

## Memorandum 77-55

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

The July 1977 meeting of the Commission drew to a close during the discussion of draft Section 707.410, the exemption for life insurance. The revised draft of the exemption chapter attached hereto reflects the decisions made at the July meeting pertaining to Sections 707.110-707.410. In the course of revising the draft, some additional questions have arisen which are discussed below. We hope to be able to tentatively approve Chapter 7, subject to any necessary substantive and editorial changes, at the September meeting.

Attached to this memorandum are several exhibits:

1. Excerpt from Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779 (1974).
2. Excerpts from Uniform Exemptions Act (1976).
3. Miscellaneous Statutes.

Accompanying the draft statute is an appendix showing the disposition of existing Sections 690-690.52.

Tracing and Exemption of Proceeds From Exempt Property

Existing exemption provisions contain no general statements concerning the continuation of the exempt nature of property through a change in form. The homestead and motor vehicle exemption laws provide an exemption of proceeds from sale for six months and 90 days, respectively. See Civil Code §§ 1257, 1265; Code Civ. Proc. § 690.2. Section 690.18 provides that retirement, disability, death, or annuity benefits are exempt "whether the same shall be in the actual possession of such pensioner or beneficiary, or deposited by him." The cases have made clear that unemployment, disability, veterans', and life insurance benefits are exempt in the form of a cashier's check or in a deposit account, whether a savings and loan account, a checking account, or an attorney's trust account. See the cases cited in the Comment to proposed Section 707.180 below. Additional background is provided in Exhibit 1, the excerpt from Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779 (1974).

By way of contrast, Section 9 of the Uniform Exemptions Act (see Exhibit 2), provides an exemption for the proceeds of a homestead, burial plot, health aids, and, to the extent of the applicable value limitations, household furnishings, wearing apparel, animals, books, instruments, tools, and a motor vehicle. The following moneys are also exempt so long as they are traceable: (1) social security, unemployment, and public assistance benefits; (2) medical benefits to the extent used to pay medical bills; (3) veterans' benefits; (4) crime victim reparations; and (5) disability benefits, support payments, tort awards, life insurance, pensions, and annuities to the extent necessary for support.

The staff recommends that the proceeds exemption be continued for homesteads and motor vehicles, and that tools of a trade be afforded a similar exemption. See draft Sections 707.330 and 707.370. These sections should also make clear that the proceeds of insurance or other indemnification for the loss or destruction of, or damage to, such property should be exempt. Should the proceeds from any other form of tangible property be exempt?

The staff also recommends adoption of the following provision which recognizes that exemptions may be traced and specifies the standard for tracing money through deposit accounts:

§ [707.180.] Tracing exempt amounts

[707.180.] (a) An exempt amount remains exempt after it is paid to the judgment debtor and an exempt amount may be traced from one form of money to another and into and out of deposit accounts.

(b) The tracing of exempt amounts in deposit accounts shall be accomplished by application of the principle of first-in first-out.

(c) The judgment debtor has the burden of tracing exemptions pursuant to this section.

Comment. Section [707.180] provides the general rule concerning the duration of an exemption for payments to the judgment debtor through a change in form. Subdivision (a) is consistent with decisions under prior law. See, e.g., *Kruger v. Wells Fargo Bank*, 11 Cal.3d 352, 367, 521 P.2d 441, \_\_\_, 113 Cal. Rptr. 449, \_\_\_ (1974) (unemployment benefits in checking account); *Holmes v. Marshall*, 145 Cal. 777, 782-83, 79 P. 534, \_\_\_ (1905) (life insurance benefits deposited in bank account); *Bowman v. Wilkinson*, 153 Cal. App.2d 391, 395-96, 314 P.2d 574, \_\_\_ (1957) (life insurance check converted to cashier's check and deposited in attorney's

trust account). See also former Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (veterans' benefits in savings and loan account). This section applies to any fund which is exempt as provided in this chapter. See Sections [707.310] (proceeds from homestead), 707.330 (proceeds from motor vehicle), 707.370 (proceeds from tools of trade), 707.380 (deposit accounts and money), 707.390 (deposit account into which Social Security benefits are paid), 707.410 (life insurance benefits), 707.420 (retirement benefits), 707.430 (unemployment benefits), 707.440 (disability and health benefits), 707.450 (worker's compensation), 707.460 (aid), and 707.490 (relocation benefits).

Subdivision (b) specifies the manner of tracing exempt amounts in a deposit account. This has the effect of changing the rule in *California United States Bond & Mortgage Corp. v. Grodzins*, 139 Cal. App. 240, 34 P.2d 193 (1934), which held that an attachment defendant spent the exempt portion of life insurance benefits first, thereby preserving and "earmarking" the nonexempt portion for creditors.

Subdivision (c) states the rule under former law concerning the burden of tracing exempt funds. This is consistent with the general burden on the judgment debtor to prove entitlement to exemptions. See Section 707.275(b).

A serious problem with applying the proposed section would arise where, for example, a lump-sum payment of retirement benefits or periodic payments of retirement benefits that have not been subjected to garnishment are deposited in a bank account. Under current law, since such benefits are completely exempt (except against judgments for child or spousal support), the debtor need only show the nature and amount of such funds. However, the Commission has tentatively decided to exempt retirement benefits in the amount provided in the wage garnishment recommendation which would leave approximately one-fourth of periodic payments in the hands of the payor subject to garnishment. We need to clarify whether this exemption applies after payment, such as when the benefits are deposited in a bank (by the debtor or directly by the retirement plan) and, if not, whether some other or no exemption applies. The same problem arises in the case of other types of benefits the Commission has tentatively decided should be exempt to the extent provided in the wage garnishment exemptions.

If the law pertaining to tracing is to be continued, as recommended by the staff, a certain amount of these types of benefits should be exempt after payment. Otherwise, the creditor could reach all of the funds in the hands of the bank, whereas, if the creditor first garnished the benefits in the hands of the retirement plan, the exemption of the remainder would be traceable in the deposit account. The staff does not believe these different approaches by the creditor should result in a four-fold difference (approximately) in the amount which may be applied to the judgment.

It is not, however, feasible to apply the wage garnishment exemptions to funds in the hands of the debtor or, in most cases, in the hands of the bank. The reach of Title III of the federal Consumer Credit Protection Act (CCPA), 15 U.S.C. §§ 1671-1677 (1970), which currently preempts the California provisions restricting wage garnishment, is a matter of dispute. The CCPA defines earnings to mean "compensation paid or payable for personal services" (emphasis added). 15 U.S.C. § 1672(a) (1970). The administrative opinions of the Wage and Hour Division of the United States Department of Labor have taken a broad view of the meaning of this provision. In Opinion W.H.-171 (August 3, 1972), it was stated that "earnings of a debtor in a bank account would retain their status as earnings subject to the restrictions on garnishment provided in the [CCPA] so long as they are capable of identification as such." In Opinion W.H.-146 (October 26, 1971), a similar conclusion was reached in a situation where a bank performed payroll services for the employer; in this case, the writer of the opinion spoke of the bank as being an agent of the employer.

The views expressed in these administrative opinions did not find favor in the one federal decision on the issue. In *Dunlop v. First Nat'l Bank of Arizona*, 399 F. Supp. 855 (D. Ariz. 1975), the court held that the CCPA did not restrict garnishment of earnings in the hands of a bank and that, even if it did, the bank was under no duty to assert the exemption on behalf of the depositor. The court in *Dunlop* was obviously concerned about the difficulty of applying the complicated formula provided in the CCPA to determine the amount of the exemption, terming the proposed mandatory compliance by the bank as involving "staggering" red tape and involving the bank in a "Pandora's Box of

possible litigation by both parties." 399 F. Supp. at 856 n.7, 858 n.12. Cf. Miller v. Monrean, 507 P.2d 771 (Alaska 1973) (federal law, unlike Alaska law, appears to apply only to employers).

Recently, the Commission, in anticipation of the difficulties of applying the wage garnishment restrictions outside of the employee-employer relationship, has limited the application of its wage garnishment recommendation to earnings which are payable by an employer to an employee for personal services. See Section 723.011(a) in Assembly Bill 393. However, it should also be remembered that, in the December 1974 Recommendation Relating to Wage Garnishment Exemptions, 12 Cal. L. Revisions Comm'n Reports 901 (1974), the Commission proposed a hardship exemption that would have been applicable regardless of whether there had been a wage garnishment. Id. at 920-21. The Commission's views on the extent of the earnings exemption under prior California law are summarized in the following note (id. at 910 n.4.):

Section 690.6 of the Code of Civil Procedure apparently protects not only earnings in the hands of the employer but also earnings that have been paid to the employee. Between 1937 and 1970, California granted a wage exemption to earnings "received." Cal. Stats. 1937, Ch. 578, § 1. Prior to 1937, the exemption was accorded to earnings without reference to their status as "owing" or paid over. Cal. Stats. 1935, Ch. 723, § 11. The word "received" was soon construed as including accrued but unpaid wages. See Medical Finance Ass'n v. Rambo, 33 Cal. App.2d Supp. 756, 757, 86 P.2d 159, 160 (Sup. Ct. L.A., App. Dep't 1938) ("We are not to be understood as saying that the exemption would not also attach to the proceeds of his earnings in the judgment debtor's hands, so long as they could be identified as such. That question is not before us and we express no opinion on it.") In subsequent cases, the California courts at least sub silentio applied the wage exemption to a paycheck in the hands of the employee or deposited by him in a bank account. See Medical Finance Ass'n v. Short, 36 Cal. App.2d Supp. 745, 92 P.2d 961 (Sup. Ct. L.A., App. Dep't 1939) (paycheck); Le Font v. Rankin, 167 Cal. App.2d 433, 334 P.2d 608 (1959) (bank account); Carter v. Carter, 55 Cal. App.2d 13, 130 P.2d 186 (1942) (bank accounts). The substitution of "due or owing" for "received" by Cal. Stats. 1970, Ch. 1523, § 19, probably destroyed the ability of a debtor to continue such tracing. See Randone v. Appellate Department, 5 Cal.3d 536, 559 n.22, 488 P.2d 13, 28 n.22, 96 Cal. Rptr. 709, 724 n.22 (1971). However, the word "received" was restored by Cal. Stats. 1971, Ch. 1684, § 5. Federal law also protects both paid and unpaid earnings. Consumer Credit Protection Act § 302(b), 15 U.S.C. § 1672(b) (1970).

In order to make tracing possible in situations where there has not already been a levy on partially exempt funds, the staff recommends that, after payment, life insurance benefits, retirement benefits, private unemployment benefits, and disability and health benefits be exempt to the extent the judgment debtor shows them to be necessary for the support of his or her family.

An alternative approach which would likewise permit tracing and which would be easier to administer would be to exempt three-fourths of such benefits. This proportion approximates the exemption provided for wages. Such an approach, however, would permit debtors to shield large amounts of life insurance, in particular, from the reach of creditors, with no demonstration of need.

#### Applicability of Exemptions to Judgments for Child or Spousal Support

Existing California exemption statutes are subject to exceptions where the judgment is for child or spousal support in two instances. Section 690.6, which is superseded in most situations by the federal restrictions on wage garnishment, permits the garnishment of one-half of the debtor's earnings, since the federal law does not preempt state law in the case of support judgments (see 15 U.S.C. § 1673(b)(1) (1970)); and this amount may be increased by court order (see *Ogle v. Heim*, 69 Cal.2d 7, 11, 442 P.2d 659, 69 Cal. Rptr. 579 (1968), and cases cited therein; Welf. & Inst. Code § 11489). Section 690.18 currently provides an exception for child or spousal support judgments to the exemption of pensions, annuities, and retirement, disability, death, or other benefits, from a public entity or under ERISA.

In the wage garnishment recommendation, the Commission has recommended the continuation of the former law which permitted the garnishment of one-half of the debtor's earnings to collect delinquent amounts payable for child or spousal support, subject to the power of the court to make an order that more or less of the earnings of the judgment debtor be withheld in such cases. This power is particularly important where the debtor has families from both a former and a current marriage.

Although the matter has been discussed at past meetings, no decision has been made concerning the extent to which the exemptions from enforcement of a money judgment should be subject to an exception in the case of a judgment for child or spousal support. The explicit exception

applicable to the exemption for Section 690.18-type assets (retirement, disability, and the like) has not been continued in the draft statute since the exception applicable under the wage garnishment exemption, incorporated by draft Sections 707.410, 707.420, and 707.440 would apply automatically to these exemptions. The effect of the present structure of the draft statute is to consistently apply the support exception to all of these types of payments, including union pension funds which, it appears, are not subject to the exception under existing Section 690.18(c).

As noted in the discussion on tracing, we do not as yet have in the draft statute (except for the staff proposal concerning life insurance proceeds in Section 707.410(c)) a post-payment exemption of these types of assets. The staff has recommended that a necessity standard be applied to such payments after they are paid to the debtor. If this is done, the staff also recommends a provision based on Section 735.052(b) of the wage garnishment recommendation which would apply where a support judgment is being enforced:

Where property described in Section 707.410(a) or (c), 707.420(c), 707.430(b)(6), or 707.440(a) is sought to be applied toward the satisfaction of a judgment for child or spousal support, the court shall, upon motion of any interested party, make an equitable division of such property that takes into account the needs of all the persons the judgment debtor is required to support and shall effectuate such division by an order determining the amount of such property to be applied toward the satisfaction of the judgment.

#### Exemption of Property of Public Entities

Under existing law, property of the state is exempt from execution (presumably including supplementary proceedings and the like) unless a specific statute creates an exception to this principle. See Westinghouse Elec. & Mfg. Co. v. Chambers, 169 Cal. 131, 135, 145 P. 1025 (1915); Meyer v. State Land Settlement Board, 104 Cal. App. 577, 584-86, 286 P. 743 (1930). However, the general rule concerning the property of local public entities is that property held in a proprietary capacity, i.e., not devoted to public use, is subject to execution. See C.J. Kubach Co. v. City of Long Beach, 8 Cal. App.2d 567, 573, 48 P.2d 181 (1935); Marin Water & Power Co. v. Town of Sausalito, 49 Cal. App. 78, 83, 193 P. 294 (1920). Section 690.22 (see the Appendix) exempts specific items of property of counties, towns, and incorporated cities. Some

special exemptions are also provided. See Sections 690.26, 690.27, and 690.29 in the Appendix. A curious exemption is provided by Health and Safety Code Section 34217 and Code of Civil Procedure Section 690.27, which exempts the real property of a housing authority. Although a municipal housing authority is a state agency, the effect of this exemption is to subject the personal property of a housing authority to execution. See Maurice L. Bein, Inc. v. Housing Auth., 157 Cal. App.2d 670, 690, 321 P.2d 753 (1958).

The staff recommends that the vestigial remedy of execution against local public entities and some state agencies be eliminated. It should be sufficient to make clear where need be that public entities have a duty to pay. The remedy is then by writ of mandate. See Code Civ. Proc. § 1085; McPherson v. City of Los Angeles, 8 Cal.2d 748, 750, 68 P.2d 707 (1937); Title Guar. & Trust Co. v. City of Long Beach, 4 Cal.2d 56, 47 P.2d 472 (1935); Emeric v. Gilman, 10 Cal. 404, 410 (1858) (dictum); Cook v. Board of Supervisors, 99 Cal. App. 169, 171, 277 P.2d 1064 (1929).

The Commission recognized in the course of its study of sovereign immunity that:

Judgments against public entities, unlike those against private persons, ordinarily cannot be satisfied by execution or other legal process against the assets of the judgment debtor, for public property and funds are generally exempt from execution. [Recommendation Relating to Sovereign Immunity: Number 2--Claims, Actions and Judgments Against Public Entities and Public Employees, 4 Cal. L. Revision Comm'n Reports 1001, 1018 (1963).]

In the Recommendation Proposing the Eminent Domain Law, 12 Cal. L. Revision Comm'n Reports 1601, 1668, it was stated:

The property owner should be permitted to seek dismissal of the eminent domain proceeding upon nonpayment without having to make an expensive, time-consuming, and futile attempt to execute.

Since the issue of whether the property is devoted to a public use is likely to be present in most cases where a creditor seeks to levy on property of a local public entity, it is not a persuasive objection to the elimination of the execution alternative to say that a greater burden on the courts will result from the need to resort to mandamus in some cases. The joustings of the C.J. Kubach Company and the City of



Long Beach are interesting in this regard. Kubach caused the levy of execution on a lot used for parking for hire (which the city claimed was held for eventual public use) and on an oil lease of which the city was lessor. The court in C.J. Kubach Co. v. City of Long Beach, supra, held that the parking lot was not subject to execution since two-thirds of the original parcel was in fact being used for governmental purposes. However, the royalties from the oil lease were found not to be dedicated to a public purpose. Long Beach must thereafter have dedicated the royalties to a public purpose because, a year and a half later, we find Kubach resorting to mandamus for the collection of the over two-thirds of the judgment remaining unpaid. See Title Guar. & Trust Co. v. City of Long Beach, supra.

It may also be argued that there is no need for the normal creditor's remedies when the judgment debtor is a public entity because the debtor is not capable of fleeing the jurisdiction and, further, that execution is an ill-designed remedy, as compared with mandamus, because the debtor and its functionaries are under a duty to pay and because the debtor may not currently have funds with which to pay a judgment although it has, through the taxing and bond issuing powers, the means with which to eventually pay the judgment. See, e.g., Govt. Code §§ 970.8-971 (levy of taxes by local public entities to pay tort and inverse condemnation judgments free of debt limitations and tax rate restrictions), 975-978.8 (funding of judgments by local public entities through bond issuance), 50170-50175 (payment of judgments in installments by cities and counties); Educ. Code §§ 35201 (payment of judgments by school districts), 72501 (payment of judgments by community college districts); Water Code §§ 39091-39096 (payment of judgments by water district).

#### Miscellaneous Issues

§ 707.320. Cemetery plot. The Commission decided to recommend an exemption for a cemetery plot for two persons, the idea being that such an exemption protects the plot for the husband and wife. However, since that decision was made, the Commission has tentatively approved Section 707.160 which grants exemption rights to the spouse of the judgment debtor, whether or not the spouse is a debtor. This section has the effect of protecting a plot for each spouse, regardless of whether the

judgment is against one or both spouses. Consequently, the staff suggests that Section 707.320 exempt only one plot since otherwise a husband and wife would be able to exempt four plots by operation of Section 707.160.

§ 707.330. Motor vehicle; proceeds. We have tentatively revised subdivision (b) to provide explicitly for an exemption of the proceeds of insurance on a motor vehicle and to specify the dates from which the 90-day exemption of proceeds runs.

§ 707.370. Tools, etc.; proceeds. We have tentatively added subdivision (b) to provide an exemption for proceeds of sale or insurance on tools, implements, instruments, equipment, and vehicles used in a trade, business, or profession. This corresponds to the proceeds exemption in Section 707.330 (motor vehicle).

§ 707.410. Life insurance and death benefits. (See the Note following the section.) The staff believes that there should be some exemption of life insurance benefits which are paid in a lump sum, if for no other reason than to protect the beneficiaries to a limited extent. We suggest a \$5,000 exemption for benefits of a matured life insurance policy paid to the debtor, the spouse, or a dependent of the debtor. It should be understood, however, that this may lead to varying results. Suppose that a debtor has a \$100,000 policy with \$5,000 loan value built up. Because of the exemption in Section 707.410(b), the debtor is free to borrow \$5,000 on the policy and use it as he pleases. Upon the maturity of the policy, without the suggested exemption, as much as \$95,000 would be available to the creditor. However, if the debtor does not use the \$5,000 loan value before the policy matures, the entire lump sum of \$100,000 would be available to the creditor. The staff thinks that the justification for the \$5,000 exemption of loan value is, in part, to preserve at least that much of the face value of the policy. Accordingly, it is necessary to provide (as proposed in Section 707.410(c)) an additional \$5,000 exemption of benefits. However, as drafted, this too leads to differing results depending upon whether the debtor uses the exempt loan value or not. The amounts available to the debtor and creditor, respectively, in these different situations could be equalized to some extent by providing that the \$5,000 exemption of benefits upon maturity is to be reduced by any

amounts the debtor has borrowed on the policy to the extent that they reduce the loan value below \$5,000. However, this would in some cases have the effect of destroying the \$5,000 fund which otherwise would be available upon maturity.

§ 707.460. Aid. We have tentatively added an exemption for aid rendered by charitable organizations. As the Comment notes, this generalizes the exemption in existing Section 690.14 which applies to aid from fraternal benefit societies.

§ 707.480. Vacation credits. The staff questions whether this section is necessary (and also whether, if necessary, it should apply only to public employees). Consider the following paragraph from the Comment to Section 723.011 in the Recommendation Relating to Wage Garnishment Procedure, 13 Cal. L. Revision Comm'n Reports 601, 644-45 (1976):

"Earnings" embraces all remuneration "whether denominated as wages, salary, commission, bonus, or otherwise." The infinite variety of forms which such compensation can take precludes a more precise statutory definition. Accordingly, the Judicial Council will be required in some circumstances to provide by rule, consistent with the statutory definition, whether certain items are an employee's earnings and, if so, the earnings period to which such earnings are attributable. See Section 723.150. One such item will probably be vacation credits or pay. Different employers will treat this form of compensation differently. Generally speaking, however, vacation pay should be subject to withholding only when paid, i.e., when the employee goes on vacation or terminates his employment in circumstances where he has the right to be paid his accrued benefits.

Article 4 (§§ 707.710-707.780). Exempt property of entities and individuals. The staff has some misgivings about whether it is useful to aggregate these provisions in Chapter 7. Several of them are not truly exemptions. E.g., Section 707.710, providing that escrow and trust funds are exempt from claims against the trustee or escrow agent, states the obvious rule that property not belonging to the debtor (or not subject to a lien when it did belong to the debtor) may not be applied to the satisfaction of a judgment against the debtor. Section 707.730, providing a \$500 exemption for funds of a "fraternal organization" seems pointless in view of the amount specified. Section 707.770, exempting segregated benefit funds, is of no importance to most

judgment creditors and judgment debtors and would be better located in the Insurance Code. Should Article 4 be disbanded?

Building material exemption. The draft does not continue the exemption provided by Section 690.17 for building materials not exceeding \$1,000 in value purchased in good faith for use in the construction, alteration, or repair of any building. If there is some strong sentiment for continuing such an exemption, perhaps it would be best to add a reference to materials necessary for repair of a dwelling in Section 707.340 (household furnishings, appliances, and so on).

Respectfully submitted,

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[Vukowich, Debtors' Exemption Rights,  
62 Geo. L.J. 779, 832-37 (1974)]

### APPLICABILITY AND DURATION OF EXEMPTION AFTER TRANSFORMATION OF EXEMPT ASSET

Two situations commonly arise in which debtors claim exemption of assets not explicitly included in the exemption laws. The first situation involves transformation of exempt property into cash; the other involves investments of exempt cash payments in otherwise nonexempt assets such as checking or savings accounts, savings bonds, or securities.

#### PROCEEDS FROM EXEMPT PROPERTY

A debtor's exempt property may be transformed into cash in a number of ways. Debtors frequently sell exempt property for cash. Also, exempt property may be sold at an execution sale because the property exceeds the maximum allowance of the exemption laws, in which case the debtor is paid the amount of the allowance in cash.<sup>319</sup> In addition, if insured exempt property is destroyed or damaged, the debtor may receive cash for the property from his insurer. Generally, the law exempts payments which a debtor receives in each of these instances. This gives the debtor an opportunity to reinvest the proceeds in other exempt property.<sup>320</sup>

The exemption accorded to the proceeds from the voluntary or involuntary sale of exempt items is consistent with the purposes of the exemption laws by allowing a debtor to change the types of exempt property he owns without fear of losing his exemption. Statutory and judicial limitations on the maximum time the exemption applies insure against abuses.

#### VOLUNTARY SALES

If a debtor voluntarily sells his homestead, most states provide a period of time—generally six months<sup>321</sup> or a year<sup>322</sup>—during which creditors may not levy on the proceeds of the sale.<sup>323</sup> This grace period allows a debtor to sell his home without fear that the proceeds of the sale will be attached before purchase of another home.<sup>324</sup> Although many states require the debtor to hold the proceeds with the intention of acquiring a new homestead,<sup>325</sup> a significant number do not.<sup>326</sup> Those

<sup>319</sup> See notes 116-122 *supra* and accompanying text.

<sup>320</sup> Most of the law in this area deals with the homestead, but a few laws relate to personalty.

<sup>321</sup> CAL. CIV. CODE § 1265 (West Supp. 1973), construed in *Thorsby v. Babcock*, 36 Cal. 2d 202, 206, 222 P.2d 863, 866 (1950) (exemption extends beyond six months where litigation delays receipt of proceeds from sale); TEX. REV. CIV. STAT. ANN. art. 3834 (1966).

<sup>322</sup> ILL. ANN. STAT. ch. 52, § 6, (South-Hurd Supp. 1973); MINN. STAT. ANN. § 510.07 (1947); ORE. REV. STAT. § 23.240(2) (1971); S.D. COMPILED LAWS ANN. § 43-45-3 (1967); WASH. REV. CODE ANN. § 6.12.090 (1963); see WIS. STAT. ANN. § 272.20(1) (Supp. 1973) (two-year period).

<sup>323</sup> However, some states provide no time limit. E.g., N.D. CENT. CODE § 47-18-16 (1960); WYO. STAT. ANN. § 1-503 (1959), construed in *United States v. Field*, 190 F. Supp. 216, 219 (D. Wyo. 1960). The courts must cope with the duration of the exemption as in cases of exempt payments to the debtor. See notes 340-356 *infra* and accompanying text.

<sup>324</sup> *Thorsby v. Babcock*, 36 Cal. 2d 202, 206, 222 P.2d 863, 866 (1950); *Weiss v. Stone*, 220 So. 2d 403 (Fla. Ct. App. 1969); *Aronson v. Murk*, 67 Wash. 2d 1, 7, 406 P.2d 607, 611 (1965).

<sup>325</sup> E.g., ORE. REV. STAT. § 23.240(2) (1971); WASH. REV. CODE ANN. § 6.12.090 (1963); WIS. STAT. ANN. § 272.20(1) (Supp. 1973).

<sup>326</sup> E.g., CAL. CIV. CODE § 1265 (West Supp. 1973); MINN. STAT. ANN. § 510.07 (1947).

jurisdictions not conditioning the exemption on intention to purchase another homestead invite the inequitable result that a debtor might acquire a new homestead with assets of nonexempt origin and concomitantly claim the proceeds of the sale of a former homestead as exempt.<sup>327</sup>

Relatively few statutes grant exemptions to proceeds of the voluntary sale of exempt personalty.<sup>328</sup> The few courts that have considered this issue without statutory guidance have reached conflicting results.<sup>329</sup>

#### FORCED SALES

If a debtor's equity in his homestead exceeds the statutory value limitation and the homestead is sold on execution,<sup>330</sup> the exempt statutory amount is paid to the debtor.<sup>331</sup> Although some state statutes explicitly exempt the proceeds paid to the debtor,<sup>332</sup> most do not. However, the requirement that the portion of the proceeds equal to the maximum amount of the exemption be paid to the debtor indicates that the proceeds should be exempt. Additionally, in most states, the law with respect to voluntary sales of the homestead indicates that the exemption should be extended to the amount paid to the debtor.<sup>333</sup>

Only a few statutes state how long the proceeds exemption lasts in the case of a forced sale.<sup>334</sup> Where there is no statute, the statutory rules governing the duration of the exemption for voluntary sales could

MISS. CODE ANN. § 85-3-1(10)(b) (1972); S.D. COMPILED LAWS ANN. § 43-45-3 (1967).

<sup>327</sup> See *Davis v. Lammons*, 246 Miss. 624, 151 So. 2d 907 (1963).

<sup>328</sup> HAWAII REV. STAT. § 651-66(8) (1968); ILL. ANN. STAT. ch. 52, § 13(c) (Smith-Hurd Supp. 1973); MISS. CODE ANN. § 85-3-1(10)(b) (1972). See also ORE. REV. STAT. § 23.164(2) (1971) (\$3,000 of proceeds from sale of exempt mobile home exempt for one year if held with intent to purchase another homestead).

<sup>329</sup> Compare *Bogardus v. Salter*, 127 Okla. 4, 5, 259 P. 561, 562 (1927) (proceeds from sale of exempt personalty exempt) with *Gillett State Bank v. Knaack*, 229 Wis. 179, 184, 281 N.W. 913, 914 (1938) (proceeds from sale of exempt personalty not exempt).

<sup>330</sup> See notes 116-122 *supra* and accompanying text.

<sup>331</sup> E.G., ALA. CODE tit. 7, § 653 (1960); ILL. ANN. STAT. ch. 52, § 8 (Smith-Hurd 1967); MICH. COMP. LAWS ANN. § 600.6033 (1968); MISS. CODE ANN. § 85-3-37 (1972); NEB. REV. STAT. § 40-112 (1968); WIS. STAT. ANN. § 272.21(2) (Supp. 1973).

<sup>332</sup> CAL. CIV. CODE § 1257 (West 1954) (six month exemption); COLO. REV. STAT. ANN. § 77-3-7 (1963); N.Y. CIV. PRAC. LAW § 5206(f) (McKinney Supp. 1973).

<sup>333</sup> See notes 321-323 *supra* and accompanying text. At least one state requires that the amount be paid in court and released when a new homestead is chosen. S.C. CODE ANN. § 14-7 (1962). See also GA. CODE ANN. § 51-501 (1963) (proceeds from sale of town property to complete debtor's homestead exemption to be invested by county magistrate in private property chosen by the debtor to constitute his exemption).

<sup>334</sup> CAL. CIV. CODE § 1257 (West 1954) (six months); COLO. REV. STAT. ANN. § 77-3-7 (1963) (one year); N.Y. CIV. PRAC. LAW § 5206(f) (McKinney Supp. 1973) (one year).

be followed. If there is no statutory rule for voluntary sales, the courts should allow the exemption for a reasonable time during which the debtor may find a new homestead.<sup>545</sup>

The few statutes which regulate the forced sale of exempt personalty worth more than the statutory maximum provide that the exempt amount is to be paid to the debtor from the proceeds of sale prior to any payment to the execution creditor.<sup>546</sup> The exemption clearly should extend to the proceeds of an involuntary sale of personalty. Otherwise, the exemption is meaningless whenever the value of the personalty exceeds the statutory allowance, since the levying creditor immediately could order the sheriff to pay the total amount to him. Moreover, if the sheriff is forced to sell exempt property, it is likely that the debtor has no nonexempt property. This is a situation where the protection of the exemption laws is needed and appropriate. Accordingly, the courts should afford the debtor a reasonable time to purchase other property with the proceeds.

#### INSURANCE PROCEEDS

If an insured dwelling situated on the homestead is destroyed, a number of states exempt the insurance proceeds.<sup>547</sup> In the absence of statutory guidance, courts have extended the exemption to the proceeds to effectuate the purposes of the homestead exemption laws.<sup>548</sup> Some states also provide an exemption for insurance proceeds when exempt personal property is destroyed.<sup>549</sup> A few states exempt a debtor's cause of action or the recovery due to destruction or conversion of exempt property.<sup>550</sup>

<sup>545</sup> See *Weiss v. Stone*, 220 So. 2d 403, 405 (Fla. Ct. App. 1969).

<sup>546</sup> COLO. REV. STAT. ANN. § 77-4-9 (Supp. 1965); MD. ANN. CODE art. 83, § 10 (1969); MICH. COMP. LAWS ANN. § 600.6031 (1968); MINN. STAT. ANN. § 550.41 (1947); OHIO REV. STAT. § 23.160(2) (1971); WIS. STAT. ANN. § 272.19(2) (Supp. 1973).

<sup>547</sup> COLO. REV. STAT. ANN. § 77-3-9 (1965); CONN. GEN. STAT. ANN. § 52-354 (1960); ILL. ANN. STAT. ch. 52, § 7 (Smith-Hurd 1967); MISS. CODE ANN. § 85-3-1(10)(b) (1972); TENN. CODE ANN. § 26-105 (1955); see WASH. REV. CODE ANN. § 6.16.050 (1965) (destruction by fire); WIS. STAT. ANN. § 272.18(17) (1958) (destruction by fire).

<sup>548</sup> E.g., *Dennis v. Smith*, 125 Ohio St. 120, 126, 180 N.E. 638, 641 (1932); *Home Improvement Loan Co. v. Brewer*, 318 S.W.2d 673, 676 (Tex. Civ. App. 1958).

<sup>549</sup> COLO. REV. STAT. ANN. § 77-2-2(1)(ii) (1963); CONN. GEN. STAT. ANN. § 52-354 (1960); MISS. CODE ANN. § 85-3-1(10)(b) (1972); WASH. REV. CODE ANN. § 6.16.050 (1965); WIS. STAT. ANN. § 272.18(17) (1958). See also OHIO REV. STAT. ANN. § 6-4-22 (1963) (hail insurance proceeds exempt); MONT. REV. CODES ANN. § 82-1520 (1966) (hail insurance proceeds exempt).

<sup>550</sup> ARIZ. REV. STAT. ANN. § 33-1126 (1956); MINN. STAT. ANN. § 550.37(16) (Supp. 1973); N.H. REV. STAT. ANN. § 512.21(VII) (1968); N.Y. CIG. PRAC. LAW § 5205(c) (McKinney 1963).

## DEPOSITS AND INVESTMENT OF EXEMPT PAYMENTS

When a debtor deposits an exempt payment of money in a bank account or invests it in some otherwise nonexempt asset, the question arises whether the exemption extends to the bank account or other asset. If the exemption is not extended, creditors could frustrate the efficient use of the money by levying upon the money soon after payment. On the other hand, some limitation must be imposed, or a debtor could claim exemptions for all the assets ever purchased with exempt income.<sup>341</sup>

In *Porter v. Aetna Casualty & Surety Co.*<sup>342</sup> the Supreme Court dealt with this problem in ruling that veterans' disability compensation payments, covered by federal statute which provides that "payments made to . . . a beneficiary shall be exempt,"<sup>343</sup> retained exempt status after being deposited in a federal savings and loan account.<sup>344</sup> The Court traced the history of various veterans' benefits exemption laws and concluded

[t]he Congress, we believe, intended that veterans in the safe-keeping of their benefits should be able to utilize those normal modes adopted by the community for that purpose—provided the benefit funds . . . are readily available as needed for support and maintenance, actually retain the qualities of moneys, and have not been converted into permanent investments.<sup>345</sup>

Recently the Court followed *Porter* in finding that retroactive disability insurance benefits deposited in a bank account were "readily withdrawable and retained the qualities of 'moneys'"<sup>346</sup> and therefore ruled that they were exempt. Both decisions emphasize that the exemption continues if the invested fund remains liquid and readily accessible to the debtor. Since these benefits were provided mainly for subsistence, this test is reasonable and consistent with the purposes of the laws.

State statutes adopt a variety of schemes for dealing with this general issue, some of which differ from the Supreme Court's approach. State rules do not apply uniformly to all payments of exempt money, but

<sup>341</sup> Cf. *New Amsterdam Cas. Co. v. Waller*, 301 F.2d 839 (4th Cir. 1962) (\$500 personal property exemption did not attach permanently to each salary check successively upon receipt).

<sup>342</sup> 370 U.S. 139 (1962).

<sup>343</sup> 38 U.S.C. § 3101(a) (1970).

<sup>344</sup> 370 U.S. at 162.

<sup>345</sup> *Id.*

<sup>346</sup> *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1971).



rather are found in an assortment of specific exemption laws. A few states provide an express time limit for the exemption,<sup>847</sup> while others extend the exemption as long as the debtor retains the money<sup>848</sup> or deposits it in a bank<sup>849</sup> or even if he otherwise relinquishes possession of it.<sup>850</sup> Other state provisions extend the exemption for unemployment compensation indefinitely, so long as the payments are not commingled with other assets.<sup>851</sup>

In the absence of specific statutory direction, state courts have applied a variety of rules. Only rarely have the courts applied the exemptions strictly and allowed creditors to reach the payments immediately after payment.<sup>852</sup> Most courts extend the exemption to payments in the hands of debtors, especially if the payments are for subsistence.<sup>853</sup> However, if the money is converted into a permanent investment, state courts often deny the exemption.<sup>854</sup> The exemption ends when the debtor dies,<sup>855</sup> since there is then no longer a need for exemption.<sup>856</sup>

<sup>847</sup> E.g., ILL. ANN. STAT. ch. 52, § 13(b) (Smith-Hurd Supp. 1973) (public employees' pensions exempt for one year); MINN. STAT. ANN. § 550.38 (1947) (veterans' pensions exempt for one year); N.Y. CIV. PRAC. LAW § 5205(c) (McKinney 1963) (proceeds paid as damages exempt for one year).

<sup>848</sup> CONN. GEN. STAT. ANN. § 52-352 (1966) (federal pensions).

<sup>849</sup> TENN. CODE ANN. § 26-206 (1955). *Contra*, OHIO REV. CODE ANN. § 2329.81 (Page 1954), *construed in* Dennis v. Smith, 125 Ohio St. 120, 126, 180 N.E. 638, 640 (1932).

<sup>850</sup> IOWA CODE ANN. § 97B.39 (1972) (public employees' pension payments exempt without time limit); WASH. REV. CODE ANN. § 6.16.030 (1963) (federal pensions exempt if deposited or lent by debtor).

<sup>851</sup> E.g., ALASKA STAT. § 23.20.405(b) (1962); COLO. REV. STAT. ANN. § 82-10-3 (1963); MINN. STAT. ANN. § 286.17(2) (1959); N.M. STAT. ANN. § 59-9-18(c) (Supp. 1973); N.C. GEN. STAT. § 96-17(c) (1963); OKLA. STAT. ANN. tit. 40, § 225(c) (1954).

<sup>852</sup> See *In re McGreevy Estate*, 445 Pa. 318, 322, 286 A.2d 335, 336 (1971). The court in *McGreevy* held that the statute only protected federal benefits prior to payment. *Id.* In view of the Supreme Court's construction of other federal exemption laws, this represents an overly restrictive construction of the exemption. See notes 342-346 *supra* and accompanying text.

<sup>853</sup> E.g., *MacQuarrie v. Balch*, — Mass. —, —, 285 N.E.2d 103, 104 (1972) (welfare payments); *Freedom Fin. Co. v. Fleckenstein*, 116 N.J. Super. 428, 432, 282 A.2d 458, 460 (Dist. Ct. 1971) (railroad retirement payments); *Guardian Loan Co. v. Baylis*, 112 N.J. Super. 44, 46, 270 A.2d 304, 305 (Dist. Ct. 1970) (welfare payments); *First Nat'l Bank v. Funnell*, 144 Okla. 188, 189, 290 P. 177 (1930) (benefits of fraternal aid association).

<sup>854</sup> See *New Amsterdam Cas. Co. v. Waller*, 401 F.2d 839 (4th Cir. 1962) (realty). But see *Booth v. Martin*, 158 Iowa 434, 435, 119 N.W. 888, 889 (1913).

<sup>855</sup> E.g., *In re Estate of Todd*, 243 Iowa 910, 939, 54 N.W.2d 521, 526 (1962); *Stare v. Monaco*, 81 N.J. Super. 448, 451, 195 A.2d 910, 912 (Super Ct. 1963); see Cohen, *supra* note 38, at 589-93.

<sup>856</sup> See *In re Estate of Todd*, 243 Iowa 930, 939, 54 N.W.2d 521, 526 (1962).

Different considerations may be present when the money claimed as exempt represents a lump sum death or disability benefit or insurance proceeds as opposed to periodic

## [UNIFORM EXEMPTIONS ACT §§ 5-9, 15]

1 SECTION 5. [Property Exempt without Limitation.]

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

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

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

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

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

14 (5) veteran's benefits; and

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

## COMMENT

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

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

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

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

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

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

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

1 SECTION 6. [Property Exempt to Extent Reasonably  
2 Necessary for Support.]

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

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

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

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

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

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

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

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

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

#### COMMENT

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

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

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

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

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

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

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

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

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

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

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

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

COMMENT

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

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



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

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

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

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

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

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

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

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

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

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

COMMENT

(1) The specific personal property exemptions listed in subsections (a)(1) and (2) and (c) are fairly typical of those found in most state exemption laws and in Internal Revenue Code § 6334(a). See Vukowich, Debtors' Exemption Rights, 62 Geo.L.J. 770, 826-29 (1974). The list is also similar to the catalogue of personal property exemptions in the Commission's Proposed Bankruptcy Act (§ 4-503(c)(1)) and that recommended in the Report of the National Commission on Consumer Finance, Consumer Credit in the United States 38 (1973). The inclusion of family portraits and heirlooms of sentimental value in subsection (a)(3) recognizes that the debt-paying value obtainable by levy and sale of such property by a creditor is unlikely to be proportionate to the deprivation suffered by the individual and his family, and the \$500 value limitation on the exemption allowable in any such item of property is a safeguard against abuse of this provision. While jewelry held for personal use is not often specified as exempt in state statutes, courts have frequently held items of jewelry included in the exemption of "wearing apparel." 1A W. Collier, Bankruptcy § 6.14, at 872 (14th ed. 1974); 31 Am. Jur. 2d Exemptions § 81 (1967). Subsection (b) relieves the courts of the necessity to construe "wearing apparel" to protect such items but places a \$750 aggregate limitation on the property of this category that can be claimed as exempt.

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

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

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

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

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

(7) The exemption of liquid assets, including unpaid earnings, provided by this section is independent of the exemption of earnings provided by the Federal Consumer Credit Protection Act (§§ 301-307, 15 U.S.C. §§ 1671-731 (1970)), and the Uniform Consumer Credit Code (§ 5.105) or other state wage garnishment statutes that provide for more limited garnishment than allowed under the Federal Consumer Credit Protection Act. (See further, the Comments accompanying §§ 24 and 25, infra.)



1           SECTION 9. [Tracing Exempt Property.]

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

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

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

COMMENT

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

(2) Subsection (b) explicitly adopts the policy that the exemption of benefits under §§ 5(3)-(6) and 6 is to be extended to any form into which they may be traced by any reasonable basis chosen by the individual. The rationale for such an extension is that to limit the protection of the individual to the proceeds in their original form would be to destroy the utility of the protection and defeat the purpose of the exemption statute. See 31 Am. Jur. 2d Exemptions § 87 (1967). See also Riesenfeld, Life Insurance and Creditors' Remedies in the United States, 4 U.C.L.A. L. Rev. 583, 607-04 (1957); Comment, 71 Towa L. Rev. 153 (1935).



1 SECTION 15. [Contents of Notice.]

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

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

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

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

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

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

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

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

COMMENT

(1) The notice to the individual required for compliance with §§ 14 and 15 may vary, depending on the nature of the property the creditor proposed to levy on. Thus, a levy on a bank account or other obligation owed the judgment debtor by a third person ordinarily contemplates no sale of the debtor's property. Rather the creditor in such a case proceeds by garnishment or similar process, and the debtor should raise any objection to the creditor's attempt to collect through such means by filing an answer or appropriate motion in the garnishment proceeding. If a creditor is proceeding to levy on property of a kind listed in § 3(a), he must, in addition to serving on the individual a notice that complies with §§ 14 and 15, serve a copy of an order issued pursuant to a request under § 13(a). Permissible modes of service of a notice under the Act are specified in § 1(8).

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

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

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

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



Property Exempt Under the Laws of This State

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

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
Date of this notice

\_\_\_\_\_  
Creditor's attorney

\_\_\_\_\_  
Judgment creditor

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

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 5119.5 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. 3826, § 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 890.50 of the Code of

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

(Amended by Stats.1971, c. 325, p. 1220, § 1.)

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

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

## GOVERNMENT CODE

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

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

The sheriff, marshal, or constable to whom the writ is directed and delivered shall execute it without delay, and shall attach and keep in his custody the vessel, masted 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. 1841, 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. 805, § 1.)

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

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

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

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

Execution or other judicial process shall not issue against the real property of an authority nor shall any judgment against an authority be a charge or lien upon its real property. This section does not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, or revenues.

(Added by Stats.1951, c. 710, p. 1960, § 1.)

## **INSURANCE CODE**

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

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

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

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

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

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

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

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

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

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

## **LABOR CODE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Amended by Stats.1974, c. 1510, p. 3380, § 32, operative Jan. 1, 1977.)

**§§ 4900-4909**

**Part 3**

**COMPENSATION CLAIMS**

**Chapter 1**

**PAYMENT AND ASSIGNMENT**

**§ 4900. Nonassignability**

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

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

**§ 4901. Exemption from debts**

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

(Stats.1937, c. 90, p. 287, § 4901.)

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

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

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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 herein-after set forth in subdivisions (a) through (g) of this section. If more than one such lien be allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens which may be allowed hereunder are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

(Added by Stats.1976, c. 1100, p. —, § 1.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

**§ 4908. Priority of compensation claim**

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

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

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

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

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

**PUBLIC UTILITIES CODE**

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

All money received by any person as an annuity, pension, retirement allowance, disability payment, or death benefit from the retirement system, and all contributions and interest thereon returned to any member of the retirement system, whether in the actual possession of such person or deposited, loaned, or invested by him, is unassignable, and is exempt from execution \* \* \* and attachment \* \* \* as provided in Section 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.1966, c. 1036, p. 1963, § 2. Amended by Stats.1970, c. 1523, p. 3034, § 63.)

**§ 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. 1956, p. 2304, § 3.)

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

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

(Added by Stats.1963, c. 839, p. 2060, § 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.1966, c. 1835, p. 4243, § 1.)

**§ 98196. Exemption from legal process; nonassignability**

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

(Added by Stats.1967, c. 978, p. 2548, § 1.)

## UNEMPLOYMENT INSURANCE CODE

### § 988. Exemption from garnishment, attachment or execution

Contributions by workers, payable as provided in this article, shall be exempt from attachment and execution pursuant to Section 690.16 of the Code of Civil Procedure, and from garnishment or any other remedy for the collections of debts, and in the event of the insolvency or bankruptcy of an employer shall not be considered any part of his assets and shall be paid to the director prior to the payment of any other claim against the employer.

(Stats.1958, c. 308, p. 1486, § 988. Amended by Stats.1970, c. 1523, p. 3084, § 64.)

### § 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 690.175 and 690.18 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, § 58.)

## 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.1968, c. 726, 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**

*Text of section operative Jan. 1, 1977.*

There shall be exempt from the transfers and grants authorized by Section 17109 and from . . . execution on claims under Section 17403 against property acquired by persons for the support of whom public moneys have been expended all of the following property:

- (a) Cash to the amount of fifty dollars (\$50).
- (b) Personal effects and household furniture to the value of five hundred dollars (\$500).
- (c) An interment space, crypt, or niche intended for the interment of the applicant or recipient of aid.
- (d) Funds placed in trust for funeral or burial expenses to the extent that such funds do not exceed the sum of five hundred dollars (\$500).
- (e) Insurance policies having an actual cash surrender value of not to exceed five hundred dollars (\$500).
- (f) Real or personal property of a recipient of public assistance, with respect to aid or county hospital care granted after May 21, 1963.
- (g) For a period of six months from the date of receipt, the compensation received from a public entity which acquires for a public use a dwelling actually owned and occupied by the recipient. Such compensation shall be exempt in the amount, over and above all liens and encumbrances, provided by Section 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 7200), Division 7, Title 1 of the Government Code and from the federal government under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

No county shall withhold emergency medical or hospital care from any person pending his giving security for reimbursement to the county for the care or hospitalization to be provided to him. (Amended by Stats.1974, c. 47, p. 104, § 8, urgency, eff. Feb. 28, 1974; Stats.1974, c. 1818, p. 3894, § 47, operative Jan. 1, 1977.)

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 toward 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 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 plus the amount of the exemption, the property may not be sold. Sections 703.\_\_\_\_, 707.\_\_\_\_.]

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§ 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 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. Generally, property interests that are assignable may, by some procedure, be reached to satisfy a money judgment. See Murphy v. Allstate Ins. Co., 17 Cal.3d 937, 945-46, 553 P.2d 584, \_\_\_, 132 Cal. Rptr. 424, \_\_\_ (1976). See also A. Freeman, Law of Executions §§ 110, 112, 159, 162 (3d ed. 1900); 2 id. §§ 172, 177; 3 id. § 425. A debt which is uncertain or contingent in the sense that it may never become due and payable may not be reached. See Javorek v. Superior Court, 17 Cal.3d 629, 640, 552 P.2d 728, \_\_\_, 131 Cal. Rptr. 768, \_\_\_ (1976); Dawson v. Bank of America, 100 Cal. App.2d 305, 309, 223 P.2d 280, \_\_\_ (1950); Clecak v. Dunn, 95 Cal. App. 537, 540, 272 P. 1104, \_\_\_ (1928).

The introductory clause of Section 707.120 refers to exemptions from enforcement of a money judgment provided in this chapter 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. 851 (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 3402-05 (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 830, \_\_\_-\_\_\_ (1946) (property subject to execution lien when owned by judgment debtor); Nordstrom 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 854, 860, 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; this claim may be made 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). But cf. *White v. Gobey*, 130 Cal. App. Supp. 789, 791, 18 P.2d 876, \_\_\_ (1933) (husband allowed to claim exemption for his earnings levied upon to satisfy judgment against wife alone where husband's earnings liable under community property laws).

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§ 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. This provision supersedes subdivision (a) of former Section 690. 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) A claim of exemption for property described in this chapter as "exempt" shall be made pursuant to Section 707.220.

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

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 a 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.



§ 707.160. Exemption rights of spouse

707.160. A person who is the spouse of a judgment debtor may claim exemptions as provided in this chapter where the judgment creditor seeks to satisfy the judgment by levying upon or otherwise reaching the community property, or the separate property of such person, which is liable for the satisfaction of the judgment, regardless of whether such person is a judgment debtor.

Comment. Section 707.160 establishes the right of a nondebtor spouse of a judgment debtor 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 is not without precedent in California cases. See *White v. Gobey*, 130 Cal. App. Supp. 789, 791, 19 P.2d 876, \_\_\_ (1933) (husband allowed to claim exemption for his earnings levied upon to satisfy judgment against wife where husband's earnings liable under community property laws). 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.

This section does not change the amount of property exempt where the exemption is not limited either in terms of number of items, such as

one motor vehicle (see Section 707.330), or in terms of monetary amount such as \$2,000 in a savings account (see Section 707.380) or jewelry worth \$500 (see Section 707.350). Consequently, a husband and wife may claim as exempt only so much of the household furnishings which are community property liable for the satisfaction of the judgment as is reasonably necessary for one household inasmuch as there can be only one principal place of the residence under Section 707.340. The spouse must meet the terms of the exemption in order to make a successful claim.

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 chapter. 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.

968/995

§ 707.170. Adjustments of dollar amounts of exemptions

707.170. (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 707.170 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 707.170 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.

100/918

§ 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 a writ of execution issued by such court.

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

16/974

## 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, a person entitled to claim exemptions pursuant to Section 707.160, and the spouse or a dependent of an individual judgment debtor who claims the exemptions on behalf 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 on behalf of the judgment debtor. 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. Note that the right afforded by subdivision (b) to claim exemptions on behalf of the judgment debtor is different from the right of a nondebtor spouse to claim exemptions as provided in Section 707.160.

16/973

§ 707.220. Claim of exemption; contents

707.220. (a) The claimant shall, within 10 days from the date the notice of levy or other process affecting the property was mailed to or personally served upon the judgment debtor, 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) The name of the claimant and an address within this state where service by mail may be made upon the claimant of the notice of opposition to the claim of exemption and, if service on the attorney of the claimant is requested, the name and address of the attorney.

(2) The name and address of the judgment debtor if the claimant is not the judgment debtor.

(3) A description of the property which is claimed to be exempt.

(4) A citation of the section in this chapter or other law upon which the claim is based.

(5) A statement of the facts necessary to support the claim.

(6) Points and authorities supporting any legal issues raised.

Comment. Section 707.220 continues the substance of subdivision (a) of former Section 690.50 except that subdivision (b) prescribes in greater detail the contents of the claim. The form of the claim of exemption is prescribed by the Judicial Council pursuant to Section 702.260. See Section 707.210(b) ("claimant" defined).

§ 707.230. Notice of claim of exemption

707.230. Upon the filing of the claim of exemption, the levying officer shall promptly mail to the judgment creditor at the address stated in the application for the writ or in other process, 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 Section 701.\_\_\_\_ (personal service permitted). The form of the notice of claim of exemption is prescribed by the Judicial Council pursuant to Section 702.260.

968/708

§ 707.240. Contest of exemption claim

707.240. In order to contest the claim of exemption, the judgment creditor shall, within 10 days after the date of the mailing of the notice of claim of exemption (1) file with the levying officer a notice of opposition to the claim of exemption and (2) file with the court a notice of motion for an order determining the claim of exemption.

Comment. Section 707.240 supersedes portions of subdivisions (c) and (e) of former Section 690.50. Section 707.240, 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 707.270, making a hearing unnecessary. See Section 707.290. 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 for filing the notice of opposition and notice of motion 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).

16/971

§ 707.250. Contents of notice of opposition

707.250. The notice of opposition to the claim of exemption shall be executed under oath and shall include all of the following:

- (a) The name and address of the judgment creditor.
- (b) The date of mailing of the notice of claim of exemption.
- (c) 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.
- (d) A statement of the facts necessary to support the allegation.
- (e) Points and authorities supporting any legal issues raised.

Comment. Section 707.250 is derived from a portion of subdivision (c) of former Section 690.50 but prescribes in greater detail the contents of the notice of opposition. The form of the notice of opposition is prescribed by the Judicial Council pursuant to Section 702.260.

16/970

§ 707.260. Notice of motion for hearing

707.260. (a) If the notice of opposition to the claim of exemption and the notice of motion are filed as provided by Section 707.240, 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.

(b) 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, on the judgment debtor if other than the claimant, and on the attorney for the claimant if the claim of exemption so requested. 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 person to be served at the address stated in the claim of exemption. The judgment creditor shall file proof of such service with the court.

(c) 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 707.260 supersedes portions of subdivision (e) of former Section 690.50. 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 Section 707.210(b) ("claimant" defined).

16/969

§ 707.270. Release

707.270. If the levying officer does not receive a notice of opposition to the claim of exemption within the time prescribed by Section 707.240 and a notice of the hearing within the time prescribed by Section 707.260, the levying officer shall immediately release the property to the extent it is claimed to be exempt in the manner provided by Section 703.280.

Comment. Section 707.270 supersedes subdivisions (d) (release if no counteraffidavit served) and (f) (release if no motion) of former Section 690.50. See the Comment to Section 707.260.

§ 707.275. Pleadings; conduct of hearing; order

707.275. (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) Where 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. If the court is not so satisfied, the court shall order the hearing continued for the production of other evidence, oral or documentary.

(d) At the conclusion of the hearing, the court 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 apply the property toward 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 the custody of and the lien on the property or to continue the custody and the lien in order to apply the property toward the satisfaction of the judgment.

Comment. Section 707.275 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 Section 707.210(b) ("claimant" defined).

§ 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.

§ 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 of other process, on the property pending the final determination of the claim of exemption. The property may 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 a 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 (h) and the second sentence of subdivision (j) of former Section 690.50; however, this subdivision refers to custody of the property and liens of execution and of other process 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 Sections 703.310-703.\_\_\_\_) 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 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 707.275 or if the judgment creditor fails to oppose a claim of exemption within the time allowed by Section 707.240, the judgment creditor may not levy upon or otherwise seek to apply the property toward the satisfaction of the same judgment for the payment of money 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 toward the satisfaction of the same judgment. 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 making 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.

15327

### 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.]

15328

#### § 707.320. Cemetery plot

707.320. (a) A cemetery plot for [one] person 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 one-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. In the case of a married debtor, a lot for two persons

could be exempt pursuant to Section 707.160. This is 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.

27/868

§ 707.330. Motor vehicle; proceeds

707.330. (a) One 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, [or if it has been lost, damaged, or destroyed,] the proceeds of sale [or of insurance or other indemnification] are exempt in the amount of one thousand five hundred dollars (\$1,500) for a period of 90 days after the sale, in the case of a voluntary sale, or after receipt of the proceeds by the judgment debtor, in all other cases.

Comment. Section 707.330 supersedes subdivisions (a) and (e) of former Section 690.2. Subdivision (a) of this section increases the motor vehicle exemption from \$500 to \$1,500. 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 707.170 (adjustments of dollar amounts of exemptions).

Subdivision (b) provides an exemption for proceeds of sale, or insurance, or other indemnification whereas subdivision (e) of former Section 690.2 exempted "any amount representing the motor vehicle exemption." Cf. Houghton v. Lee, 50 Cal. 101, \_\_\_ (1875) (exemption of proceeds from insurance on homestead). Subdivision (b) also makes clear that the 90-day period during which proceeds are exempt runs from the receipt of the proceeds by the judgment debtor except in the case of a voluntary sale in which case the period runs from the date of sale. This principle is derived from the provisions exempting the proceeds

from the sale of a homestead. See [Civil Code §§ 1257, 1265]; Chase v. Bank of America, 227 Cal. App.2d 259, 263-64, 38 Cal. Rptr. 567, \_\_\_ (1964).

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). See Section 707.150 (exemptions cumulative).

Note. Final consideration of this provision awaits the conclusion of legislative action on Assembly Bill 1736.

15329

§ 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). The spouse of the judgment debtor is not entitled to claim as exempt furnishings and other items for a second household since there may be only one principal place of residence under the terms of this section. See Section 707.110 ("value" defined).



§ 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 upon its being ordinarily and reasonably necessary 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); 707.170 (adjustments of dollar amounts of exemptions).

405/332

§ 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. See Section 707.295 (claim of exemption for property exempt without making a claim).

045/222

§ 707.370. Tools, etc., used in trade, business, or profession;  
[proceeds]

707.370. (a) 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.

(b) [If an item exempt pursuant to subdivision (a) is sold, or if it has been lost, damaged, or destroyed, the proceeds of sale or of insurance or other indemnification are exempt in an amount not exceeding two thousand five hundred dollars (\$2,500) less the value of other items exempt pursuant to subdivision (a). The proceeds are exempt for a period of 90 days after the sale, in the case of a voluntary sale, or after receipt of the proceeds by the judgment debtor, in all other cases.]

Comment. Subdivision (a) of Section 707.370 continues the substance of former Section 690.4. See Sections 707.110 ("value" defined), 707.170 (adjustments of dollar amounts of exemptions).

Subdivision (b) provides an exemption for the proceeds of sale or of insurance or other indemnification analogous to that provided by Section 707.330(b).

27/867

§ 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 Sections 703.\_\_\_\_ (order permitting levy on deposit accounts in amounts less than \$2,000), 703.\_\_\_\_ (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), 707.170 (adjustment of dollar amounts of exemptions).

§ 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 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 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 707.250, and a hearing shall be set and held, and notice given, as provided by Sections 707.260 and 707.275. The judgment debtor shall file a counteraffidavit supporting the exemption not later than 10 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 Sections 707.250, 707.260, and 707.275 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 property 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 lien of execution and shall be applied toward 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. Social Security payments are directly deposited pursuant to 31 U.S.C. § 492 (1970, Supp V 1975). 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 Sections 701.\_\_\_\_ ("deposit account" defined), 703.280 (release), 707.170 (adjustment of dollar amounts of exemptions).

27/824

§ 707.400. 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 707.170, 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 unmatured life insurance policies is exempt without making a claim.

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

(c) [When paid in a lump sum, benefits from matured life insurance policies or death benefits, paid to the judgment debtor or the spouse or a dependent of the judgment debtor, are exempt in the aggregate amount of five thousand dollars (\$5,000).]

(d) When payable periodically, benefits from matured life insurance policies or death benefits, [payable to the judgment debtor or the spouse or a dependent of the judgment debtor,] are exempt to the same extent as earnings pursuant to Section 704.\_\_\_\_.

Comment. Section 707.410 supersedes the exemptions provided in former Sections 690.9 (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). Subdivision (c) of Section 707.410 provides a \$5,000 exemption for life insurance benefits that are paid in a lump sum. Subdivision (d) applies the wage garnishment exemptions where the benefits are paid periodically, such as under an annuity option. [The exemptions provided in subdivisions (c) and (d) are available only when the beneficiary is the judgment debtor or the spouse or a dependent of the judgment debtor. Under former law, the exemption was available to any person, including creditors of the judgment debtor and artificial persons. See Jackson v. Fisher, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Rptr. 439 (1961).] See Section 707.170 (adjustment of dollar amounts of exemptions).

Note. We have tentatively drafted this section to cover death benefits, to provide a \$5,000 exemption for benefits consistent with the loan value exemption, and to limit the exemption consistent with the idea that only those dependent upon the benefits for a livelihood should be able to take advantage of the exemption.

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. Under Section 707.420, payable retirement benefits are no longer completely exempt as they were under former Section 690.18 except as against judgments for support.

405/355

§ 707.430. Unemployment benefits and contributions

707.430. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are exempt without making a claim.

(b) Before 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.

(c) After the right to payment has accrued:

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

(2) The benefits described in paragraph (6) of subdivision (b) 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.



§ 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 exemption of such benefits in the amount provided by Section 704.\_\_\_\_ replaces the complete exemption provided by former Section 690.18. 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).

405/354

§ 707.450. Worker's compensation

707.450. 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 707.450 continues the substance of former Section 690.15.

405/346

§ 707.460. Aid

707.460. Prior to payment, aid provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code [or similar aid provided by a charitable organization,] 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 707.460 is based on former Sections 690.14 and 690.19. However, Section 707.460 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 707.460 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).

Section 707.460 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

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 1.) 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

§ 707.470. Employee's bond

707.470. 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 707.470 continues the substance of a provision formerly included in Labor Code Section 404.

405/336

§ 707.480. Vacation credits

707.480. 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 707.480 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.

27/872

§ 707.490. Relocation benefits

707.490. 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 707.490 continues the substance of former Section 690.8a.

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 395 (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 1) 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 1), 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.

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.

APPENDIX  
DISPOSITION OF EXISTING LAW

968/718

§ 690. Exemptions; debtor; creditor

690. (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 690.31, inclusive, "debtor" means debtor, claimant, defendant, cross-defendant, or judgment debtor.

(d) As used in Sections 690.1 to 690.31, inclusive, "creditor" means the plaintiff or the person in whose favor the writ runs.

Comment. Subdivision (a) of former Section 690 is superseded by Sections 707.130(a) and 707.140(a). The substance of subdivision (b) is superseded by Section 707.140(b). See Section 707.295 (claim of exemption for property exempt without making a claim that is levied upon nevertheless). Subdivision (c) is superseded by Section 701.\_\_\_\_ ("judgment debtor" defined) and Section 707.210(b) ("claimant" defined). Subdivision (d) is superseded by Section 701.\_\_\_\_ ("judgment creditor" defined).

968/719

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

690.1. 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.



Comment. The first sentence of former Section 690.1 is superseded by Section 707.340, which provides an exemption for household furnishings, appliances, wearing apparel, provisions, and other personal effects with a value not exceeding \$300. The listing of specific items is not continued. The standard of former Section 690.1 to the effect that items must be "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family" is continued in a somewhat altered form by Section 707.340.

The second sentence of former Section 690.1 is superseded by Section 707.350, which provides an exemption for jewelry, heirlooms, and works of art in the aggregate value of \$500.

968/720

§ 690.2. Exemptions; motor vehicle; distribution of proceeds, priority  
[A.B. 1736, as amended in Assembly, June 8, 1977]

690.2. (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) In addition to the procedure established under Section 690.50, 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 notify the debtor that the debtor may file a claim of exemption pursuant to Section 690.50, but that if the debtor so files, he waives his right to file a claim of exemption under this section for any other motor vehicle currently registered in the name of the debtor. If the department's records show that no other vehicle is registered in the name of the debtor, the levying officer shall nevertheless notify the debtor that the debtor may file a claim of exemption pursuant to Section 690.50.

The notice required by this subdivision shall be given at the same time and in the same manner as the giving of the notice of sale to the judgment debtor. If the debtor files a claim of exemption, the claim shall be determined as provided in subdivisions (a), (c) and (d).

If no claim of exemption is filed after notice is given, under this subdivision 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.

(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.

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

(d) When the debtor has only one vehicle, the levying officer shall not receive any bid at the execution sale 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.

Comment. Former Section 690.2 is superseded by Section 707.330.

Note. The Comment to this section will be revised when the final form of Assembly Bill 1736 is available.

§ 690.3. Exemptions; housetrailer, mobilehome or waterborne vessel

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

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

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

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

(b) The exemption provided by this section shall not apply if such debtor or the spouse of such debtor has an existing homestead as provided by Title 5 (commencing with Section 1237) of Part 4 of Division 2 of the Civil Code or has obtained a prior judicial determination that the dwelling house of the debtor or the family of the debtor is exempt from execution under Section 690.31.

Note. Disposition of this section awaits the consultant's study on the homestead exemption.

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

690.4. 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.

Comment. Former Section 690.4 is superseded by Section 707.370(a) which is essentially the same. Section 707.370(a), however, does not require that "other property" be shown to be used exclusively in the exercise of the judgment debtor's trade. See Section 707.110 ("value" defined).

968/851

§ 690.5. Exemptions; prosthetic and orthopedic appliances

690.5. All prosthetic and orthopedic appliances personally used by the debtor.

Comment. The substance of former Section 690.5 is continued in Section 707.360.

968/853

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

690.6. (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.

Note. This section will be repealed if the Commission's Recommendation Relating to Wage Garnishment is enacted.

968/854

§ 690.7. Exemptions; savings; limit

690.7. (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.

Comment. Subdivision (a) of former Section 690.7 is superseded by Section 707.380 which provides an aggregate exemption in the amount of \$2,000 for deposit accounts (defined by Section 701.\_\_\_\_ to include the items described in subdivision (a) of former Section 690.7).

Subdivision (b) is superseded by the general provisions of Section 707.160.

968/855

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

690.8. 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.

Comment. The substance of former Section 690.8 is continued in Section [707.310].

Note. The substance of this provision should be located in the provisions concerning the homestead exemption.

968/856

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

690.8a. 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 1970, as amended, shall, in addition to any other exemptions provided for by the law, be exempt from attachment or execution. Such benefits shall be exempt from attachment or execution without filing a claim of exemption, as provided in Section 690.50.

Comment. The substance of former Section 690.8a is continued in Section 707.490.

968/858

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

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

(b) In addition to the foregoing, all moneys, benefits, or privileges belonging to or inuring to the benefit of the insured's spouse or minor children growing out of life insurance purchased with annual

premiums not exceeding five hundred dollars (\$500), or if such annual premiums exceeded that sum, a like exemption shall exist in favor of such persons which shall bear the same proportion to the moneys, benefits, or privileges growing out of such insurance that five hundred dollars (\$500) bears to the whole annual premiums paid.

Comment. Former Section 690.9 is superseded by Section 707.410, which provides an exemption for life insurance of \$5,000 of loan value or of benefits upon maturity [when paid to the judgment debtor or the spouse or a dependent of the judgment debtor]. Benefits are exempt pursuant to Section 707.410(d) in the same amount as wages when paid periodically to the judgment debtor or the spouse or a dependent of the judgment debtor. See Section 704.

968/860

§ 690.10. Exemptions; group life policy

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

Comment. Former Section 690.10 is not continued. Group life insurance is exempt to the same extent as any other life insurance under Section 707.410.

968/861

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

690.11. 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.

Comment. Former Section 690.11 is superseded by Section 707.440 which provides an exemption for disability and health insurance benefits

paid periodically in the amount of the wage garnishment exemption. See Section 704. However, this exemption is not applicable against a provider of health care for the condition for which the payments are made.

968/862

§ 690.12. Exemptions; segregated benefit funds

690.12. 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.

Comment. The substance of former Section 690.12 is continued in Section 707.770.

968/863

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

690.13. All moneys belong 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.

Comment. Former Section 690.13 is continued in Section 707.730.

968/864

§ 690.14. Exemptions; aid by fraternal benefit society

690.14. 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.

Comment. Former Section 690.14 is superseded by Sections 707.410 (death benefits), 707.440 (disability and health benefits), and 707.460 (aid).



968/865

§ 690.15. Exemptions; workmen's compensation claims

690.15. 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.

Comment. The substance of former Section 690.15 is continued in Section 707.450.

968/866

§ 690.16. Unemployment insurance contributions

690.16. Contributions by workers, payable to the Unemployment Compensation Disability Fund, and by employers, payable to the Unemployment Fund are exempt without filing a claim of exemption as provided in Section 690.50.

Comment. The substance of former Section 690.16 is continued in Section 707.430(a).

968/867

§ 690.17. Exemptions; building materials; restriction

690.17. 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.

Comment. Former Section 690.17 is not continued.

968/868

§ 690.175. Exemptions; unemployment compensation

690.175. 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 690.50.

Comment. The substance of former Section 690.175 is continued in subdivisions (b) and (c) of Section 707.430 except that private supplemental unemployment compensation is exempt in the same amount as earnings pursuant to Section 704. \_\_\_ under the new provision.

968/869

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

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

(b) All money held, controlled, or in process of distribution by the state, or a city, city and county, county, or other political subdivision of the state, or any public trust or public corporation, or the governing body of any of them, or by any public board or boards, derived from the contributions by the state or such city, county, city and county, or other political subdivision, or such public trust, public corporation, governing body, or public board or boards, or by any officer or employee thereof, for retirement or pension purposes or the payment of disability, death, or other benefits, or the payment of benefits payable to, or the reimbursement of benefits paid to, employees

thereof under the provisions of the Unemployment Insurance Code, and all rights and benefits accrued or accruing to any person under any system established pursuant to statute by the state, city, city and county, county, or other political subdivision of the state, or any public trust or public corporation for retirement, annuity, or pension purposes or payment of disability or death benefits, and all vacation credits accumulated by a state employee pursuant to the provisions of Section 18050 of the Government Code, or any other public employee pursuant to any law for the accumulation of vacation credits applicable to such employee. Such moneys, benefits, and credits shall be exempt without filing a claim of exemption as provided in Section 690.50.

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

Comment. Former Section 690.18 is superseded by Sections 707.410 (death benefits), 707.420 (retirement benefits), 707.430 (unemployment benefits), 707.440 (disability benefits), and 707.480 (vacation credits). [The exception to the exemption in the case of an order for child or spousal support provided by subdivisions (a) and (c) of former Section 690.18 is not continued inasmuch as the new provisions do not exempt the entire amount of these benefits. Note that a lesser amount is exempt in a case where these assets are sought to be applied toward the satisfaction of a support order. See Section 723.052.]

§ 690.19. Exemptions; public assistance

690.19. 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.

Comment. The substance of the first and last sentences of former Section 690.19 is continued in Section 707.460. The second sentence is not continued; Section 17409 of the Welfare and Institutions Code has been amended in a consistent manner. See the Comment to Section 707.460.

§ 690.20. Exemptions; hospital endowment funds; extent

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

Comment. The substance of former Section 690.20 is continued in Section 707.750.

§ 690.21. Exemptions; funds of prisoners

690.21. 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.

Comment. Former Section 690.21 is superseded by Section 707.380 which provides a \$2,000 exemption for deposit accounts and money. See Section 701.\_\_\_\_ ("deposit account" defined).

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

690.22. 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.

Comment. [Former Section 690.22 is not continued. A money judgment against a local public entity is no longer enforceable by writ of execution or the special procedures provided in Chapter 5 (commencing with Section 705.110). See \_\_\_\_\_. Such judgments are enforceable by way of a writ of mandate. See Section 1085; Govt. Code § 970.2 (tort and inverse condemnation judgments).]

§ 690.24. Exemptions; cemetery lots

690.24. 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.

Comment. The first sentence of former Section 690.24 is superseded by Section 707.320 which provides an exemption for a cemetery plot for one person or a larger family plot (as determined by Health and Safety Code Section 8650). The limitation formerly provided by the second sentence of Section 690.24 is not continued.

The second paragraph of former Section 690.24 is superseded by Section 707.320.

The third paragraph is continued in Section 707.740(b). The fourth paragraph is continued in Section 707.740(d). The last paragraph is continued in Section 707.740(c).

968/880

§ 690.25. Exemptions; pews

690.25. 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.

Comment. The church pew exemption provided by former Section 690.25 has not been continued. This exemption no longer served a useful purpose because the practice of member ownership of pews has generally ceased.

§ 690.26. Exemptions; property of certain boards and districts

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

Comment. Former Section 690.26 is superseded by Section \_\_\_\_\_ which precludes the enforcement of a money judgment against the state or local public entities through the procedures of Chapter 3 (commencing with Section 703.110) (writ of execution) and Chapter 5 (commencing with Section 705.110) (special procedures for enforcement of money judgment). See the Comment to the repeal of Section 690.22.

§ 690.27. Exemptions; housing authority realty

690.27. 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.

Comment. Former Section 690.27 is superseded by Section \_\_\_\_\_ which makes all such property unavailable for the satisfaction of a money judgment. See the Comment to the repeal of Section 690.22.

§ 690.28. Exemptions; grants for educational purposes; restrictions

690.28. 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.

Comment. The first and second sentences of former Section 690.28 are continued in Section 707.760. The substance of the last sentence is continued in Section 707.130(b).

§ 690.29. Exemptions; redevelopment agency property

690.29. 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.

Comment. Former Section 690.29 is superseded by Section \_\_\_\_\_ which makes such property unavailable for the satisfaction of a money judgment. See the Comment to the repeal of Section 690.22.

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

690.30. 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)) 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. 92-366 (86 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 (i) 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.

Comment. The substance of former Section 690.30 is continued in Section 707.390. See the Comment to Section 707.390 for an indication of the variations from former Section 690.30.

968/888

§ 690.31. Dwelling house

Note. The disposition of this provision is the subject of a consultant's study currently being prepared.

968/889

§ 690.50. Procedure for claiming exemptions

[as amended by AB 393, § 5.5, and AB 423, § 10]

690.50. (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 10, days 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.

(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 five days after service of such writing.

(c) If the creditor desires to contest the claim to exemption, he shall, within such period of five days, 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 Section 690.2, 690.3, or 690.4, 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 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, 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.

(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.

Comment. Former Section 690.50 is superseded by Sections 707.210-707.285. The provision in subdivision (a) of former Section 690.50 requiring exemptions to be made within 10 days after levy is replaced by Section 707.220(a) pursuant to which the 10-day period runs from the date of mailing or personally serving notice of levy or of other process. Section 707.220(a) permits a "claimant," as defined by Section 707.210(b), to make a claim of exemption in place of the former explicit authorization for only the judgment debtor or an agent. The provisions for the contents of a claim of exemption in subdivision (a) of former Section 690.50 are superseded by Section 707.220(b).

Subdivision (b) of former Section 690.50 is superseded by Section 707.230 which allows 10 days for the filing of the notice of opposition in place of the five-day period for filing the counteraffidavit under subdivision (b). The 10-day period is not, however, subject to being extended pursuant to Section 1013 (extra time to act after mail service). See the Comment to Section 707.240.

Subdivision (c) of former Section 690.50 is superseded by Sections 707.240 (contest of exemption claim), 707.250 (contents of notice of opposition), and 707.260(b) (proof of service of notice of opposition and notice of motion).

Subdivisions (d) and (f) are superseded by Section 707.270. The provision in subdivision (f) for release if neither party makes a motion is not continued since pursuant to Section 707.240 the judgment creditor must file the notice of opposition with the levying officer and file the notice of motion with the court within the same 10-day period after the date of notice of claim of exemption was mailed. The debtor's opportunity to obtain a hearing, formerly provided by subdivision (e), has been eliminated because it served no purpose, the exemption claim being admitted if the notice of motion is not timely filed by the judgment creditor. The 15-day period in subdivision (e) for holding the hearing has been increased to 20 days (see Section 707.260(a)) and, correspondingly, the debtor is required to receive 10 days' notice of the hearing (see Section 707.260(b)) rather than five.

The substance of subdivision (g) of former Section 690.50 is continued in subdivisions (b) and (c) of Section 707.285.

The substance of subdivision (h) of former Section 690.50 is continued in Section 707.285(a).

The substance of subdivision (i) of former Section 690.50 is continued in subdivisions (a) through (d) of Section 707.275 except that the reference to jury trials of exemption claims has been discontinued as superfluous.

The substance of the first sentence of subdivision (j) of former Section 690.50 is continued in Section 707.275(e). The second sentence of subdivision (j) is superseded by Section 707.285(a).

Subdivision (k) of former Section 690.50 is not continued. See Section 702.210 (manner of mailing notice).

Subdivision (1) of former Section 690.50 is not continued. See Section 1054 (general provision for extension of time); Cal. R. Ct. 235 (superior court), 534(b) (municipal court).

The substance of subdivision (m) of former Section 690.50 is continued in Section 707.280.

18545

§ 690.51. Exemptions; tax liability

690.51. 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 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 shall be entitled to the exemptions provided in Sections 690.1 to 690.31, inclusive, and, where applicable, the provisions of Section 690.50 shall govern 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.

Comment. The substance of former Section 690.51 is continued in Section 707.170.

18546

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

690.52. 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.

Comment. The substance of former Section 690.52 is continued in Section 707.130(b).