

Memorandum 77-37

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

Attached to this memorandum is a staff draft of Chapter 7 (Exemptions) of the Enforcement of Judgments Law. This draft incorporates policy decisions made at the February and March meetings of the Commission. This material has not been considered in detail as yet so we plan to proceed section by section.

This memorandum briefly discusses several policy questions that have been dealt with in the draft or remain to be resolved. Other questions are raised by notes directly following the Comments to some of the sections. Also attached hereto are three exhibits. Exhibit 1 is a copy of the Code of Civil Procedure exemptions (Sections 690-690.52). Exhibit 2 contains exemption provisions in other codes and miscellaneous provisions referred to in this memorandum or in the draft. Exhibit 3 is a chart showing the liability of the property of married persons for various types of debts.

Exemption Policy and Community Property Laws

The interplay between the creditors' remedies and exemption laws and the community property and other laws pertaining to the manner of holding title to property is complicated and is bound to remain so. Insofar as the community property laws are concerned, the reforms enacted in 1975 (see Civil Code Sections 5116-5132 in Exhibit 2) should ultimately simplify the determination of which property of married and formerly married individuals may be reached by creditors although procedural problems will remain. We assume that it is out of the question for the Commission to get involved in recommending any changes in the community property laws so suggestions for reform should be directed toward the creditors' remedies provisions.

The principal effect of the new community property laws as they relate to creditors' remedies is clear enough. Civil Code Section 5125 gives each spouse management and control of the community property (except a community property business) and, correspondingly, Civil Code Sections 5116 and 5120 make community property liable for the contract

debts of either spouse incurred during the marriage or, with the exception of the community property earnings of the other spouse, before the marriage. (See also Exhibit 3, summarizing the liability of classes of property for different types of debts.) Accordingly, a judgment creditor of the husband on a contract debt incurred during the marriage may reach all the community property and the husband's separate property. A judgment creditor of both spouses as joint judgment debtors may reach, in addition, the separate property of the wife.

Consider a case where the judgment creditor holding a judgment against both spouses on a contract debt incurred during the marriage levies on property which the creditor assumes to be community property. If the property levied upon is a savings and loan account in the amount of \$5,000, may the spouses claim one or two \$1,000 exemptions? Section 690.7 provides an exemption of \$1,000 "per person, whether the character of the property be separate or community." There are no cases interpreting this provision, but it would seem to permit each spouse to claim \$1,000 as exempt. If the judgment creditor may reach only \$3,000, he would have been better off not to have joined both spouses since then the community account would be exempt only in the amount of \$1,000. If the account is joint property (each spouse having a one-half interest as separate property), then the judgment creditor is in a different position. If both spouses are judgment debtors, \$3,000 can be reached, but if only one spouse is a judgment debtor, then only \$1,500 can be reached.

This sort of problem may arise with respect to several other exemptions. Section 690.7 (savings and loan accounts) is the only provision containing the "per person" feature. The \$1,500 exemption for credit union accounts (Fin. Code § 15406) is silent in this regard. Other exemptions, such as the life insurance exemption (Section 690.9) similarly provide a monetary amount of exempt property. On the other hand, the homestead exemption provides a \$15,000 exemption for a single person and a \$30,000 exemption for a married person, without regard to whether one or both spouses are judgment debtors. Civil Code §§ 1260, 1261. The new motor vehicle exemption takes a different approach, declaring that a "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." This appears to create

a presumption that the motor vehicle is the separate property of the debtor even though it must be determined that the vehicle is community property for the provision to apply. Finally, there are several types of exemptions that exempt specific types of property without regard to value or on the basis of necessity which are not affected by the nature of the judgment or whether both spouses are judgment debtors.

The varying results which may occur under existing law raise serious questions about the nature of exemption provisions. It is frequently stated that the policy of the exemption provisions is to permit the judgment debtor to support his or her family and to permit the judgment debtor to retain the assets required to become a productive member of society. Clearly, some other exemptions exist because of the political power of special interest groups and some others recognize that the harm that the debtor would suffer from the loss of a type of property outweighs any possible benefit to the creditor.

The exemption laws should recognize that the community property and, in the case of a debt for necessities incurred during marriage, the separate property of the nondebtor spouse may be applied to the satisfaction of the judgment so that the nondebtor spouse should be given the opportunity to claim all applicable exemptions protecting his or her property just as if he or she were a judgment debtor. The effect of making this explicit in the exemption laws would eliminate the different applications of community property where two judgment debtors happen to be in the same household. This policy could be implemented by the following provision:

[\$ 707.190.] Exemption rights of nondebtor spouse

707.190. If a judgment creditor holding a judgment for the payment of money against only one spouse seeks to satisfy the judgment by levying upon or otherwise reaching the community property or the separate property of the other spouse where such property is liable for the satisfaction of the judgment, the spouse who is not a judgment debtor is entitled to claim exemptions for such property as provided in this chapter.

Comment. Section [707.190] establishes the right of a nondebtor spouse to claim exemptions for community property and for his or her separate property which is sought to be applied to the satisfaction of a money judgment against the other spouse pursuant to the community property laws making such property liable in certain circumstances for debts of the other spouse. See Civil

Code §§ 5116, 5120, 5121, 5122, 5125, 5131, 5132. This provision permits the nondebtor spouse to take advantage of exemptions to the same extent as if he or she were a judgment debtor. It also has the effect of making the same amount of property liable for the satisfaction of a judgment regardless of whether (1) the property is community property and the judgment is against one or both spouses or (2) the property is held in joint tenancy and the judgment is against both spouses. For example, a \$10,000 deposit account which is community property would be exempt in the amount of \$4,000 (\$2,000 exemption under Section 707.380 for each spouse) whether the judgment was against one or both spouses. Similarly, if the judgment is against both spouses, each may claim a \$2,000 exemption in the respective half interest where the account is held in joint tenancy. However, if the account is held in joint tenancy and only one spouse is a judgment debtor, only half the account may be reached and only one exemption may be claimed.

It should be noted that the nondebtor spouse who claims that the community property or separate property is not liable under the applicable rules may not assert such claim pursuant to this section. A claim that the property is not liable is normally asserted by way of the third-party claims procedure in Chapter 6 (commencing with Section 706.110). See the Comment to Section 707.120.

Conversion of Lump Sum Benefits to Periodic Payments

Tentatively, the Commission has decided that certain payments (life insurance benefits, private disability and health insurance benefits, personal injury and wrongful death awards, retirement benefits) should be exempt in the amount provided in the wage garnishment recommendation if paid periodically. The theory is that these payments are usually a substitute for or supplement to earnings. As currently drafted, Sections 707.410-707.450 provide no exemption for such payable benefits unless they are paid periodically. Hence, in order to permit the debtor to take advantage of the proposed exemption, there needs to be a grace period after levy for converting the lump sum benefit into some plan of periodic payments. The staff proposes the following provision:

[707.180.] (a) Where a lump sum amount which, if paid periodically, would be exempt to the extent provided by Sections 707.410 to 707.450, inclusive, is levied upon or otherwise subject to a lien under this title, such amount may not be applied to the satisfaction of the judgment until the expiration of [60] days after the defendant is given notice of levy or of service of other process creating a lien unless the judgment debtor waives in writing the provisions of this subdivision and the applicable exemption. In order to qualify for the exemption for periodic payments of such amount, the judgment debtor shall within such [60]_day period file a claim of exemption as provided by Section 707.220 which includes a copy of the proposed plan of periodic payments. The right to the

exemption shall be determined in the manner provided by Article 2 (commencing with Section 707.210).

(b) The person owing the amount shall (1) hold the amount subject to the lien until otherwise instructed by court order or by the levying officer or until receipt of the judgment debtor's written waiver or (2) pay over to the levying officer the amount due. The receipt of the levying officer is a sufficient discharge for the amount paid.

(c) If the plan of periodic payments is approved, the periodic payments may be levied upon or otherwise applied to the satisfaction of the judgment and the priority of the judgment creditor relates back to the creation of the lien on the lump sum amount.

Comment. Section [707.180] provides a procedure for converting lump sum benefits which are not exempt into periodic payments which are exempt to the extent that earnings are exempt. See Sections 704.____ (amount of earnings exemption), 707.410-707.450 (exemption provisions incorporating earnings exemption). Under subdivision (a), unless it is waived in writing, the judgment debtor is afforded [60] days within which to take advantage of the exemption by retaining approval of the judgment creditor or the court for a plan of periodic payments of the amounts levied upon. This approval is obtained through the general procedures applicable to the determination of exemptions. See Sections 707.210-707.295. Note that Section [707.180] does not apply to a situation where a plan of periodic payments which is already in force is levied upon or otherwise subject to a lien.

Subdivision (b) permits a third person owing amounts described in Sections 707.410-707.450 that are partially exempt if paid periodically to pay the lump sum over to the levying officer or retain such amount until the outcome of the exemption proceedings. It is anticipated that a garnishee, such as an insurer owing benefits under a policy of life insurance which permits the beneficiary to elect to receive the benefits as annuity payments, will retain the amount levied upon pending the outcome of proceedings under this section whereas a garnishee, such as a judgment debtor of the judgment debtor in a tort action who is unable to offer a plan of periodic payments, would be more likely to pay over to the levying officer.

If this approach is satisfactory, we will fill in any necessary detail when the exemption and wage garnishment provisions are incorporated into the Enforcement of Judgments Law. It is worth noting at this point, however, that a levy on the sort of periodic payments discussed here is distinct from a levy on earnings since a wage garnishment is good for 120 days, at the end of which another creditor may levy, whereas a levy on other periodic payments would not terminate until the judgment was satisfied or the execution lien expired.

The wage garnishment tables are based on a determination of available earnings under Section 723.050 of the wage garnishment recommendation. This calculation takes into account social security and unemployment disability taxes which do not have to be paid out of retirement, annuity, life insurance, or disability or health insurance benefits, or tort damage awards. In this way, the application of the proposed wage garnishment tables allows a higher exemption for these sorts of payments than for wages although the discrepancy would not be great. The deduction of state and federal income taxes based on withholding tables in the calculation of the amount which may be garnished makes some sense, however, when applied to these other types of periodic payments since, in many cases, the recipients thereof will still be subject to income taxes although taxes would not be withheld by the garnishee as under a wage garnishment. We believe the recommended approach is basically sound although there are some minor theoretical inconsistencies in applying the formula for wage garnishments to these other periodic payments.

Procedure for Claiming Exemptions

Article 2 (Sections 707.210-707.295) provides the procedure for claiming exemptions. It is essentially the same as existing law and incorporates the modifications in existing procedure proposed in Assembly Bill 393 (the Commission's wage garnishment recommendation). This scheme contemplates that property will be levied upon and then, if the debtor so desires, a claim of exemption will be made. However, in a situation where, for example, the debtor has two vessels, one of which will be exempt under the tools of a trade exemption, the question arises as to who decides which vessel is exempt and which may be levied upon. If the creditor levies upon one vessel, may the debtor claim an exemption for it and leave the other open to levy? Or should the creditor levy on both vessels and thereby force the debtor to claim an exemption for one of them?

In the early case of *Feybers v. McComber*, 67 Cal. 395 (1885), the debtor had eight work horses, two of which could be claimed as exempt. The levying officer levied upon two of the horses and the debtor claimed them as exempt six days after levy. The opinion concludes as follows:

Where the debtor has more of a particular kind of property than is exempt from execution, he may select which he will claim, but in doing so, according to a preponderance of authorities, the defendant, in claiming the right of selection, must offer to surrender to the officer the other property in his hands subject to execution. . . .

. . . .

It is quite proper to give the debtor a reasonable time within which to make his selection of that which he will claim; but if he does not do so at the time a levy is made, the opportunities and temptations to dispose of property not levied upon, or place it beyond the pale of the law, and then claim as exempt that which has been taken in execution, becomes great, and if yielded to may result in a fraud upon creditors.

If the exemption is claimed at the time of levy, there being other property of the same kind not claimed, it is reasonable to suppose the officer holding an execution will levy upon that not claimed, and his opportunity to do so should not be abridged by reason of the claims of exemption being asserted at a later date.

We hold, therefore, where, as in this case, the debtor has more property of a particular kind liable to seizure than is exempt from execution, and a writ is levied upon a portion only thereof, leaving as much as is by law exempt, and thereafter the debtor for the first time claims as exempt the property levied upon or a portion thereof, and leaving in the hands of the officer a less quantity than is necessary to satisfy his writ, then, and in that case, the debtor to make good his claim of exemption must offer to surrender to the officer the other property in his hands of the same general kind, subject to execution, or so much thereof as may be necessary to satisfy the writ, and failing to do so, as in this case, he is not entitled to recover against the officer. [67 Cal. at 400-01; citations omitted.]

In an earlier memorandum, the staff suggested codifying a procedure similar to that outlined in Keybers which was never considered. The following sections have not been included in the draft because we suspect that the procedure may be too cumbersome so that it is better left to case law and existing practice. However, we offer these sections for your consideration:

§ 707.1. Manner of selection of exempt property

707.1. (a) If the judgment debtor is present when levy is made on property exempt pursuant to Section 707.340 or 707.370, the judgment debtor may select the property to be exempt as provided by this section. The levying officer shall inform the judgment debtor [in writing], if present, of the right to select exempt

property. A selection made by the judgment debtor or by the levying officer in the presence of the judgment debtor without objection is conclusive upon the judgment debtor but may be opposed by the judgment creditor as provided by Section 707.2.

(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, an exemption may be claimed in the manner provided by Article 2 (commencing with Section 707.210).

Comment. Section 707.1 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 707.340 (household furnishings, appliances, wearing apparel, personal effects, provisions, and fuel) and 707.370 (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 classifications of property may differ, the judgment creditor may oppose any selections made by the judgment debtor as provided in Section 707.2 by filing a notice of opposition to selection within 10 days after the notice provided by subdivision (b) is mailed.

§ 707.2. Opposition to selection of exemptions

707.2. (a) The judgment creditor may oppose the selection or the valuation of the property selected by the judgment debtor pursuant to Section 707.1 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 Section 707.1 which is claimed not to be exempt.
- (4) A citation of the section 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 20 days from the date the motion was filed unless continued by the court for good cause. The judgment creditor shall give not less than 10 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 five 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 707.220. 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 shall 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.

(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 707.2 is new. It provides a procedure whereby the judgment creditor may challenge the validity of exemptions selected pursuant to Section 707.1. If the judgment debtor selects property under the provisions of Section 707.1, the judgment creditor may oppose the selection as provided in this section. However, if the property described in Section 707.340 or 707.370 is levied upon--where the judgment debtor was not present when levy occurred or did not wish to exercise the right of selection--the exemption procedure provided by Article 2 (commencing with Section 707.210) is followed. The judgment creditor may use the procedure of Section 707.2 to contest either the validity of including certain property in the categories provided in Section 707.340 or 707.370 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 707.270(b), 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?

Church Pew Exemption

Section 690.25 provides:

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.

This exemption originates in an uncodified provision enacted in 1861. 1861 Cal. Stats., Ch. 500, § 2. At the March meeting, the Commission directed the staff to consult various church groups to determine whether it is still the practice for church members to own the pews in their churches.

The consensus of church personnel we spoke with is that, while this was a common practice in New England and in some churches in early California history, it is no longer done. The historiographer of the Episcopal Diocese of California said that this practice had ceased a century ago. No instances of pew ownership by individual members came to light in discussions with persons in the offices of the Roman Catholic Archdiocese of San Francisco, Methodist Church Headquarters, United Presbyterian Church, American Baptist Churches-U.S.A., San Francisco-Peninsula Southern Baptist Association, Assemblies of God-Northern

California Nevada District, Northern California Conference of the United Church of Christ, Missouri Synod Lutheran-California and Nevada District, and the Berkeley Friends Church. Accordingly, we have not continued this exemption in the draft statute.

Respectfully submitted,

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EXHIBIT 1

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 690.81.

(Added by Stats.1970, c. 1523, p. 3071, § 14. Amended by Stats.1972, c. 418, p. 743, § 1; Stats.1973, c. 787, p. 1495, § 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. 578, p. 1138, § 8.8, urgency, eff. Aug. 13, 1971, operative Oct. 1, 1971; Stats.

1971, c. 1646, p. 3650, § 1; Stats.1971, c. 1684, p. 3614, § 5; Stats.1972, c. 48, p. 61, urgency, eff. April 8, 1972; Stats.1974, c. 1816, p. 3881, § 17, operative Jan. 1, 1977; Stats.1975, c. 1241, p. —, § 7, operative Jan. 1, 1977; Stats. 1976, c. 817, 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. 1623, 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. 1630, § 2. Amended by Stats.1974, c. 47, p. 102, § 1, urgency, eff. Feb. 28, 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 7260), Division 7, Title 1 of the Government Code or the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970¹, 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 690.80.

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

¹ 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 annuities

§ 690.10 Exemptions; group life policy

Except as provided in Sections 10203.3, 10203.5, 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.1935, c. 728, p. 2257, § 1. Renumbered § 690.13 and amended by Stats.1970, c. 1523, p. 3077, § 48.)

§ 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.)

§ 690.17 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.)

§ 690.17a 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. 3078, § 87. Amended by Stats.1973, c. 1206, p. 2601, § 3; Stats.1973, c. 1207, p. 2652, § 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 18080 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) ¹.

(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.)

¹ 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 § 690.285 added by Stats.1959, c. 889, p. 2265, § 1. Renumbered § 690.21 and amended by Stats.1970, c. 1523, p. 3076, § 46. Amended by Stats.1974, c. 1516, p. 3881, § 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 § 690.18, 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 7925 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 690.60.

(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, § 60.)

§ 690.27 Exemptions; housing authority realty

The real property of a housing authority, as defined in Part 2 (commencing with Section 34200) 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 31051 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 33100) 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. 92-366 (86 Stats. 506 (1972))¹ 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. 92-366 (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. 92-386 (88 Stats. 506 (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. 810, p. —, § 1.)

§ 81 U.S.C.A. § 492.

§ 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 6 (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 described 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 890.81 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.)

§ 690.50 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 690.236, 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 counteraffidavit 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 690.6 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 690.6, 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 690.6 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, § 50. Amended by Stats.1972, c. 649, p. 1206, § 2, urgency, eff. Aug. 9, 1972; Stats.1974, c. 1251, p. 2706, § 3, 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 1765 of the Unemployment Insurance Code, or Section 6776, 7881, 9001, 10111, 18906, 28191, 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 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. 2567, § 6; Stats.1961, c. 1029, p. 2712, § 12. Renumbered § 690.51 and amended by Stats.1970, c. 1523, p. 3077, § 6.1; Stats. 1971, c. 873, p. 1715, § 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.1935, 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, § 6, operative July 1, 1975.)

EXHIBIT 2

CIVIL CODE

§ 3433. Marshaling assets

RELATIVE RIGHTS OF DIFFERENT CREDITORS. Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

(Enacted 1872.)

§ 5116. Community property; liability for contracts of either spouse

The property of the community is liable for the contracts of either spouse which are made after marriage and prior to or on or after January 1, 1975.

(Amended by Stats.1973, c. 999, p. 1987, § 2; Stats.1973, c. 999, p. 1988, § 3, operative Jan. 1, 1975; Stats.1974, c. 1206, p. 2609, § 2.)

§ 5118. Separate property; earnings of spouse and children after separation

The earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse, are the separate property of the spouse.

(Amended by Stats.1971, c. 1699, p. 3640, § 1.)

§ 5119. Separate property; earnings after judicial separation

After the rendition of a judgment decreeing legal separation of the parties, the earnings or accumulations of each party are the separate property of the party acquiring such earnings or accumulations.

(Amended by Stats.1971, c. 1699, p. 3640, § 2.)

§ 5120. Liability for spouse's premarital debts; exemption of spouse's separate property and earnings

Neither the separate property of a spouse nor the earnings of the spouse after marriage is liable for the debts of the other spouse contracted before the marriage.

(Amended by Stats.1973, c. 987, p. 1900, § 9, operative Jan. 1, 1975.)

§ 5121. Spouse's separate property; liability for debts

The separate property of a spouse is liable for the debts of the spouse contracted before or after the marriage of the spouse, but is not liable for the debts of the other spouse contracted after marriage; provided, that the separate property of the spouse is liable for the payment of debts contracted by either spouse for the necessities of life pursuant to Section 5132.

(Amended by Stats.1973, c. 987, p. 1900, § 10, operative Jan. 1, 1975.)

§ 5122. Liability for injury or damage caused by spouse; property subject to satisfaction of liability

(a) A married person is not liable for any injury or damage caused by the other spouse except in cases where he would be liable therefor if the marriage did not exist.

(b) The liability of a married person for death or injury to person or property shall be satisfied as follows:

(1) If the liability of the married person is based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the community property and second from the separate property of the married person.

(2) If the liability of the married person is not based upon an act or omission which occurred while the married person was performing an activity for the benefit of the community, the liability shall first be satisfied from the separate property of the married person and second from the community property.

(Amended by Stats.1973, c. 987, p. 1900, § 11, operative Jan. 1, 1975.)

§ 5123. Separate property of spouse; non-liability for certain secured debts

(a) The separate property of the wife is not liable for any debt or obligation secured by a mortgage, deed of trust or other hypothecation of the community property which is executed prior to January 1, 1975, unless the wife expressly assents in writing to the liability of her separate property for such debt or obligation.

(b) The separate property of a spouse is not liable for any debt or obligation secured by a mortgage, deed of trust, or other hypothecation of the community property which is executed on or after January 1, 1975, unless the spouse expressly assents in writing to the liability of the separate property for the debt or obligation.

(Amended by Stats.1973, c. 987, p. 1900, § 12, operative Jan. 1, 1975.)

§ 5125. Community personal property; management and control; restrictions on disposition

(a) Except as provided in subdivisions (b), (c), and (d) and Sections 5113.5 and 5128, either spouse has the management and control of the community personal property, whether acquired prior to or on or after January 1, 1975, with like absolute power of disposition, other than testamentary, as the spouse has of the separate estate of the spouse.

(b) A spouse may not make a gift of community personal property or dispose of community personal property without a valuable consideration.

(c) A spouse may not sell, convey, or encumber the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the other spouse or minor children which is community personal property, without the written consent of the other spouse.

(d) A spouse who is operating or managing a business or an interest in a business which is community personal property has the sole management and control of the business or interest.

(e) Each spouse shall act in good faith with respect to the other spouse in the management and control of the community property.

(Amended by Stats.1973, c. 987, p. 1901, § 14, operative Jan. 1, 1975; Stats.1974, c. 546, p. 1359, § 14; Stats.1974, c. 1206, p. 2609, § 4.)

§ 5126. Separate property; damages for personal injuries; conditions; reimbursement of spouse for expenses

(a) All money or other property received by a married person in satisfaction of a judgment for damages for personal injuries or pursuant to an agreement for the settlement or compromise of a claim for such damages is the separate property of the injured person if such money or other property is received as follows:

(1) After the rendition of a decree of legal separation or a final judgment of dissolution of a marriage.

(2) While either spouse, if he or she is the injured person, is living separate from the other spouse.

(3) After the rendition of an interlocutory decree of dissolution of a marriage.

(b) Notwithstanding subdivision (a), if the spouse of the injured person has paid expenses by reason of his spouse's personal injuries from his separate property or from the community property subject to his management and control, he is entitled to reimbursement of his separate property or the community property subject to his management and control for such expenses from the separate property received by his spouse under subdivision (a).

(Amended by Stats.1970, c. 1575, p. 3825, § 5; Stats.1972, c. 905, p. 1609, § 1.)

§ 5132. Support of spouse

A spouse must support the other spouse while they are living together out of the separate property of the spouse when there is no community property or quasi-community property.

For the purposes of this section, the terms "quasi-community property" and "separate property" have the meanings given those terms by Sections 4803 and 4804.

(Amended by Stats.1973, c. 987, p. 1902, § 17, operative Jan. 1, 1975.)

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.

21152. 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

§ 15406. 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 690.50 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. 1226, § 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. 2063, § 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. 1286, § 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

§ 405.4 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

§ 7003. Cemetery

"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.

(Stats.1939, c. 60, p. 670, § 7003.)

§ 7022. Lot; plot; interment plot

"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.

(Stats.1939, c. 60, p. 672, § 7022.)

§ 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.)

§ 8601. Spouse's vested right of interment

The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner.

(Stats.1939, c. 60, p. 706, § 8601. Amended by Stats.1939, c. 339, p. 1677.)

§ 8650. Death of owner without disposition of plot; family plot

Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and the owner dies without making disposition of the plot either in his will by a specific devise,

or by a written declaration filed and recorded in the office of the cemetery authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner.

(Stats.1939, c. 60, p. 708, § 8650.)

§ 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. 806, § 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 defunct

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. 3389, § 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

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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.¹

(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,² 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.1976, 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

§ 25337. 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 60018 of the Code of Civil Procedure.

(Amended by Stats.1970, c. 1523, p. 3084, § 62.)

§ 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, and is exempt from legal process.

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

(Added by Stats.1955, c. 1036, p. 1963, § 2. Amended by Stats.1970, c. 1523, p. 3084, § 68.)

§ 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, § 8.)

§ 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 890.16 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. 808, p. 1486, § 988. Amended by Stats.1970, c. 1523, p. 3084, § 64.)

§ 1342. Invalidity of waiver of benefit rights; assignment, release or computation of benefits; exemption of benefits; invalidity of agreement by employee to pay contributions required of employer

Any waiver by any person of any benefit or right under this code is invalid. Benefits under this code, incentive payments provided by * * * Division 2 (commencing with Section 5000), and payments to an individual under a plan or system established by an employer which makes provisions for his employees generally, or for a class or group of his employees, for the purpose of supplementing unemployment compensation benefits, are not subject to assignment, release, or commutation, and are exempt from attachment and execution pursuant to Sections 890.175 and 890.18 of the Code of Civil Procedure. Any agreement by any individual in the employ of any person or concern to pay all or any portion of the contributions required of his employer under this division is void.

(Amended by Stats.1973, c. 1206, p. 2020, § 58; Stats.1973, c. 1207, p. 2070, § 68.)

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.1966, c. 736, p. 2128, § 1.)

WELFARE & INSTITUTIONS CODE

§ 11002. Inalienability of aid

All aid given under a public assistance program shall be absolutely inalienable by any assignment, sale, or otherwise, and in case of bankruptcy the aid shall not pass through any trustee or other person

acting on behalf of creditors, and is exempt from execution and attachment pursuant to Section 690.19 of the Code of Civil Procedure. (Added by Stats.1965, c. 1784, p. 3994, § 5. Amended by Stats.1970, c. 1523, p. 3084, § 66.)

§ 17408. Exempt property; emergency hospital or medical care

Test 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 17408 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 1260 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 7260), 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. 1616, p. 3394, § 47, operative Jan. 1, 1977.)

EXHIBIT 3

[D. Reith, California Debt Collection Practice Supplement
176-177 (Cal.Cont. Ed. Bar 1976).]

176

A series of code changes first complicated, then greatly simplified, the rules concerning liability of separate and community property for the spouses' debts. The following chart covers most debt/property classifications.

**Chart: Liability and Nonliability of Classes of
Property On or After July 1, 1975**

<i>Time debt incurred and parties' situation</i>	<i>For what purpose</i>
1. Before marriage	1. For necessities
2. During marriage	2. For nonnecessaries
3. While parties are living separate	3. For tort

[Note: Spouse's separate property is always liable for his own debts.]

- 1-1: Debts for necessities incurred before marriage.
 - A. Community property (except other spouse's community property earnings) is liable. CC §5120; CC §5125, by implication.
 - B. Other spouse's community property earnings not liable.
 - C. Other spouse's separate property not liable. CC §5120.
- 2-1: Debts for necessities incurred during marriage.
 - A. Community property is liable. CC §5116.
 - B. Other spouse's separate property liable if there is no community property or quasi-community property. CC §§5121, 5132.
- 3-1: Debts for necessities incurred while living separate.
 - A. Community property is liable. CC §5116.
 - B. Other spouse's separate property not liable. CC §5131.
- 1-2: Debts for nonnecessaries incurred before marriage.
 - A. Community property (except other spouse's community property earnings) is liable. CC §5120; CC §5125, by implication.
 - B. Other spouse's community property earnings not liable. CC §5120.
 - C. Other spouse's separate property not liable. CC §5120.
- 2-2: Debts for nonnecessaries incurred during marriage.
 - A. Community property is liable. CC §5116.
 - B. Other spouse's separate property not liable. CC §5121.
- 3-2: Debts for nonnecessaries incurred while living separate.
 - A. Community property liable. CC §5116.
 - B. Other spouse's separate property not liable. CC §5131.

1-3: Debts for tort incurred before marriage.

- A. Community property (except other spouse's community property earnings) liable. CC §5120; CC §5125, by implication. For order, see CC §5122.**
- B. Other spouse's community property earnings not liable. CC §5120.**
- C. Other spouse's separate property not liable. CC §5120.**

2-3: Debts for tort incurred during marriage. CC §5120.

- A. Community property is liable. CC §5125, by implication. For order, see CC §5122.**
- B. Other spouse's separate property not liable. CC §5122.**

3-3: Debts for tort while living separate.

- A. Community property is liable. CC §5125, by implication. For order, see CC §5122.**
- B. Other spouse's separate property not liable. CC §5122.**

CHAPTER 7. EXEMPTIONS FROM ENFORCEMENT
OF MONEY JUDGMENTS

Article 1. General Provisions

- § 707.110. Value
- § 707.120. Property subject to enforcement of money judgments
- § 707.130. Exemptions from other process
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- § 707.210. Right to claim exemption; "claimant" defined
- § 707.220. Claim of exemption
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- § 707.290. Prohibition against levy on property determined to be exempt
- § 707.295. Property exempt without making a claim; claim of exemption

Article 3. Exempt Property of Individual Debtors

- § 707.310. Dwelling
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- § 707.350. Jewelry, heirlooms, works of art
- § 707.360. Prosthetic and orthopedic appliances
- § 707.370. Tools, etc., used in trade, business, or profession
- § 707.380. Deposit accounts and money
- § 707.390. Deposit account in which social security payments are directly deposited
- § 707.400. Unpaid earnings

- § 707.410. Life insurance [and death benefits]
- § 707.420. Retirement benefits
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- § 707.440. Disability and health benefits
- § 707.450. Tort damages
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- § 707.470. Aid
- § 707.480. Employee's bond
- § 707.490. Vacation credits
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**Article 4. Exempt Property of Entities
and Individuals**

- § 707.710. Escrow and trust funds
- § 707.720. Property held in trust for wages
- § 707.730. Fraternal organization funds for sick or unemployment benefits
- § 707.740. Cemetery property
- § 707.750. Hospital endowment funds
- § 707.760. Educational endowment funds
- § 707.770. Segregated benefit funds
- § 707.780. Licenses

CHAPTER 7. EXEMPTIONS FROM ENFORCEMENT
OF MONEY JUDGMENTS

Article 1. General Provisions

§ 707.110. Value

707.110. As used in this chapter, "value" means fair market value of a person's interest in property, exclusive of valid liens and encumbrances which are superior to the lien under which the property is sought to be applied to the satisfaction of the judgment.

Comment. Section 707.110 defines "value" as that term is used in this chapter. Provisions of former law referred to "fair market value" (Section 690.2(a)), "actual cash value" (Sections 690.3, 690.4), and "value" (Section 690.7). Section 707.110 probably continues the substance of former law in this regard. Cf. *Wade v. Rathbun*, 23 Cal. App.2d Supp. 758, 67 P.2d 767 (1937) (value in exemption statutes, unless context indicates otherwise, means market value, not forced sale value).

The judgment debtor's interest in the property is determined by subtracting the amounts of prior liens and encumbrances from the total fair market value of the property. [It should be noted that, if the bid at a sale is not sufficient to pay off prior liens and the amount of the exemption, the property may not be sold. Sections 703.____, 707.____.]

27/874

§ 707.120. Property subject to enforcement of money judgments

707.120. 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, when the property was owned by the judgment debtor, to an attachment lien, judgment lien, execution lien, or other lien in favor of the judgment creditor and arising from the enforcement of the judgment.

Comment. Section 707.120 supersedes subdivision (a) of Section 688. Deletion of the overbroad 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 707.120 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, e.g., *Emeric v. Gilman*, 10 Cal. 404 (1858) (assets of citizen of county not liable for satisfaction of county debt); *Estate of Lawrence*, 267 Cal. App.2d 77, 72 Cal. Rptr. 351 (1968) (spendthrift trust); 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); *Hawi Mill & Plantation Co. v. Leland*, 56 Cal. App. 224, 205 P. 485 (1922); 5 B. Witkin, *California Procedure Enforcement of Judgment* §§ 21-24, at 3402-405 (2d ed. 1971). 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, 412-13, 175 P.2d 330, ____-____ (1946) (property subject to execution lien when owned by judgment debtor); *Wardstrom v. Corona City Water Co.*, 155 Cal. 206, 212-13, 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 Nat'l 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).

This section in no way restricts the property which is liable for the debts of a spouse pursuant to Civil Code Sections 5116, 5120, 5121, 5122, 5123, 5131, and 5132. Where a spouse's separate property is

sought to be applied to the debt of the other spouse incurred for necessities pursuant to the liability provided in Civil Code Section 5121, the spouse whose separate property is sought to be reached must be made a party to the action for the purpose of obtaining a limited personal judgment. Credit Bureau of Santa Monica Bay Dist., Inc. v. Terranova, 15 Cal. App.3d 354, 850, 93 Cal. Rptr. 538, ___ (1971). However, if property has been levied upon, the spouse who is not a judgment debtor may claim that the property may not be applied to the satisfaction of the judgment because it is such spouse's separate property by way of the third-party claims procedure in Chapter 6 (commencing with Section 706.110). Sherwood v. Cornfield, 216 Cal. App.2d 364, 369, 31 Cal. Rptr. 264, ___ (1963); Adler v. Blair, 169 Cal. App.2d 92, 336 P.2d 971 (1959).

100/916

§ 707.130. Exemptions from other process

707.130. (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 707.130 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 707.130 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 Civil Code § 1241 (specific exceptions to declared homestead exemption).]

27/822

§ 707.140. Claimed and unclaimed exemptions

707.140. (a) Where property is described in this chapter as "exempt," a claim of exemption shall be made pursuant to Section 707.220.

(b) Where property is described in this chapter as "exempt without making a claim," no claim of exemption need be made except as otherwise provided by Section 707.295.

Comment. Section 707.140 is similar in effect to subdivisions (a) and (b) of former Section 690. It explains the effect of the terms "exempt" and "exempt without making a claim" as used in this chapter.

100/915

§ 707.150. Exemptions cumulative

707.150. Except as otherwise provided by statute, the exemptions provided by this chapter are cumulative.

Comment. Section 707.150 makes clear that the judgment debtor is entitled to claim as many exemptions 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 707.330, the judgment debtor may obtain an exemption under that section and apply the entire \$2,500 exemption of Section 707.370 to tools.

266/995

§ 707.160. Adjustments of dollar amounts of exemptions

707.160. (a) Except as provided in subdivision (f), as used in this section:

(1) "Index" means an index stated as the average of the Consumer Price Index (all items, 1967 equals 100) for Los Angeles-Long Beach and for San Francisco-Oakland compiled by the Bureau of Labor Statistics of the United States Department of Labor.

(2) "Reference Base Index" means the Index for June [1979--June of the odd-numbered year immediately preceding the operative date of this section].

(b) The dollar amounts of the exemptions provided in this chapter change as provided in this section to correspond to changes in the cost of living as reflected in changes in the Index. Except as provided in subdivision (d), the dollar amounts of the exemptions change on October 1 of each odd-numbered year if the percentage of change between the Index for the preceding June and the Reference Base Index is not less than 10 percent.

(c) The dollar amounts of exemptions provided in this chapter change by a percentage which is the highest multiple of 10 percent not exceeding the change computed pursuant to subdivision (b) between the Index for the preceding June and the Reference Base Index.

(d) The dollar amounts do not change if the amounts required by an application of this section are the amounts currently in effect as a result of an earlier application of this section.

(e) The Judicial Council shall compute the changes in dollar amounts and adopt a rule announcing the changes before September 1 of the year in which the change occurs.

(f) If the Index is revised to change its base year, a revised Reference Base Index shall be determined by multiplying the Reference Base Index by the rebasing factor furnished by the Bureau of Labor Statistics of the United States Department of Labor. If the Index is otherwise revised, the percentage of change shall be calculated on the basis of the revised Index. If the Index is superseded, the change in the cost of living shall be calculated on the basis of an index represented by the Bureau of Labor Statistics as most accurately reflecting changes in the purchasing power of the dollar for consumers.

Comment. Section 707.160 is new so far as concerns the laws relating to exemptions from enforcement of money judgments. It is derived in part from other provisions in California law which rely upon the Consumer Price Index for a determination of adjustments in the cost of living. See Govt. Code §§ 9360.9 (legislative retirement system), 21221(c) (public employees' retirement benefits), 31870 (county employee's retirement benefits), 82001 (campaign spending limits), Welf. &

Inst. Code §§ 11453 (AFDC payments), 12201(i) (aged, blind, and disabled payments). Section 707.160 is also based on provisions in some federal and uniform laws. See [11 U.S.C. § 104 (197_) (bankruptcy act)]; Uniform Consumer Credit Code § 1.106 (1974 version); Uniform Exemptions Act § 2.

Under Section 707.160, the dollar amounts of exemptions provided in this chapter automatically change on October 1 of each odd-numbered year if the change in the Index (as defined in subdivision (a)(1)) is great enough. The time designated for the change to occur corresponds to the time when adjustments in the exemptions under the Bankruptcy Act take place. [11 U.S.C. § 104 (197_).] The change in the Index is figured from June to June of odd-numbered years. See subdivisions (a)(2), (b). The Judicial Council is given the responsibility of determining whether the requisite change in the Index has occurred and the amount of the change in the dollar amount of each of the exemptions provided by this chapter. See subdivision (e).

It should be noted that this section does not apply to exemptions not provided by this chapter. Subdivision (b). Hence, the exemption of earnings pursuant to Chapter 4 (Sections 704.110-704.____) is not changed in the manner stated here. Similarly, exemptions provided in this chapter which depend on Chapter 4 for a determination of the exempt amount are not governed by this section.

The following examples illustrate the operation of this section in the case of the exemption of deposit accounts provided by Section 707.380:

(1) Assume that the Reference Base Index (which, pursuant to subdivision (a)(2), is the Index for June 1979) is 190. If the Index for June 1981 is 205, the change from the Reference Base Index is approximately eight percent. Since the change is less than 10 percent, no change in dollar amounts of exemptions occurs. Note that the calculation is made on the basis of a percentage change in the Index, not on the basis of a change in Index points.

(2) If the Index for June of 1983 is 222, the change from the Reference Base Index of 190 is approximately 17 percent so a change in the amount of the exemption occurs. The portion in excess of 10 percent, however, is disregarded pursuant to subdivision (c). Ten percent

of \$2,000 is \$200 so the deposit account exemption is \$2,200 beginning on October 1, 1983.

(3) If the Index for June of 1985 is 226, the change from the Reference Base Index of 190 is approximately 19 percent. The portion in excess of 10 percent is disregarded, indicating a 10-percent change in the dollar amount of exemptions. However, the change does not occur because it has already been made. See subdivision (d).

(4) If the Index for June of 1987 is 234, the change from the Reference Base Index of 190 is approximately 23 percent so a change should occur. The portion of 23 percent in excess of a multiple of 10 percent (here three percent) is disregarded so a 20-percent change in the exemption is indicated. Twenty percent of \$2,000 is \$400 so the deposit account exemption is \$2,400 beginning on October 1, 1987.

(5) If the Index for June of 1989 is 220, the change from the Reference Base Index of 190 is approximately 16 percent. Note that a decline in the Index from 1987 to 1989 indicates an increase in the purchasing power of the dollar although it is still an overall decrease since the Reference Base Index of 190 in 1979. The portion in excess of 10 percent is disregarded so a 10-percent change is indicated in the dollar amount of the exemption as stated in Section 707.380. Ten percent of \$2,000 is \$200 so the deposit account of exemption is \$2,200 beginning on October 1, 1989.

(6) If the Bureau of Labor Statistics revises the Index in 1990 by changing the components of the Consumer Price Index, the revised Index should be used as provided in subdivision (f). If a new base period is selected, such as 1989 equals 100, the Reference Base Index will have to be revised when the determination of the changes is made in 1991. In this hypothetical case, the rebasing factor would be approximately 0.455. The revised Reference Base Index is 86.4 (190 times 0.455). If the Index for June of 1991 is 112 (1989 equals 100), the change from the revised Reference Base Index is approximately 31 percent. A 30-percent change in the amount of the exemption provided by statute is indicated so the deposit account exemption is \$2,600 beginning on October 1, 1991.

§ 707.170. Exemptions from tax liability

707.170. 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 707.170 is the same in substance as former Section 690.51.

Article 2. Procedure for Claiming Exemptions

§ 707.210. Right to claim exemption; "claimant" defined

707.210. (a) Except as otherwise provided in Sections 704.____ [wage garnishment], 707.310, and 707.390 [bank account consisting of social security payments], 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, an exemption may be claimed therefor as provided in this article.

(b) As used in this article, "claimant" means the judgment debtor, a person authorized to exercise the rights of the judgment debtor, and, in the case of an individual judgment debtor, the spouse or a dependent of the judgment debtor.

Comment. Subdivision (a) of Section 707.210 indicates the scope of the application of exemption procedure provided in this article. As noted in the introductory clause, variant procedures are applicable to claims of exemption for earnings exempt pursuant to Section 704.____, for dwellings exempt pursuant to Section 707.310, and for deposit accounts consisting of social security benefits pursuant to Section 707.390.

Subdivision (b) specifies : the persons who are entitled to claim exemptions. Under former Section 690.50(a), only the judgment debtor and the agent of the judgment debtor were expressly authorized to claim an exemption. The reference to persons authorized to exercise rights of the judgment debtor includes agents, guardians, conservators, and persons holding a power of attorney. Subdivision (b) extends this right to the spouse and dependents of a judgment debtor since a major purpose of the exemption laws is to protect such persons.

§ 707.220. Claim of exemption

707.220. (a) The claimant shall, within 10 days from the date of levy or service of other process affecting the property, file with the levying officer a claim of exemption, together with a copy thereof.

(b) The claim of exemption shall be executed under oath and shall include 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.

Comment. Section 707.220 continues the substance of [the first sentence of] subdivision (a) of former Section 690.50 except that subdivision (b)(4) requires the claim to contain points and authorities if legal issues are raised. The form of the claim of exemption is prescribed by the Judicial Council pursuant to Section 701.____. See also Section 707.210(b) ("claimant" defined).

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§ 707.230. Notice of claim of exemption

707.230. 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:

- (a) A copy of the claim of exemption.
- (b) 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.

Comment. Section 707.230 is substantially the same as subdivision (b) of former Section 690.50. The five-day period provided by former law for giving the notice of opposition has been increased to 10. See also Section 701.____ (personal service permitted). The form of the notice of claim of exemption is prescribed by the Judicial Council pursuant to Section 701.____.

§ 707.240. Notice of opposition

707.240. (a) A judgment creditor who desires to contest a claim of exemption shall, within 10 days after the date of the mailing of the notice of claim of exemption, file with the levying officer a notice of opposition to the claim of exemption.

(b) 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.

Comment. Section 707.240 is essentially the same as subdivision (c) of former Section 690.50 except that the provision for proof of service of the notice of opposition is continued in Section 707.250(c). The form of the notice of opposition is prescribed by the Judicial Council pursuant to Section 701.____.

§ 707.250. Notice of motion for hearing

707.250. (a) If a notice of opposition to the claim of exemption is filed with the levying officer within the 10-day period provided by Section 707.240, the judgment creditor is entitled to a hearing on the claim of exemption.

(b) If the judgment creditor desires a hearing on the claim of exemption, the judgment creditor shall file a notice of motion for an order determining the claim of exemption with the court within 10 days after the date the levying officer mailed the notice of claim of exemption. If the notice of motion is so filed, the hearing on the motion shall be held not later than 20 days from the date the notice of motion was filed unless continued by the court for good cause.

(c) Not less than 10 days prior to the hearing, the judgment creditor shall give written notice of the hearing to the levying officer and shall serve a notice of the hearing and a copy of the notice of the opposition to the claim of exemption by first-class mail on the claimant and, if the claim of exemption so requested, on the attorney for the claimant. Service is deemed made when the notice of the hearing and a copy of the notice of opposition to the claim of exemption are deposited in the mail, postage prepaid, addressed to the claimant at the address stated in the claim of exemption and, if service on the attorney for the claimant was requested in the claim of exemption, to the attorney at the address stated in the claim of exemption. The judgment creditor shall file proof of such service with the court.

(d) 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.

Comment. Section 707.250 supersedes portions of subdivision (e) of former Section 690.50. Section 707.250, unlike former law, does not provide the claimant with the right to request a hearing on the claim of exemption since, if the judgment creditor does not file a notice of opposition and file a notice of motion for an order determining the claim of exemption within the time provided, the property is released pursuant to Section 707.260, making a hearing unnecessary. Consequently, the time provided by subdivision (e) of former Section 690.50 between the filing of the counteraffidavit and the notice of motion has been eliminated.

The 10-day period provided by subdivisions (b) and (c) for the judgment creditor to file the documents there specified runs from the date of mailing the notice of claim of exemption. This specific provision is intended to take precedence over the general provisions of Section 1013 (extra time to act after mail service). Cf. *Labarthe v. McRae*, 35 Cal. App.2d 734, 97 P.2d 251 (1939) (provision for running of time for notice of intention to move for new trial from receipt of notice of entry of judgment controls over Section 1013). The 10-day period for service of the notice of hearing is not subject to Section 1013. See *Welden v. Davis Auto Exch.*, 153 Cal. App.2d 515, 521-22, 315 P.2d 33, 37 (1957). See also Section 707.210(b) ("claimant" defined).

§ 707.260. Release

707.260. 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 upon and custody of the property.

Comment. Section 707.260 supersedes subdivisions (c) (release if no counteraffidavit served) and (f) (release if no motion) of former Section 690.50. See the Comment to Section 707.250.

§ 707.270. Pleadings; conduct of hearing; order

707.270. (a) 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 claimant's claim of exemption shall be deemed controverted by the judgment creditor's notice of opposition to the claim of exemption.

(b) At any hearing under this section, the judgment debtor has the burden of proof.

(c) 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.

(d) At the conclusion of the hearing, the court by order shall 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.

(e) 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 custody of and lien on the property or to continue the custody and lien in order to apply the property to the satisfaction of the judgment.

(f) 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 707.270 continues the substance of portions of subdivisions (i) and (j) of former Section 690.50. Subdivision (e) serves the same purpose as the first sentence of subdivision (j) of former Section 690.50 but varies in its terminology as explained in the Comment to Section 707.285. See also Section 707.210(b) ("claimant" defined).

16/967

§ 707.280. Appeal

707.280. An appeal lies from any order under this article and shall be taken in the manner provided for appeals in the court in which the proceeding takes place.

Comment. Section 707.280 is the same as subdivision (m) of former Section 690.50.

100/909

§ 707.285. Maintenance of levy, orders, during pendency of proceedings

707.285. (a) The levying officer shall maintain the custody of property in custody and the lien of execution or other process for the satisfaction of a judgment for the payment of money shall be maintained 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 claimant 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 707.285 is substantively similar to subdivision (b) and the second sentence of subdivision (j) of former Section 690.50; however, this subdivision refers to custody of and liens on the property 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 terminology in the levy procedures (see Section 703.310) and recognizes that exemptions provided by this chapter apply to any type of process used to enforce a money judgment (see Section 707.210(a)). Subdivision (a) of Section 707.285, as did former Section 690.50(h), simply requires the levying officer to preserve the status quo by maintaining the lien in whatever form it takes.

Subdivisions (b) and (c) continue the substance of subdivision (g) of former Section 690.50.

See also Section 707.210(b) ("claimant" defined).

100/913

§ 707.290. Prohibition against levy on property determined to be exempt

707.290. If property is determined to be exempt pursuant to Section 707.270 or if the judgment creditor fails to oppose a claim of exemption within the time allowed by Section 707.240, the exempt property may not be levied upon or sought to be applied to the satisfaction of a judgment for the payment of money 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 has expired makes the exemption invalid, in whole or in part.

Comment. Section 707.290 is new. This section makes clear that the judgment creditor may subject property to the satisfaction of a money judgment where it has been determined to be exempt in a hearing on a claim of exemption or where the judgment creditor has not filed a notice of opposition to a claim of exemption within the time provided. Section 707.290 only prohibits the application of such property 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 non-exempt.

100/905

§ 707.295. Property exempt without making a claim; claim of exemption

707.295. If property described in Article 3 (commencing with Section 707.310) as "exempt without a claim" is levied upon, the claimant may obtain its release from the custody of the levying officer and the lien of execution or other process for the satisfaction of a judgment for the payment of money by following the procedure provided by this article except that the procedure may be initiated at any time [prior to sale or other disposition of the property].

Comment. Section 707.295 provides that the procedure for claiming and determining exemptions provided by this article 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 normally must be made under Section 707.220 is not applicable to claims under Section 707.295.

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?

Article 3. Exempt Property of Individual Debtors§ 707.310. Dwelling

707.310. [The drafting of this section awaits the conclusions of a consultant's study and Commission action thereon. See the Minutes for April and May 1977.]

§ 707.320. Cemetery Plot

707.320. (a) A cemetery plot for two persons is exempt.

(b) Notwithstanding subdivision (a), a family plot (as that term is used in Health and Safety Code Section 8650) is exempt.

(c) As used in this section, "cemetery" has the meaning provided by Health and Safety Code Section 7003 and "plot" has the meaning provided by Health and Safety Code Section 7022.

Comment. Section 707.320 supersedes the first sentence of the first paragraph of former Section 690.24 which provided an exemption for a cemetery lot not exceeding one-quarter of an acre in size. The two-lot limitation provided in subdivision (a) does not apply to a family plot created under the conditions set forth in Health and Safety Code Section 8650. The exemption of two lots is, in the case of a married debtor, consistent with the spouse's vested right of interment provided by Health and Safety Code Section 8601. For other exemptions pertaining to cemeteries, see Section 707.740.

§ 707.330. Motor vehicle; proceeds of sale

707.330. (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 one thousand five hundred dollars (\$1,500) 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.

(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 one thousand five hundred dollars (\$1,500) for a period of 90 days after sale.

Comment. Section 707.330 supersedes subdivisions (a) and (e) 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 but that another motor vehicle may be exempt pursuant to Section 707.370 (tools of trade). Subdivision (a) prescribes a different manner of determining value in the case of motor vehicles and as such constitutes an exception to the general rule stated in Section 707.110. See also Section 707.160 (adjustments of dollar amounts of exemptions).

Note. Portions of the following subdivisions of Section 690.2 (enacted in 1976) should be added to the other provisions concerning sale and distribution of proceeds in Chapter 3 where necessary:

(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.

The third paragraph of subdivision (b) does not appear to have any function. If the vehicle is community property, then it is liable for the debts of the spouses. Civil Code §§ 5116, 5120, 5121, 5125. Deeming the vehicle owned by the debtor spouse seems superfluous. The question is here, as for all other types of property, whether the property is separate or community, when the debt was incurred, and for what purpose.

We envision difficulties for the levying officer in determining whether the vehicle is safe, functional, and legally operable or can be made so and also whether the debtor and 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?

§ 707.340. Household furnishings, wearing apparel, personal effects

707.340. Household furnishings, appliances, wearing apparel, provisions, and other personal effects, [reasonably necessary for one household and] personally used or procured for use by the judgment debtor and members of the judgment debtor's household at their principal place of residence, with a value not exceeding three hundred dollars (\$300) per item are exempt.

Comment. Section 707.340 supersedes former Section 690.1 which provided an exemption for like items "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family." Section 707.340 [continues the reasonably necessary standard in modified form but] places a limit on the value of the item. This value limitation [in conjunction with the standard of reasonably necessary items for one household,] is intended to eliminate the unfairness inherent in the station in life test as applied in cases such as Independence Bank v. Heller, 275 Cal. App.2d 84, 79 Cal. Rptr. 868 (1969), and Newport Nat'l Bank v. Adair, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969).

§ 707.350. Jewelry, heirlooms, works of art

707.350. Jewelry, heirlooms, and works of art are exempt in the maximum aggregate value of five hundred dollars (\$500).

Comment. Section 707.350 provides a \$500 exemption for items likely to be of sentimental value. This section supersedes portions of former Section 690.1 which provided an exemption for wearing apparel and furnishings "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family" and an exemption for works of art "of or by the debtor and his resident family." The property exempt under Section 707.350 depends upon an estimation of its value rather than its ordinary and reasonable necessity to the judgment debtor. It should be noted that jewelry, heirlooms, and works of art may also be exempt under the exemption for household furnishings not exceeding \$300 in value per item provided by Section 707.340. See also Sections 707.110 ("value" defined); 707.160 (adjustments of dollar amounts of exemptions).

§ 707.360. Prosthetic and orthopedic appliances

707.360. 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 707.360 is the same as former Section 690.5 except that under Section 707.360 no claim of exemption need be made and the exemption covers such items owned by the judgment debtor but used by members of the judgment debtor's family.

§ 707.370. Tools, etc., used in trade, business, or profession

707.370. 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 value of two thousand five hundred dollars (\$2,500), are exempt.

Comment. Section 707.370 continues the substance of former Section 690.4. The specific reference to farming in former Section 690.4 has not been continued in this section because it is included in the phrase "trade, business, or profession." See also Sections 707.110 ("value" defined), 707.160 (adjustments of dollar amounts of exemptions).

§ 707.380. Deposit accounts and money

707.380. Except as otherwise provided in Section 707.390, any combination of deposit accounts and money is exempt without making a claim to the maximum aggregate amount of two thousand dollars (\$2,000).

Comment. Section 707.380 supersedes 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 cover bank accounts. See Section 701.____ ("deposit

account" defined). Section 707.380 also aggregates the deposit account exemption with money. Under Section 707.380, \$2,000 is exempt without making a claim 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), 707.390 (exemption of deposit account into which social security payments are directly deposited), 707.160 (adjustment of dollar amounts of exemptions).

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§ 707.390. Deposit account in which social security payments are directly deposited

707.390. (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 amount 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 consisting of an amount in excess of the amount exempt pursuant to subdivision (b) is exempt to the extent that such account consists of payments authorized by the Social Security Administration 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 Article 2 (commencing with Section 707.210), an excess amount exempt under subdivision (c) 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 Section 707.240, and a hearing shall be set and held, and notice given, as provided by Section 707.250. 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 Section 707.250 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 a hearing may not 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 a hearing may not 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 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 703.390 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 Article 2 (commencing with 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 subdivision (d) 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 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 Article 2 (commencing with Section 707.210) apply to the determination of the exemption provided for deposit accounts generally in Section 707.390. Note that, where an account described in subdivision (b) exceeds the amount exempt thereunder, the exemption provided by subdivision (c) is determined pursuant to subdivision (d), not by Article 2 procedures. See subdivision (d), providing an exception to Article 2 (determination of exemption where property described as "exempt"). See also Sections 701.____ ("deposit account" defined), 707.160 (adjustment of dollar amounts of exemptions).

Note. The staff is somewhat 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 707.390(c)) or some other section (such as draft Section 707.380).

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.

27/824

§ 707.400. Unpaid earnings

707.400. 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 707.400 refers to the portion of Chapter 4 (commencing with Section 704.110) that provides the exemptions applicable to wage garnishment. It should be noted that Section 707.160, relating to adjustments of dollar amounts of exemptions, does not apply to the wage garnishment exemption.

968/908

§ 707.410. Life insurance [and death benefits]

707.410. (a) The cash surrender value of an unexpired life insurance policy is exempt without making a claim.

(b) The loan value of an unexpired life insurance policy is exempt without making a claim in the aggregate amount of five thousand dollars (\$5,000).

(c) Benefits from a matured life insurance policy [or any death benefits] that are paid periodically are exempt to the same extent as earnings pursuant to Section 704.____.

Comment. Section 707.410 supersedes the exemptions provided in former Sections 690.7 (life insurance represented by \$500 annual premium) and 690.10 (group life insurance) [and portions of former Section

690.18 (death benefits from public entity)]. Section 707.410 does not provide an exemption for life insurance benefits that are paid in a lump sum. In order to take advantage of subdivision (c) of this section, the insured or beneficiary, if other than the insured, should convert the lump sum benefits into some plan of periodic payments within the time prescribed by Section 707.____. See also Section 707.160 (adjustment of dollar amounts of exemptions).

Note. Should benefits be exempt to the same extent that we propose to exempt loan value, e.g., \$5,000?

We have tentatively drafted this section also to cover death benefits.

968/999

§ 707.420. Retirement benefits

707.420. (a) As used in this section, "retirement benefits" means money held for payment or paid as an annuity, pension, or retirement allowance under a retirement plan of a public entity, private employer, or other private entity, including a profit-sharing plan designed and used for retirement purposes.

(b) Before the right to payment of retirement benefits has accrued, the benefits are exempt without making a claim.

(c) After the right to payment of retirement benefits has accrued, the benefits that are payable periodically are exempt to the same extent as earnings pursuant to Section 704.____.

Comment. Section 707.420 supersedes the provisions relating to exemptions for retirement benefits (other than disability payments from retirement plans covered by Section 707.440) provided by former Section 690.18.

405/355

§ 707.430. Unemployment compensation

707.430. (a) Before the right to payment has accrued, the following benefits are exempt without making a claim:

(1) Unemployment compensation benefits payable under Part 1 (commencing with Section 100) of Division 1 of the Unemployment Insurance Code.

(2) Unemployment compensation disability benefits payable under Part 2 (commencing with Section 2601) of Division 1 of the Unemployment Insurance Code.

(3) Extended duration benefits payable under Part 3 (commencing with Section 3501) of Division 1 of the Unemployment Insurance Code.

(4) Federal-state extended benefits payable under Part 4 (commencing with Section 4001) of Division 1 of the Unemployment Insurance Code.

(5) Incentive payments payable under Division 2 (commencing with Section 5000) of the Unemployment Insurance Code.

(6) Benefits under a plan or system established by an employer which makes provision for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits.

(b) After the right to payment has accrued:

(1) The benefits described in paragraphs (1) to (5), inclusive, of subdivision (a) are exempt.

(2) The benefits described in paragraph (6) of subdivision (a) that are payable periodically are exempt to the same extent as earnings pursuant to Section 704.____.

Comment. Section 707.430 supersedes former Sections 690.16 and 690.175 and portions of Unemployment Insurance Code Sections 988 and 1342. To the extent unemployment benefits were payable under former Section 690.14 and Insurance Code Section 11045 (fraternal benefit society aid), this section is applicable.

15331

§ 707.440. Disability and health benefits

707.440. (a) Benefits from a disability or health insurance policy or program that are paid or to be paid periodically are exempt in the same amount as earnings pursuant to Section 704.____.

(b) The exemption provided by subdivision (a) does not apply to a claim by a provider of health care whose claim arises out of the judgment debtor's condition for which the benefits are collected.

Comment. Section 707.440 supersedes former Section 690.11 (disability or health insurance benefits represented by \$500 annual premium) and portions of former Section 690.18 (disability benefits from retirement plans). The claim of a provider of health care whose claim arises out of the condition for which benefits are paid is not subject to the exemption as provided in subdivision (b).

15332

§ 707.450. Tort damages

707.450. [(a)] Damages awarded in an action for personal injury or wrongful death or in settlement of such an action are exempt to the same extent as earnings pursuant to Section 704. ___ if the damage award or settlement is converted to a periodic payment plan.

[(b) Notwithstanding subdivision (a), the exemption provided by subdivision (a) does not apply to a provider of health care whose claim arises out of the judgment debtor's condition for which the damages were collected or the settlement made.]

Comment. Section 707.450 is new. It treats damages or settlements for personal injury or wrongful death in the same manner as disability and health benefits under Section 707.440(a) and life insurance benefits under Section 707.410(c). Analogous to disability and health benefits, subdivision (b) provides an exception in the case of a claim of a health care provider. See Section 707.440(b).

405/354

§ 707.460. Worker's compensation

707.460. Except as provided by Chapter 1 (commencing with Section 4900) of the Labor Code, prior to payment, a claim for worker's compensation or compensation awarded or adjudged is exempt without making a claim. After payment, the award is exempt.

Comment. Section 707.460 continues the substance of former Section 690.15.

§ 707.470. Aid

707.470. Prior to payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code to the judgment debtor or for the benefit of the judgment debtor is exempt without making a claim. After payment, such aid is exempt.

Comment. Section 707.470 is based on former Section 690.19. However, Section 707.470 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 707.470 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 also Welf. & Inst. Code § 10052 ("aid" defined).

Note. Welfare and Institutions Code Section 17409 is in Exhibit 2. 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 2.) 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.

405/339

§ 707.480. Employee's bond

707.480. 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 707.480 continues the substance of a provision formerly included in Labor Code Section 404.

405/336

§ 707.490. Vacation credits

707.490. Vacation credits accumulated by a 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 707.490 continues the substance of a portion of former Section 690.18(b). Accumulation of state employees' vacation credits is provided by Government Code Section 18050.

Note. Should this apply only to public employees?

27/872

§ 707.500. Relocation benefits

707.500. Relocation benefits for displacement from a dwelling actually owned or rented by the judgment debtor which are 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 707.500 continues the substance of former Section 690.8a.

968/699

§ 707.510. Estate at will

707.510. An estate at will is exempt without making a claim.

Comment. Section 707.510 continues the substance of a portion of former Civil Code Section 765.

Article 4. Exempt Property of Entities
and Individuals

§ 707.710. Escrow and trust funds

707.710. Escrow funds and trust funds are exempt without making a claim where the claim is against the escrow agent or trustee.

Comment. Section 707.710 is based on a provision formerly included in Financial Code Section 17410. Section 707.710 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. See Fin. Code § 17006.

§ 707.720. Property held in trust for wages

707.720. 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 707.720 is based on portions of former Labor Code 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). Section 707.720 extends the exemption of former law to any situation where an employer may be required to hold property in trust for the payment of wages.

§ 707.730. Fraternal organization funds for sick or unemployment benefits

707.730. 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 707.730 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?

17002

§ 707.740. Cemetery property

707.740. (a) 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.

(b) Notwithstanding Section 707.320, land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

(c) 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.

(d) Property dedicated as a cemetery by a cemetery authority is exempt without making a claim on a debt due from an individual owner of a cemetery plot.

Comment. Section 707.740 supersedes portions of former Section 690.24. Subdivision (a) 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 on execution). Subdivision (b) continues the substance of the third paragraph of former Section 690.24. Subdivision (c) is the same as the fifth paragraph of former Section 690.24. Subdivision (d) is the same in substance as the fourth paragraph of former Section 690.24.

405/340

§ 707.750. Hospital endowment funds

707.750. 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 707.750 continues the substance of former Section 690.20 and of a provision formerly included in Health and Safety Code Section 32508.

405/341

§ 707.760. Educational endowment funds

707.760. 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 707.760 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 707.130(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 2) 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 on enforcement. In view of the provisions of Education Code Section 21115 (see Exhibit 2), the first sentence of Section 21116 is unnecessary. The second sentence of Section 707.760 and Education Code Section 21116 provide for the priority of applying property to the satisfaction of the judgment and do not really constitute exemption provisions at all.

405/949

§ 707.770. Segregated benefit funds

707.770. 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 707.770 continues the substance of former Section 690.12.

Note. This section relates to certain life insurers. See Ins. Code § 10497 in Exhibit 2.

27/823

§ 707.780. Licenses

707.780. Except as provided in Section 705.320, a license to engage in any business, profession, or activity issued by a public entity is exempt without making a claim.

Comment. Section 707.780 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 707.780 expands the application of this provision to preclude the application of a license issued by any governmental entity to engage in a business, profession, or activity to the satisfaction of a money judgment.