment creditor shall file notice of opposition to the selection and a notice of motion for an order determining the validity of the selection with the court within 10 days from the date the levying officer mails notice of the selection to the judgment creditor.

(c) The notice provided of opposition to the selection shall be executed under oath and shall include all of the following:

(1) The name and address of the judgment debtor.

(2) The date of mailing of the levying officer's notice of selection.

(3) A description of the property selected by the judgment debtor pursuant to Article 4 (commencing with Section 707.710) which is claimed not to be exempt.

(4) A citation of the section in Article 4 (commencing with Section 707.710) which supports the judgment creditor's claim that the property is not exempt.

(5) A statement of facts necessary to support the claim.

(6) Points and authorities supporting any legal issues raised.

(7) An address within this state where service by mail may be made upon the judgment creditor of the judgment debtor's claim of exemption.

(d) If the notice of opposition and notice of motion are filed as provided in subdivision (b), the hearing on the motion shall be held not later than 15 days from the date the motion was filed unless continued by the court for good cause. The judgment creditor shall give not less than five days' written notice of the hearing to the judgment debtor and shall serve upon the judgment debtor a copy of the notice of opposition to the selection.

(e) A judgment debtor who desires to uphold the selection shall, not less than two days before the hearing, file and serve on the judgment creditor a claim of exemption in the form provided by paragraphs (1) to (4) of subdivision (b) of Section 707.210. Service of the claim of exemption shall be by first-class mail, postage prepaid, sent to the address of the judgment creditor stated in the notice of opposition to the selection.

(f) The notice of opposition to the selection and the claim of exemption supporting the selection constitute the pleadings, subject to the power of the court to permit amendments in the interests of justice. The judgment creditor's notice of opposition to the selection shall be deemed controverted by the judgment debtor's claim of exemption supporting the selection.

(g) At any hearing under this section, the judgment creditor has the burden of proof.

(h) When the hearing is before the court sitting without a jury and no evidence other than the notice of opposition to the selection and the claim of exemption is offered, the court, if satisfied that sufficient facts are shown thereby, may make its determination thereon. Otherwise, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(i) At the conclusion of the hearing, the court by order determines whether or not the property is exempt, in whole or in part. The order is determinative of the right of the judgment creditor to have the property levied upon by the levying officer or otherwise to subject the property to the satisfaction of the judgment. In the order, the court shall provide for the disposition of the property or the proceeds thereof. No findings are required in a proceeding under this section.

(j) An appeal lies from any order under this section. Such appeal shall be taken in the manner provided for appeals in the court in which the proceeding is had.

(k) Nothing in this section shall be construed to deprive anyone of the right to a jury trial in any case where, by the Constitution, such right is given, but a jury trial may be waived in any such case in like manner as in the trial of an action.

Comment. Section 707.250 is new. It provides a procedure whereby the judgment creditor may challenge the validity of exemptions provided in Article 4 (commencing with Section 707.710) which allows the judgment debtor to select property of a certain type up to a maximum value--e.g., household goods (Section 707.720) and tools (Section 707.730). If the judgment debtor selects property under the provisions of Section 707.710, then the judgment creditor may oppose the selection as provided in this

section. However, if the property described in Article 4 (commencing with Section 707.710) is levied upon--whether the judgment debtor was not present when levy occurred or did not wish to exercise the right of selection--the exemption procedure provided by Section 707.210 is followed. The judgment creditor may use the procedure of Section 707.250 to contest either the validity of including certain property in the categories provided in Article 4 or to contest the value assigned to property selected. Note that the judgment creditor has the burden of proof under this procedure whereas, under Section 707.210, the judgment debtor has the burden of proof.

Note. If this procedure is approved, should we provide for a temporary restraining order pending the outcome of a hearing under this section?

Article 3. Exemptions§ 707.310. Claimed and unclaimed exemptions

707.310. (a) Where property is described in this article as "exempt," a claim of exemption shall be made pursuant to Section 707.210.

(b) Where property is described in this article as "exempt without making a claim," no claim of exemption need be made except as otherwise provided by Section 707.240.

Comment. Section 707.310 is similar in effect to subdivisions (a) and (b) of former Section 690. It explains the usage of the terms "exempt" and "exempt without making a claim" as used in this article.

15/799

§ 707.320. Dwelling; proceeds of sale

707.320. (a) As used in this section, "dwelling" means a dwelling house, together with the outbuildings and the land on which the same are situated, a housetrailer, a mobilehome, or a vessel in which the judgment debtor or the family of the judgment debtor actually resides.

(b) A dwelling is exempt to the same extent and in the same amount, [except as otherwise provided in this section,] as the judgment debtor or the spouse of the judgment debtor would be entitled to select a homestead pursuant to Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code. Notwithstanding Section 707.210, the exemption provided by this section shall be determined as provided in Section 703.\_\_\_\_ (procedure for issuance of writ of execution against dwelling).

(c) The exemption provided in subdivision (a) does not apply:

(1) Where the judgment debtor or the spouse of the judgment debtor has an existing declared homestead on any property in this state. The existence of a homestead declared by the judgment debtor or the spouse of the judgment debtor under Section 1300 of the Civil Code does not affect the right of the other spouse to an exemption under this section.

(2) Where a judgment or abstract thereof or any other obligation which by statute is given the force and effect of a judgment lien has been recorded prior to either (i) the acquisition of the property by the judgment debtor or the spouse of the judgment debtor, or (ii) the commencement of residence by the judgment debtor or the spouse of the judgment debtor, whichever last occurs.

(3) Where the writ or other process sought to be enforced against the dwelling is in satisfaction of a judgment obtained on a debt secured by any of the following:

(i) A mechanics', contractors', subcontractors', artisans', architects', builders', laborers' of every class, materialmen's, or vendors' lien upon the dwelling.

(ii) An encumbrance on the dwelling executed and acknowledged by husband and wife, by a claimant of a married person's separate homestead, or by an unmarried claimant.

(iii) An encumbrance on the dwelling executed and recorded prior to or in connection with the acquisition of the property by the judgment debtor or the spouse of the judgment debtor.

(d) The proceeds from a sale of the dwelling that represent the amount of the exemption provided by this section is exempt for a period of [180 days] [six months] from the date the judgment debtor receives the proceeds. Where exempt proceeds are used for the purchase of a dwelling within a period of [180 days] [six months] following receipt of the proceeds, such dwelling is exempt as provided in subdivision (b) and also against a lien described in paragraph (2) of subdivision (c). The exemption for the dwelling acquired with exempt proceeds has the same effect as if allowed on the date of the acquisition of or the commencement of residence by the judgment debtor or the spouse of the judgment debtor, whichever last occurred, in the property previously determined to be exempt except with respect to a judgment or other obligation which by statute is given the force and effect of a judgment lien against the property acquired with exempt proceeds prior to its acquisition.

Comment. Section 707.320 supersedes former Sections 690.3 (exemption of housetrailer, mobilehome, or waterborne vessel used as dwelling) and 690.31 (exemption of dwelling house). Subdivision (a) is derived

from subdivision (a) of former Section 690.3 and subdivision (a) of former Section 690.31. Subdivision (b) continues the substance of a portion of subdivision (a) of former Section 690.31 and paragraphs (1), (2), and (3) of former Section 690.3. Note that the exemption procedures provided by Article 2 (commencing with Section 707.210) do not apply to the exemption provided by this section. Section 703.\_\_\_\_ requires a hearing before a writ may be levied upon a dwelling. Subdivision (c) continues the substance of subdivision (b) of former Section 690.3 and paragraph (1) of subdivision (b) of former Section 690.31. Subdivision (d) continues the substance of subdivision (k) of former Section 690.31 and makes it applicable to all dwellings for which an exemption may be claimed under this section. Former law made no provision for exempting the proceeds from the sale of a housetrailer, mobile-home, or vessel. See former Section 690.3. See also Sections 701.\_\_\_\_ ("vessel" defined), 703.\_\_\_\_ (manner of issuance of writ of execution against dwelling), 703.\_\_\_\_ (manner of levy of writ of execution on dwelling), 703.640 (disposition of proceeds of sale).

Note. Several problems concerning this section are discussed in Memorandum 77-2. The following portions of Section 690.31 should be added to provisions concerning the manner of issuance of a writ of execution (see Section 703.110):

(c) Whenever a judgment creditor seeks to enforce a judgment against a dwelling house, the judgment creditor shall apply to the court in the county in which the dwelling house is located for the issuance of a writ of execution. The application shall be verified and describe the dwelling house and state that either or both of the following facts exist:

(1) The dwelling house is not exempt, the reasons therefor, and (i) that a reasonable search of the records of the office of the county recorder has not resulted in the finding of a declared homestead of the debtor or the spouse of the debtor on the subject dwelling house, and further, that a reasonable search of the records of the county tax assessor indicates that there is no current homeowner's exemption claimed by either the debtor or the spouse of the debtor on the subject dwelling house, or (ii) that the records of the county tax assessor indicate that there is a current homeowner's exemption claimed by either the debtor or the spouse of the debtor on the subject dwelling house but the judgment creditor believes for reasons which shall be stated in the application that the debtor or the spouse of the debtor is not entitled to the exemption provided in this section.

(2) The current value of the dwelling house, over and above all liens and encumbrances thereon, exceeds the amount of the allowable exemption.

If an application alleges facts solely pursuant to paragraph (2) or the court determines that a writ may issue only under the circumstances described in paragraph (2), and the court in which the proceeding is pending is a municipal or justice court, the court shall transfer further proceedings to the superior court. There shall be no filing fee imposed in the superior court upon such a transfer.

(d) Upon receipt of a complete application of a judgment creditor, the court shall set a time and place for hearing and order the debtor to show cause why a writ of execution should not issue. Prior to the hearing, a copy of the order to show cause, a copy of the application filed by the judgment creditor and a copy of the following notice, in at least 10-point bold type, shall be served as prescribed for the giving of notice of sale of real property in Section 692:

**"IMPORTANT NOTICE TO HOMEOWNER AND  
RESIDENT**

1. Your house is in danger of being sold to satisfy a judgment obtained in court. You may be able to protect the house and real property describe in the accompanying application from execution and forced sale if you or your family now actually reside on the property and presently do not have a declared homestead on any other property in the State of California. **YOU OR YOUR SPOUSE MUST COME TO THE HEARING TO SHOW THESE FACTS.**

2. If you or your spouse want to contest the forced sale of this property, you or your spouse must appear at \_\_\_\_\_ on \_\_\_\_\_  
(location set forth in OSC) (date and time)  
and be prepared to answer questions concerning the statements made in the attached application. **THE ONLY PURPOSE OF THE HEARING WILL BE TO DETERMINE WHETHER THE PROPERTY CAN BE SOLD, NOT WHETHER YOU OWE THE MONEY.**

**3. FOR YOUR OWN PROTECTION, YOU SHOULD PROMPTLY SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER."**

(e) The burden of proof at the hearing shall be determined in the following manner:

(1) Where the application of the judgment creditor states a claim of non-exempt status, the debtor or the spouse of the debtor shall have the burden of proving his or her entitlement to the exemption; and

(2) Where the application of the judgment creditor asserts that the current value of the dwelling, over and above all liens and encumbrances thereon, exceeds the amount of the allowable exemption, the judgment creditor shall have the burden of proof on that issue.

(f) Upon a determination by the court that the dwelling house is not exempt or that, although exempt, the judgment creditor is entitled to levy against any excess, it shall make an order directing the issuance of a writ of execution. The order shall state whether or not the dwelling house is exempt and, if not exempt, state that the judgment creditor is entitled only to execution against the excess over the exempt amount. It shall also specify the amount of the exemption.

The following portions of Section 690.31 should be added to the provisions concerning levy of a writ of execution (following Section 703.310):

(g) Any such writ of execution issued upon a hearing at which the debtor, the spouse of the debtor, or his or her attorney did not appear shall be served in the manner prescribed for the giving of notice of sale of real property in Section 692 and be accompanied by the following notice in at least 10-point bold type:

**"IMPORTANT NOTICE TO HOMEOWNER AND  
RESIDENT**

1. You were recently served with a court order requiring your presence at a hearing to determine why the court should not issue a writ of execution for the forced sale of your home. **YOU AND YOUR SPOUSE FAILED TO APPEAR AT THE HEARING AND THE COURT HAS ORDERED THAT YOUR HOME BE SOLD TO SATISFY A JUDGMENT AGAINST YOU."**

2. Your absence at the hearing has contributed to the issuance of the accompanying writ of execution. If the absence of you or your attorney at the hearing was legally excusable and you believe in good faith that your home may be entitled to an exemption from execution, you should complete the form below and date, sign, and return the form below no later than \_\_\_\_\_, (Insert date no later than five days prior to date of sale.)

3. **FOR YOUR OWN PROTECTION, YOU SHOULD IMMEDIATELY SEEK THE ADVICE OF AN ATTORNEY.**

.....(Cut Out and Return This Form to).....

\_\_\_\_\_ (Name and Title of Levying Officer)

\_\_\_\_\_ (Street Address and City)

\_\_\_\_\_ (Area Code and Telephone Number of Levying Officer)

I declare that my absence from the previous hearing on whether or not this property should be sold was legally excusable. I, or my spouse, currently reside in this property and I wish a further hearing so that I may assert my exemption rights under Code of Civil Procedure Section 690.31 and contest the sale of my home. I understand that the clerk of the court will notify me of the date and place for this hearing if I return this form immediately and that I must attend this hearing.

I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_ at \_\_\_\_\_, California.

\_\_\_\_\_  
Signature of Debtor or Debtor's Spouse

\* \* \* \* \*

(i) Subsequent applications by a judgment creditor within 12 months of a denial of a writ of execution shall be supported by a statement under oath alleging that there is a material change of circumstances affecting the exemption, and setting forth facts supporting such claimed material change of circumstances.

**Subdivision (h) of Section 690.31 should probably be continued in the sale provisions (following Section 703.510):**

(h) If the debtor or spouse of the debtor declares that his or her absence or the absence of his or her attorney at the hearing was due to mistake, inadvertence, surprise or excusable neglect and declares that the subject dwelling house may be entitled to an exempt status, the levying officer shall, upon receipt of the declarations of the debtor five days prior to the scheduled sale date, cancel the sale pending further orders of the court and transmit the notice forthwith to the court. Upon receipt of the notice, the clerk shall set a hearing to determine whether the writ of execution should be recalled, and shall give at least 10 days notice to the parties.

The term "housetrailer" is apparently nowhere defined; "mobilehome" is defined in Civil Code Section 1797.1 and Health and Safety Code Sections 18008, 18817, and 18211. Since these sections define the term differently, the staff thinks that it is best not to refer to any particular definition. The cases do not indicate that there has been any difficulty arising from the lack of definition of these terms; they seem to be general enough and commonly understood to achieve their purpose. The terms of the Vehicle Code could be used in place of "housetrailer" and "mobilehome"; but then we would have to use terms such as "house car," "trailer coach," and "camp trailer" which seem somewhat artificial.

We have replaced the terms "houseboat, boat, or other waterborne vessel" with "vessel" which is to be defined to incorporate the following definition from Section 9840 of the Vehicle Code:

(a) "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except the following:

(1) A seaplane on the water.

(2) A watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to or guided on such permanently fixed course by means of a mechanical device on a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled, or by means of a mechanical device attached to the watercraft itself.

27/824

§ 707.330. Unpaid earnings

707.330. Earnings payable by an employer to an employee for personal services are exempt as provided in Article 3 (commencing with Section 704. ) of Chapter 4.

Comment. Section 707.330 refers to the portion of Chapter 4 (commencing with Section 704.110) that provides the exemptions applicable to wage garnishment.

§ 707.340. Deposit accounts in banks, savings and loan associations, and credit unions

707.340. Except as otherwise provided in Section 707.345, any combination of deposit accounts in banks, savings and loan associations, and credit unions is exempt without making a claim to the maximum aggregate value of [two] thousand dollars (\$[2],000) per person, whether the character of such property is separate or community.

Comment. Section 707.340 combines the substance of former Section 690.7 (\$1,000 of savings deposits in, shares or other accounts in, or shares of stock of, savings and loan associations) and former Financial Code Section 15406 (\$1,500 of shares or certificates in credit unions) and extends the exemption to bank accounts. See Section 701.\_\_\_\_ ("deposit account" defined). Under Section 707.340, \$2,000 is exempt without making a claim pursuant to Section 707.210 regardless of whether the account or share is in a bank, savings and loan association, or credit union, or any combination thereof. See also Sections 703.[350] (order permitting levy on deposit accounts in amounts less than \$2,000), 703.[360] (levy on account into which social security payments are directly paid), 707.345 (exemption of deposit account into which social security payments deposited), 707.490 (funds of prisoner).

Note. The \$2,000 limit is arbitrary. As the Comment indicates, under current law, a wise debtor with accounts properly located may exempt \$2,500 whereas a debtor with only a bank or savings and loan account can exempt only \$1,000.

12/824

§ 707.345. Deposit account in which social security payments are directly deposited

707.345. (a) For the purposes of this section, "payments authorized by the Social Security Administration" means regular retirement and survivors' benefits, supplemental security income benefits, coal miners' health benefits, and disability insurance benefits.

(b) A deposit account in which payments authorized by the Social Security Administration are directly deposited by the United States government [pursuant to Public Law No. 92-366 (86 Stat. 506 (1972))] and

any regulations promulgated thereunder] is exempt without making a claim to the maximum value of five hundred dollars (\$500) where one depositor is the designated payee of the directly deposited payments or seven hundred fifty dollars (\$750) where two or more depositors are the designated payees of the directly deposited payments unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors in which case the exemption is in the amount of five hundred dollars (\$500).

(c) A deposit account of an amount in excess of the amount exempt pursuant to subdivision (a) is exempt to the extent that such account consists of payments authorized by the Social Security Administration as provided in subdivision (a) or of other exempt amounts. The financial institution shall either place the amount in excess of the amount exempt under subdivision (b) in a suspense account or otherwise prohibit withdrawal of such excess amount pending notification of the judicial determination of the exempt status of such excess amount and shall notify the levying officer in writing of the nature and balance of the deposit account of the judgment debtor within 10 business days after the levy. Promptly upon receipt of the notice, the levying officer shall notify the judgment creditor of the nature and balance of the deposit account.

(d) Notwithstanding Section 707.210, the exemption of such excess amount shall be determined as follows:

(1) A judgment creditor who desires to claim that such excess amount is not exempt shall deliver an affidavit [or declaration] alleging that the excess amount is not exempt to the levying officer within five days after the levying officer notifies the judgment creditor of the nature and balance of the deposit account. The affidavit shall be in the form of the notice of opposition provided by subdivision (d) of Section 707.210, and a hearing shall be set and held, and notice given, as provided by subdivision (e) of Section 707.210. The judgment debtor shall file a counteraffidavit supporting the exemption not later than five days before the date set for the hearing and mail a copy to the judgment creditor and to the levying officer. For the purpose of this paragraph, the "notice of opposition to the claim of exemption" in subdivision (e) of Section 707.210 means the affidavit under this paragraph.

(2) If the judgment creditor does not deliver the affidavit to the levying officer and give notice to the judgment debtor within the time provided, the levy shall be released and no hearing shall be held. If the judgment debtor does not file the counteraffidavit and mail a copy to the judgment creditor within the time provided, the excess amount of the deposit account remains subject to the levy and shall be applied to the satisfaction of the judgment and no hearing shall be held.

(3) The affidavit and counteraffidavit shall be filed by the levying officer with the court before the date set for the hearing and constitute the pleadings, subject to the power of the court to permit amendments in the interests of justice.

(4) At a hearing under this subdivision, the judgment debtor has the burden of proof.

(5) At the conclusion of the hearing, the court by order shall determine whether or not the excess amount of the deposit account is exempt, in whole or in part. The order is determinative of the right of the judgment creditor to have the property levied upon by the levying officer or otherwise to apply the excess amount to the satisfaction of the judgment. In the order, the court shall provide for the disposition of the excess amount. No findings are required in a proceeding under this subdivision.

(6) If the court determines that all or part of the excess amount is exempt, a certified copy of the order shall be transmitted forthwith by the clerk to the financial institution in order to permit the financial institution to comply with the order. The order shall be complied with within three business days of its receipt.

Comment. Section 703.345 supersedes former Section 690.30. Subdivision (a) continues subdivision (c) of former Section 690.30. Subdivision (b) continues the substance of the first paragraph and subdivision (a) of former Section 690.30. Subdivision (c) continues the substance of the introductory paragraph and paragraph (1) of subdivision (b) of former Section 690.30. The last sentence of subdivision (c) makes explicit what was implicit in a portion of paragraph (2) of subdivision (b) of former Section 690.30. Subdivision (d) supersedes

paragraphs (2), (3), and (4) of subdivision (b) of former Section 690.30. However, subdivision (d) clarifies the procedure applicable to claiming exemptions for excess amounts in deposit accounts described in this section and the relation between this procedure and the procedure provided by Section 707.210 (which supersedes former Section 690.50, incorporated by reference in former Section 690.30). Paragraph (1) of subdivision (d) requires the judgment debtor to file a counteraffidavit. Former Section 690.30 was silent on this matter but seemed to require some showing by the judgment debtor since the last sentence of paragraph (2) of subdivision (b) of former Section 690.30 placed the burden of showing the excess amount to be exempt on the judgment debtor. The second sentence of paragraph (2) of subdivision (d) of this section provides that a hearing is not held if the judgment debtor does not comply with paragraph (1) of that subdivision by filing the counteraffidavit within the time provided and sending a copy to the judgment creditor and the levying officer. This provision assures that a hearing will not be held where the judgment debtor is prepared to concede that the excess amount is not exempt. Paragraph (5) of subdivision (d) of this section supersedes paragraph (3) of subdivision (b) of former Section 690.30. The provision for an order determining priority or dividing the property between several several creditors is not continued. Paragraph (4) of subdivision (b) of former Section 690.30 is continued in paragraph (6) of subdivision (d) of this section. Where a deposit account is not one described by subdivision (b), the procedures provided in Section 707.210 apply to the determination of the exemption provided for deposit accounts generally in Section 707.340. Note that, where an account described in subdivision (b) exceeds the amount thereunder exempt, the exemption provided by subdivision (c) is determined pursuant to subdivision (d), not by Section 707.210. See subdivision (d), providing an exception to Section 707.210 (determination of exemption where property described as "exempt"). See also Section 701. ( "deposit account" defined).

Note. The staff is bewildered by Section 690.30. It appears to be a reaction to Phillips v. Bartholomie, 46 Cal. App.3d 346, 121 Cal. Rptr. 56 (1975), which held that the judgment debtors were not entitled to a hearing before money from Social Security, AFDC, county welfare, and veteran's benefits in a bank account were levied upon. The staff is

unaware of any contrary holding by a federal court to the effect that Social Security benefits or other benefits exempt under federal law may be levied upon only after a court hearing.

The most puzzling aspect of the provision relates to the hearing on the exemption. The judgment creditor is required to deliver an affidavit or declaration within a certain time or the levy is released. The judgment debtor is specifically freed from the necessity of making a claim of exemption. Subdivision (b)(2) then merely incorporates the procedure of Section 690.50, which requires a claim of exemption from the judgment debtor and a counteraffidavit from the judgment creditor. We wonder how the judgment debtor who wants to claim the exemption is going to be able to meet the burden placed on him by the last sentence of subdivision (b)(2). The procedure might make sense if the burden were on the judgment creditor, but this alternative would make it very difficult for the judgment creditor to levy on such accounts since it is not easy for him to know the nature of the funds.

Section 690.30 also assumes that the judgment debtor wants to claim the excess amounts as exempt, whereas he may not be entitled to an exemption. The section seems to contemplate a hearing in any case where the judgment creditor timely delivers his affidavit. The section also places a heavy burden on the financial institutions to determine the nature of the account. The phrase "nature . . . of the account" in subdivision (b)(1) is also puzzling. It also appears in subdivision (b)(2) that the levying officer's notice to the judgment creditor is supposed to assert that "all or parts of the amounts being held by the financial institution . . . are nonexempt"--when in fact the entire amount may be exempt under subdivision (b) (draft Section 707.345(c)) or some other section (such as draft Section 707.340).

We have added some detail to this procedure; more may be needed. But we also wish to avoid putting procedural provisions pertaining to how the bank is to deal with the funds levied upon (see Section 690.30(b)(1), draft Section 707.345(c)) or how the exemption is to be determined (see Section 690.30(b)(2)-(4), draft Section 707.345(d)) in this article relating to the substance of the exemptions.

27/868

§ 707.350. Motor vehicle; proceeds of sale

707.350. (a) If no more than one motor vehicle which is safe, functional, and legally operable on the public roadway (or which can be made safe, functional, and legally operable on the public roadway with an expenditure which is reasonable in relation to its fair market value) is registered in the name of the judgment debtor, such motor vehicle with a value not exceeding five hundred dollars (\$500), over all liens and encumbrances on the motor vehicle at the time of levy, is exempt. The value of the motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers or,

if not listed in such guides, by the fair market value [for a motor vehicle of its year and model]. For the purpose of this subdivision, a motor vehicle registered to the spouse of the judgment debtor and which is community property shall be deemed to be owned by the judgment debtor if the judgment debtor and the judgment debtor's spouse reside together.

(b) If the motor vehicle is sold, the proceeds of sale, after satisfaction of all liens and encumbrances on the motor vehicle, are exempt in the amount of five hundred dollars (\$500) for a period of 90 days after sale.

Comment. Section 707.350 continues the substance of subdivisions (a) and (e) and portions of subdivisions (b) and (c) of former Section 690.2. See also Sections 703.5\_\_ (sale of motor vehicle), 703.6\_\_ (distribution of proceeds of sale of motor vehicle). It should be noted that this exemption protects only one motor vehicle where the judgment debtor has more than one motor vehicle.

Note. We propose to add the following portions of Section 690.2 (enacted in 1976) to the other provisions concerning sale and distribution of proceeds in Chapter 3:

(b) The levying officer shall consult the Department of Motor Vehicles and if the department's records show that another vehicle is registered in the name of the debtor, the levying officer shall distribute the proceeds of the sale in the following order of priority:

- (1) First, the seller, lienholder or encumbrancer shall recover pursuant to paragraph (1) of Section 689c.
- (2) Second, to the satisfaction of the judgment; and
- (3) Third, the balance, if any, to the debtor.

The levying officer shall notify the debtor if he intends to distribute under this subdivision and shall notify the debtor that the debtor may file a claim of exemption pursuant to Section 690.50 at any time prior to distribution of the proceeds of the sale. If he does not own another safe and functional motor vehicle which can legally be operated on the public roadway or a motor vehicle which can be made safe, functional, and legally operable on the public roadway, with an expenditure which is reasonable in relation to its fair market value, the claim of exemption shall be sustained.

Any motor vehicle registered to the spouse of the debtor and which is community property shall be deemed to be owned by the debtor when the debtor and the debtor's spouse reside together.

If the claim of exemption is sustained the proceeds shall be distributed as provided in subdivision (c).

(c) When the debtor has only one vehicle, the levying officer shall distribute the proceeds of any execution sale or from the undertaking, if necessary, without further order of the court, in the following order of priority:

- (1) First, the seller, lienholder or encumbrancer shall recover pursuant to paragraph (1) of Section 689c;
- (2) Second, the debtor shall recover five hundred dollars (\$500), the amount of the motor vehicle exemption;
- (3) Third, to the satisfaction of the judgment; and
- (4) Fourth, the balance, if any, to the debtor.

This distribution shall be made, whether or not the debtor has filed a claim of exemption and regardless of who purchases the motor vehicle.

(d) The levying officer shall not receive any bid at an execution sale under subdivision (c) unless it exceeds the total of:

- (1) The motor vehicle exemption;
- (2) The aggregate amount of all liens and encumbrances on the motor vehicle; and
- (3) The amount necessary to repay the judgment creditor for the fees and costs advanced to the levying officer.

In the event no bid is accepted the levying officer shall release the motor vehicle to the debtor within five days.

Apparently this section permits the judgment creditor to levy on the judgment debtor's stationwagon and leave him with a motorcycle for transportation. We can also envision difficulties in determining whether the vehicle is safe, functional, and legally operable or can be made so and also whether the debtor and his spouse reside together. The amount to be subtracted under subdivision (d)(3) is unclear. Should such costs be the portion of the costs attributable to the levy on and sale of the vehicle? Or should such costs bear the same proportion to the entire costs that the amount to be realized from the motor vehicle sale price bears to the total amount realized at the sale? There is no provision here detailing the exemption provided a motor vehicle purchased with exempt proceeds as there is in Section 690.31(k) pertaining to dwelling houses. However, the staff does not believe such a provision is needed here (or in the dwelling exemption for that matter).

27/870

§ 707.360. Works of art

707.360. Works of art of or by the judgment debtor or the immediate family of the judgment debtor are exempt except that, if the

judgment debtor or a member of the immediate family of the judgment debtor is engaged in selling works of art as an occupation, only works of art which portray the judgment debtor or a member of the immediate family of the judgment debtor are exempt.

Comment. The first portion of Section 707.360 continues the substance of the last sentence of former Section 690.1 except that Section 707.360 refers to the immediate family rather than the resident family of the judgment debtor. The last portion of Section 707.360 makes clear that, if the business of the judgment debtor or family member is the sale of his or her art work, the exemption applies only when the work of art portrays someone in the family. A work of art may also be exempt under Section 707.720 (household furnishings).

Note. The last portion of Section 707.360 is derived from a suggestion in Comment, California's New Household Goods Exemption and the Problem of Personal Accountability, 12 Santa Clara Lawyer, 155, 170-171 (1972).

405/332

§ 707.370. Prosthetic and orthopedic appliances

707.370. All prosthetic and orthopedic appliances personally used by the judgment debtor [or a member of the judgment debtor's family] are exempt without making a claim.

Comment. Section 707.370 is the same as former Section 690.5 except that under Section 707.370 no claim of exemption need be made [and the exemption covers such items used by members of the judgment debtor's family].

405/333

§ 707.380. Pews

707.380. Pews in churches or in meetinghouses used for religious purposes which are [owned, claimed, or] held by the judgment debtor in accordance with the rules and regulations of such churches and meetinghouses are exempt without making a claim.

Comment. Section 707.380 is the same in substance as former Section 690.25.

Note. The staff thinks that this exemption is archaic, but it has been retained at this point for purposes of discussion.

§ 707.390. Cemeteries, mausoleums, columbariums

707.390. (a) An interest of a judgment debtor in one of the following is exempt:

(1) A lot not exceeding one-quarter of an acre in size in a burial park and all appropriate improvements thereon including railings, fences, gravestones, and monuments.

(2) A mausoleum or one or more crypts in a mausoleum and the land upon which the mausoleum is situated not exceeding one-quarter of an acre in size.

(3) A columbarium or niches in a columbarium, urns, and the land upon which the mausoleum is situated not exceeding one-quarter of an acre in size.

(b) The parts of any public or private cemetery actually containing human remains and all appropriate improvements thereon including railings, fences, gravestones, monuments, mausoleums, and columbariums are exempt without making a claim.

(c) Where a religious or benevolent association or corporation is a judgment debtor, in addition to the exemption provided by subdivision (b), unused cemetery land not exceeding five acres in size is exempt.

(d) Except as provided in subdivision (c), land held for the purpose of sale or disposition as burial lots or otherwise is not exempt under subdivision (a) or (b).

(e) Money payable or to become payable as the purchase price or on account of the purchase price of unused cemetery lands, or lands from which all human remains have been removed, is exempt if used or held for use for the purposes described in Section 7925 of the Health and Safety Code.

(f) Property dedicated as a cemetery by a cemetery authority is exempt without making a claim on a debt due from an individual owner of an interment plot.

(g) For the purposes of this section, the definitions provided in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Health and Safety Code are applicable.

Comment. Section 707.390 is based on former Section 690.24 and has been phrased in terms of the definitions provided by Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Health and Safety Code. Any type of interest of the judgment debtor in such property is exempt, whether the interest is a joint tenancy, tenancy in common, membership in an association, or a share or membership in a corporation, except as provided in subdivision (d). Subdivision (a) makes clear that cemeteries composed of mausoleums and columbariums are exempt to the same extent as burial parks. Subdivision (b) is based on Peebler v. Danziger, 104 Cal. App.2d 491, 231 P.2d 895 (1951) (property occupied by graves of human beings cannot be sold under execution).

Note. It may not be worth discussing, but we wonder whether pet cemeteries are or should be exempt.

Relevant definitions from the Health and Safety Code include the following:

7003. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

(a) A burial park, for earth interments.

(b) A mausoleum, for crypt or vault interments.

(c) A crematory, or a crematory and columbarium, for cinerary interments.

7004. "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes.

7005. Except in Part 5 of Division VIII of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

7007. Except in Part 5 of Division VIII of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

7015. "Crypt" or "vault" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains.

7016. "Niche" means a space in a columbarium used, or intended to be used, for inurnment of cremated human remains.

7018. "Cemetery authority" includes cemetery association, corporation sole, or other person owning or controlling cemetery lands or property.

7022. "Lot," "plot," or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches.

405/336

§ 707.400. Vacation credits

707.400. Vacation credits accumulated by a state employee pursuant to Section 18050 of the Government Code or by any other public employee pursuant to any statute providing for the accumulation of vacation credits applicable to such employee are exempt without making a claim.

Comment. Section 707.400 continues the substance of a portion of former Section 690.18(b).

Note. Should this apply only to public employees?

405/337

§ 707.410. Escrow funds

707.410. Escrow funds and trust funds are exempt without making a claim where the judgment or claim is against an escrow agent or a trustee.

Comment. Section 707.410 is based on a provision formerly included in Financial Code Section 17410. Section 707.410 generalizes the exemption to cover all escrow or trust funds whereas the exemption formerly provided in Financial Code Section 17410 applied only to licensed escrow agents and not to banks, trust companies, building and loan or savings and loan associations, insurance companies, California attorneys not actively engaged in conducting an escrow agency, and persons engaged in title insurance or real estate business. See Fin. Code § 17006.

§ 707.420. Property held in trust for wages

707.420. Money and other property required to be held in trust by an employer for the payment of wages to employees are exempt without making a claim except where the money or other property is claimed by the employees of the employer.

Comment. Section 707.420 is based on portions of former Sections 270.5 (property held in trust by logging employer) and 270.6 (property held in trust by employer of door-to-door or telephone solicitors) of the Labor Code. Section 707.420 extends the exemption of former law to any situation where an employer is similarly required to hold property in trust for the payment of employees.

§ 707.430. Employee's bond

707.430. An employee's bond given pursuant to Article 2 (commencing with Section 400) of Chapter 3 of Part 1 of Division 2 of the Labor Code is exempt without making a claim except in an action between the employer and the employee or applicant, or their successors in interest or assignees.

Comment. Section 707.430 continues the substance of a provision formerly included in Labor Code Section 404.

§ 707.440. Hospital endowment funds

707.440. Property granted to a trustee to endow a hospital pursuant to Division 23.5 (commencing with Section 32500) of the Health and Safety Code is exempt without making a claim after the grant is filed pursuant to Section 32502 of the Health and Safety Code.

Comment. Section 707.440 continues the substance of former Section 690.20 and of a provision formerly included in Health and Safety Code Section 32508.

§ 707.450. Educational endowment funds

707.450. Property granted to a trustee for educational purposes pursuant to Article 1 (commencing with Section 21100) of Chapter 2 of Part 12 of Division 1 of Title 1 of the Education Code is exempt without making a claim if the action under which the writ is issued is not commenced within two years after the filing of the grant pursuant to Section 21114 of the Education Code. If the action is commenced within two years after the filing of the grant, such property is exempt without making a claim if there is other property of the grantor subject to enforcement of a judgment for the payment of money and sufficient to satisfy the judgment.

Comment. Section 707.450 is substantively the same as the first two sentences of former Section 690.28 and of former Education Code Section 21116. The last sentences of former Section 690.28 and of former Education Code Section 21116 providing that mechanics' and laborers' liens are not affected are superseded by Section 707.120(b).

Note. This section continues existing law, but the staff is puzzled concerning the omission of provisions similar to Education Code Section 21116 (See Exhibit 3) in a similar article (Educ. Code §§ 21140-21154). We also have second thoughts about including this type of provision here. It is really a statute of limitations. In view of the provisions of Education Code Section 21115 (see Exhibit 3), the first sentence of Section 21116 is unnecessary. The second sentence of Section 707.450 and Education Code Section 21116 provide for the priority of applying property to the satisfaction of the judgment and is not really an exemption provision at all.

§ 707.460. Merchandise on vessel

707.460. In proceedings pursuant to Article 3 (commencing with Section 490) of Chapter 2 of Division 3 of the Harbors and Navigation Code, merchandise on board a vessel and trunks and other property of passengers and of persons employed on board a vessel are exempt without making a claim.

Comment. Section 707.460 is based on a portion of Harbors and Navigation Code Section 495.4.

§ 707.470. Property of state

707.470. Real and personal property of the state is exempt without making a claim.

Comment. Section 707.470 codifies the prior rule. E.g., Westinghouse Electric & Manufacturing Co. v. Chambers, 169 Cal. 131, 135, 145 P. 1025, \_\_\_\_ (1915); Meyer v. State Land Settlement Board, 104 Cal. App. 577, 584-586, 286 P. 743, \_\_\_\_-\_\_\_\_ (1930). A money judgment against the state is enforceable by a writ of mandate. Section 1085; Meyer v. State Land Settlement Board, *supra*. See Westinghouse Electric Co. v. Chambers, *supra*.

405/344

§ 707.480. Property of local public entity

707.480. (a) Real and personal property of a local public entity acquired for, held for, or devoted to a public use is exempt.

(b) Real and personal property of a local public entity is exempt without making a claim from enforcement of a tort judgment or inverse condemnation judgment.

Comment. Subdivision (a) of Section 707.480 provides a general exemption for all property of a local public entity which is acquired for, held for, or devoted to a public use. Subdivision (a) is derived from former Section 690.22 but, unlike the former section, does not list specific examples of exempt property such as courthouses, jails, fire stations, public office buildings, armories, cemeteries, parks, furniture, books, papers, automotive and truck equipment, and the like. However, all such real or personal property is exempt under Section 707.480 if it is devoted to a public use. Section 707.480 also supersedes former Sections 690.26 and 690.29, Health and Safety Code Sections 33124 and 34217, and Water Code Section 8537. Public cemeteries or part thereof are also exempt under Section 707.390. Note that, under Section 707.480, all property devoted to a public use of a housing authority is exempt whereas, under former Section 690.27 and Health and Safety Code Section 34217, only the real property of a housing authority was exempt.

See Maurice L. Bein, Inc. v. Housing Authority, 157 Cal. App.2d 670, 321 P.2d 753 (1958).

Subdivision (b) is analogous to Section 707.470 (exemption for state property). If a local public entity does not voluntarily pay a tort or inverse condemnation judgment, the judgment is enforceable by a writ of mandate. Section 1085; Govt. Code § 970.2.

Note. With the exception of the addition of an exemption for personal property of a housing authority, subdivision (a) merely attempts to simplify the existing law while retaining its substance. Most of the language of Section 690.22 derives from 1872.

405/345

§ 707.490. Funds of prison inmate

707.490. The funds of a judgment debtor who is an inmate in any prison or facility under the jurisdiction of the Department of Corrections or the Youth Authority or in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for the inmate or to the inmate's credit in an inmate's trust account or similar account by the state, county, city, or any agency thereof, are exempt to the extent that the inmate's funds exempt under Section 707.340 are less than [two] thousand dollars (\$[2],000).

Comment. Section 707.490 provides an exemption for funds of a prisoner held by authorities of a correctional facility equal to the amount that the inmate debtor's funds exempt under Section 707.340 (accounts in banks, savings and loan associations, and credit unions) are less than \$2,000. Former Section 690.21 provided that \$40 of an inmate's trust account was exempt without filing a claim for exemption.

Note. Apparently under existing law, if an inmate has \$500 in a prison account, he will lose \$460 of it whereas if he has \$500 in a savings and loan account, he will lose none of it. The proposed Sections 707.340 and 707.490 eliminate this inequity. In effect, the prison account is treated as if it were a bank account.

405/346

§ 707.500. Aid

707.500. Prior to payment, aid provided by Division 9 (commencing with Section 10000) of the Welfare and Institutions Code to a judgment

debtor or for the benefit of the judgment debtor is exempt without making a claim. After payment, such aid is exempt.

Comment. Section 707.500 is based on former Section 690.19. However, Section 707.500 makes clear that all aid given under Division 9 of the Welfare and Institutions Code is exempt whereas the scope of former Section 690.19 was unclear. Section 707.500 does not continue the second sentence of former Section 690.19 which provided that, as against the claim of the county, the property of a debtor who had received "support from public moneys" is exempt only to the extent allowed by the limited exemptions provided by Welfare and Institutions Code Section 17409. This provision of former Section 690.19 denied recipients of county aid the exemptions available to other judgment debtors and, therefore, is constitutionally suspect under the equal protection clause. Cf. James v. Strange, 407 U.S. 128 (1972) (Kansas statute imposing liability on indigent defendant for costs of counsel provided the defendant and denying exemptions available to other judgment debtors held unconstitutional). See Welf. & Inst. Code § 10052 (defining "aid").

Note. Welfare and Institutions Code Section 17409 is in Exhibit 3. Section 690.19 refers to "all aid given under a public assistance program." The staff is unable to discern whether these terms are used generally or in the sense they are used in the Welfare and Institutions Code. Apparently, the phrase "all aid given under a public assistance program" was taken directly from Welfare and Institutions Code Section 11002 on the recommendation of the State Bar in 1967 (the revision was enacted in 1970). (Section 11002 is in Exhibit 3.) However, the terms "aid" and "public assistance program" are defined for the purposes of Section 11002 as follows:

11052. "Aid" means financial assistance provided to or in behalf of needy persons under the terms of this division, including direct money payments, vendor payments and medical care.

10061. "Public assistance" and "public assistance programs" refer to those public social services programs provided for in Part 3 of this division.

Hence, "aid" covers all money payments and the like in Division 9 whereas "public assistance program" refers only to Part 3. If "public assistance program" is limited to its technical meaning, the following forms of aid provided by Part 3 of Division 9 are exempt: AFDC, Old Age

Security, Aid to the Blind, Aid to Needy Disabled, nonmedical care facilities and supportive home care services, Medi-Cal benefits, supplemental food programs, and several others. However, Part 4 programs, including adoption and institutions for children and aged, Part 5 programs, including county aid, and Part 6 programs, including emergency programs, miscellaneous programs for the blind, children, and aging, and food stamps would not be exempt. The staff thinks that all aid should be exempt.

405/347

§ 707.510. Compensation and proceeds from public entity for dwelling

707.510. For a period of six months from the date of receipt, compensation received from a public entity which acquires for a public use a dwelling actually owned and occupied by the judgment debtor is exempt in the amount over all liens and encumbrances provided by Section 1260 of the Civil Code.

Comment. Section 707.510 continues the substance of former Section 690.8.

Note. Should the six-month period be changed to 180 days? Should "which acquires for a public use a dwelling" in the second line be "for the acquisition for a public use of a dwelling" in light of Section 707.520?

27/872

§ 707.520. Relocation benefits

707.520. Relocation benefits for displacement from a dwelling actually owned or rented by the judgment debtor received from a public entity pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, are exempt without making a claim.

Comment. Section 707.520 continues the substance of former Section 690.8a.

405/348

§ 707.530. Disability or health insurance

707.530. (a) If the annual premiums paid for disability or health insurance do not exceed five hundred dollars (\$500), all moneys, benefits, privileges, and immunities accruing or in any manner growing out of such insurance are exempt.

(b) If the annual premiums paid for any disability or health insurance exceed five hundred dollars (\$500), moneys, benefits, privileges, and immunities accruing or in any manner growing out of such insurance are exempt in the proportion that five hundred dollars (\$500) bears to the entire annual premium paid.

Comment. Section 707.530 continues the substance of former Section 690.11.

405/349

§ 707.540. Life Insurance

707.540. (a) Except as provided in subdivision (b), all moneys, benefits, privileges, and immunities accruing or in any manner growing out of any life insurance are exempt if the annual premiums paid do not exceed five hundred dollars (\$500). If the annual premiums for such insurance exceed five hundred dollars (\$500), such moneys, benefits, privileges, and immunities are exempt in the proportion that five hundred dollars (\$500) bears to the entire annual premium paid.

(b) Where there are multiple beneficiaries claiming an interest in such moneys, benefits, privileges, or immunities, the exemption allowed to each beneficiary is the amount of the exemption provided in subdivision (a) which is proportional to the beneficiary's interest in the total proceeds of the policy.

(c) In addition to the exemption provided by subdivision (a), all moneys, benefits, privileges, and immunities belonging to or inuring to the benefit of the insured's spouse or minor children growing out of any life insurance are exempt if the annual premiums paid do not exceed five hundred dollars (\$500). If the annual premiums for such insurance exceed five hundred dollars (\$500), such moneys, benefits, privileges, and immunities are exempt in the proportion that five hundred dollars (\$500) bears to the entire annual premium paid.

Comment. Subdivisions (a) and (c) of Section 707.540 continue the substance of former Section 690.9. Subdivision (b) codifies the holding in Jackson v. Fisher, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Rptr. 439 (1961).

Note. Should the amount of this exemption be higher? The \$500 amount in subdivision (a) is the same as it was in 1872. In 1947, it was proposed to raise this to \$1,000, but instead the exemption for the debtor's spouse and children in subdivision (c) was enacted.

405/350

§ 707.550. Group life insurance

707.550. Except as provided in Sections 10203.5, 10203.6, and 10203.8 of the Insurance Code, a policy of group life insurance issued pursuant to Chapter 2 (commencing with Section 10200) of Part 2 of Division 2 of the Insurance Code and the proceeds thereof before payment are exempt without making a claim. After payment to the insured employee or the beneficiary, the proceeds of such insurance policy are exempt.

Comment. Section 707.550 is substantively similar to former Section 690.10. However, under Section 707.550 the judgment debtor need not make a claim for the exemption where the proceeds of the policy are in the hands of the insurer.

405/351

§ 707.560. Public pension, annuity, retirement, disability, or death benefits

707.560. (a) Money held, controlled, or in the process of distribution by the state, any county, city and county, city, or other political subdivision of the state, or by any public trust, public corporation, or public board derived from the contributions by such entity or by its officers or employees for retirement or pension purposes or the payment of disability, death, or other benefits, and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state, county, city and county, city, or other political subdivision of the state, or any public trust, public corporation or public board for retirement, annuity, or pension purposes or payment of disability or death benefits are exempt without making a claim.

(b) Except with regard to court-ordered child or spousal support payments, money received by any person [a resident of the state] as a pension, as an annuity, retirement, disability, death, or other benefit,

or as a return of contributions, and interest thereon, from the United States, the state, any county, city and county, city, or other political subdivision of the state, from any public trust, public corporation, or public board, or from any retirement, disability, or annuity system established by any such entity pursuant to statute, whether such money is in the actual possession of or deposited by the judgment debtor, is exempt.

Comment. Section 707.560 continues the substance of subdivision (a) and portions of subdivision (b) of former Section 690.18. The exemption for vacation credits provided in former Section 690.18(b) is continued in Section 707.400. The exemption of benefits under the Unemployment Insurance Code provided in former Section 690.18(b) is continued in Section 707.610(b).

Note. Subdivision (a) makes the following unnecessary: parts of Educ. Code § 22005; Govt. Code §§ 9359.3, 21201, 31452, 31913, 32210; Pub. Util. Code §§ 12337, 25337, 28896, 50146, 95836, 98196; and all of Water Code § 22142. For some reason, public boards are left out of the list in the last part of Section 690.18(b); they have been included here (subdivision (a)).

27/873

§ 707.570. Private retirement plan; benefits

707.570. (a) As used in this section, "plan" means a private retirement plan (including, but not limited to, a union retirement plan) and a profit-sharing plan designed and used for retirement purposes.

(b) Money held, controlled, or in the process of distribution by a plan is exempt without making a claim.

(c) Benefits paid as an annuity, pension, retirement allowance disability payment, or death benefit from a plan, and contributions and interest thereon returned to a member of a plan are exempt.

(d) Except with regard to money withheld from employees' wages and contributions based on wages in employment under provisions of the Unemployment Insurance Code and except with regard to court-ordered child support payments, the exemption provided by this section applies to money held in self-employed retirement plans and individual retirement annuities or accounts provided by the federal "Employee Retirement Income Security Act of 1974" (P.L. 93-406).

Comment. Section 707.570 is derived from subdivision (c) of former Section 690.18. Section 707.570 makes clear, however, that, if the property is in the hands of the private retirement plan, it is exempt without making a claim. This feature is analogous to the provisions applicable to public retirement plans under Section 707.560.

Note. Spousal support is an exception to the exemption provided for public retirement benefits (see draft Section 707.560(a); Section 690.18(a)) but not to the exemption provided for private retirement benefits under ERISA. There is apparently no exception for child or spousal support from the exemption provided for other private retirement plans. Does this make any sense?

405/354

§ 707.580. Worker's compensation

707.580. Except as provided by Chapter 1 (commencing with Section 4900) of the Labor Code, a claim for worker's compensation or compensation awarded or adjudged is exempt without making a claim and, after payment, is exempt.

Comment. Section 707.580 continues the substance of former Section 690.15.

405/355

§ 707.590. Unemployment compensation

707.590. Prior to payment, unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code, unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code, extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code, federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code, incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code, and payments to an individual under a plan or system established by an employer which makes provision for employees generally or for a class or group of employees

for the purpose of supplementing unemployment compensation benefits are exempt without making a claim. After payment, such benefits are exempt.

Comment. Section 707.590 continues the substance of former Section 690.175.

405/946

§ 707.600. Unemployment insurance

707.600. (a) Contributions by a worker to the Unemployment Compensation Disability Fund and by an employer to the Unemployment Fund are exempt without making a claim.

(b) Money held, controlled, or in the process of distribution by an employer for payment of benefits to, or reimbursement of benefits paid to, employees under the provisions of the Unemployment Insurance Code is exempt without making a claim.

Comment. Subdivision (a) of Section 707.600 continues the substance of former Section 690.16 and a former portion of Unemployment Insurance Code Section 988. Subdivision (b) continues the substance of a part of former Section 690.18(b).

405/947

§ 707.610. Fraternal organization funds for sick or unemployment benefits

707.610. Funds belonging to a fraternal organization which are used exclusively in the payment of sick or unemployment benefits to bona fide members of the fraternal organization are exempt to the maximum amount of five hundred dollars (\$500) [from claims against the fraternal organization].

Comment. Section 707.610 is substantively the same as former Section 690.13.

Note. "Fraternal organization" is apparently not defined. This exemption does not seem to be very significant since \$500 would not go very far if more than one or two members of the organization were either sick or unemployed. Should this section be retained?

§ 707.620. Fraternal benefit society aid

707.620. Money or other aid from any fraternal benefit society, as defined by Section 10990 of the Insurance Code, before being paid or rendered, is exempt without making a claim. Such money or other aid, after being paid or rendered, is exempt.

Comment. Section 707.620 is substantively similar to former Section 690.14 and former Insurance Code Section 11045. However, Section 707.610 makes clear that the exemption need not be claimed before the money or other aid is paid or rendered.

§ 707.630. Segregated benefit funds

707.630. Segregated benefit funds of a holder of a certificate of exemption issued pursuant to Section 10497 of the Insurance Code are exempt from claims against the holder of the certificate of exemption other than claims for benefits.

Comment. Section 707.630 continues the substance of former Section 690.12.

Note. This section relates to certain life insurers. See Ins. Code § 10497 in Exhibit 3.

§ 707.640. Licenses

707.640. A license to engage in any business, profession, or activity issued by the United States or a state or political subdivision thereof is exempt without making a claim.

Comment. Section 707.640 is derived from a portion of subdivision (e) of former Section 688 which precluded levy or sale on execution of "licenses issued by this state to engage in any business, profession, or activity." Section 707.640 expands the application of this provision to preclude the application of any license issued by a governmental entity to engage in a business, profession, or activity to the satisfaction of a money judgment.

Note. Although we have expanded this section, we have not gone as far as to cover licenses issued by foreign nations. We doubt that any such license would be valuable.

968/699

§ 707.650. Estate at will

707.650. An estate at will is exempt without making a claim.

Comment. Section 707.650 continues the substance of a portion of former Civil Code Section 765.

Article 4. Exemptions Subject to Right of Selection§ 707.710. Manner of selection of exempt property

707.710. (a) If the judgment debtor is present when levy is made on property exempt pursuant to this article, the judgment debtor may select the property to be exempt as provided by this article. The levying officer shall inform the judgment debtor [in writing], if present, of the right to select exemptions provided by this article. Any selection made by the judgment debtor or by the levying officer in the presence of the judgment debtor is conclusive upon the judgment debtor but may be opposed by the judgment creditor as provided by Section 707.250.

(b) When the judgment debtor or the levying officer has selected property pursuant to subdivision (a), the levying officer shall send a notice to the judgment creditor by first-class mail, postage prepaid, describing the property selected.

(c) If the judgment debtor is not present when levy is made or if the judgment debtor does not exercise the right of selection, property described as exempt by this article shall be treated as property described as exempt in Article 3 (commencing with Section 707.310).

Comment. Section 707.710 provides an opportunity for the judgment debtor to select which property is to be exempt subject, of course, to the limitations of value and type of property as provided in Sections 707.720 (household furnishings, appliances, wearing apparel, personal effects, provisions, and fuel) and 707.730 (tools, implements, instruments, uniforms, books, equipment, vehicle, and vessel used in trade, business, or profession). The debtor is not required to select exempt property; this task may be left to the levying officer. If the judgment debtor is present, whether or not the judgment debtor selects the exemptions, the judgment debtor is bound by the selection made and may not make a claim of exemption for property of a type described in this article that is then levied upon. Since estimates of value and categorizations of property may differ, the judgment creditor may oppose any selections made by the judgment debtor as provided in Section 707.250 by filing a notice of opposition to selection within 10 days after the notice provided by subdivision (b) is mailed.

Note. This procedure is roughly modeled on a selection procedure provided by Hawaii. See Exhibit 4.

405/951

§ 707.720. Household furnishings, appliances, wearing apparel, personal effects, provisions, and fuel

707.720. Household furnishings, appliances, wearing apparel, personal effects, provisions, and fuel, personally used or procured for use by the judgment debtor and members of the judgment debtor's household at their principal place of residence, not exceeding an aggregate [cash] value of [ ] dollars (\$ ) over all liens and encumbrances on such property at the time of levy, are exempt.

405/952

§ 707.730. Tools, etc., used in trade, business, or profession

707.730. Tools, implements, instruments, uniforms, books, equipment, one vehicle, one vessel, and other personal property reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood, not exceeding an aggregate [cash] value of two thousand five hundred dollars (\$2,500) over all liens and encumbrances on such items of property at the time of levy, are exempt.

Comment. Section 707.730 continues the substance of former Section 690.4. However, a new procedure for selecting such exemptions is provided by Section 707.710.

Note. "Farming" has been left out of this section; presumably, it is included in trade or business. Section 707.730 deals with personal property generally. We did not continue Section 690.17 which also exempts certain building materials in the amount of \$1,000.