

## Memorandum 78-23

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

Attached to this memorandum is a draft of Chapter 7 of the Enforcement of Judgments Law relating to exemptions which has been revised to implement decisions made at the April 1978 meeting. Several exhibits are also attached and are referred to below. You should note that many sections have been renumbered from the prior draft.

Preliminary Text

This material has been revised in response to decisions made at the April meeting and editorial suggestions made by several Commissioners.

§ 707.110. Claimant

This section has been reorganized. Subdivision (c) has been added to recognize the spouse's exemption right. We have deleted provisions permitting a spouse or dependent of the debtor to claim exemptions on the debtor's behalf because of the complications that would arise should the various claimants disagree.

§ 707.150. Waiver of exemptions

This provision has been revised in accordance with a decision at the April meeting.

§ 707.160. Exemption rights of married persons

The staff has reviewed the exemptions to determine which exemptions need adjustment in order to equalize the position of married debtors vis-a-vis unmarried couples. Section 707.160 has been revised to provide both spouses a set of exemptions except in the case of the homestead exemption which, if the substance of the existing law is continued, provides a \$30,000 exemption for a head of a family and a person over 65 and a \$15,000 exemption for all other persons. Section 707.160 permits each spouse to claim an exemption for a cemetery plot, a motor vehicle, household furnishings, jewelry, tools of a trade, deposit accounts, and life insurance loan value, subject to the value limitations stated in the various sections. The spouses would also be able to claim the total exemptions for retirement benefits, unemployment benefits, disability and health benefits, worker's compensation, aid, and

relocation benefits. The exemptions for life insurance benefits, personal injury awards, and wrongful death awards are based on the need of the family and can be claimed by either spouse.

Subdivision (a) of Section 707.160 raises a question concerning the fairness of permitting a nondebtor spouse to claim exemptions out of community property without regard to the amount of separate property of the nondebtor spouse which is not liable. For example, if the money judgment (not for necessities) is against the husband, the husband's separate property bank account and any community property bank account would be subject to execution, but the wife's separate property bank account would not be liable. Should the wife be able to shield all of her separate property (pursuant to the community property laws) and also claim exemptions in the community property? Or should the nondebtor spouse's exemptions in community property be diminished to the extent that such spouse has separate property of the same character? This would have the effect of treating the nondebtor spouse as a debtor for the purpose of determining exemptions. If the debt of the debtor spouse is incurred for necessities during marriage, the separate property of the nondebtor spouse is liable once the community property is exhausted. Civil Code §§ 5121, 5132. The basic policy of the exemption laws is to provide for the support of the debtor and his or her family. These policies are consistent; hence, it would not be inappropriate to consider the nondebtor spouse's separate property in determining exemption claims as to community property.

#### § 707.180. Tracing

The portion of this provision giving the debtor the choice of the manner of tracing has been deleted in accordance with a decision at the April meeting.

#### § 707.210. Exemptions from tax liability

It was decided at the April meeting to remove the references to particular sections in the Revenue and Taxation Code and the Unemployment Insurance Code from this provision, which supersedes Section 690.51. We found four warrant provisions in recently enacted laws that are not listed in Section 690.51 of existing law, presumably because of oversight. See Rev. & Tax. Code §§ 3202 (state property tax--added in

1977), 16071 (gift tax--added in 1977), 38541 (timber yield tax--added in 1976), 40161 (energy resources surcharge tax--added in 1974).

The staff has examined the collection provisions of the following tax laws in the Revenue and Taxation Code: Property tax (Section 101), aircraft tax (Section 5301), livestock tax (Section 5501), sales and use taxes (Section 6001), motor vehicle fuel license tax (Section 7301), use fuel tax (Section 8601), vehicle license fee (Section 10701), private car tax (Section 11201), insurance tax (Section 12001), inheritance tax (Section 13301), gift tax (Section 15101), personal income tax (Section 17001), bank and corporation tax (Section 23001), cigarette tax (Section 30001), alcoholic beverage tax (Section 32001), timber yield tax (Section 38101), and energy resources surcharge (Section 40001).

The different tax laws vary in the number and type of procedures through which they may be enforced, but some taxes may be enforced through any of the available procedures. A debtor may be required to give security for the collection of the tax. See Section 8951 (use fuel tax). Many sections provide for the assertion of a lien on the debtor's property, or perhaps just real property. See Section 18881 (personal income tax). The agency may issue and serve a notice to withhold. See Section 18817 (personal income tax). The agency may issue a warrant and deliver it to a levying officer for levy. See Section 16071 (gift tax). The agency may simply seize and sell property where a delinquency has existed for a prescribed time. See Section 7891 (vehicle fuel license tax). The agency may bring an action and enforce the judgment in the manner of any other money judgment. See Section 14321 (inheritance tax). The sections cited are attached as Exhibit 1 to this memorandum.

Under existing law, exemptions (other than the homestead exemption as discussed below) do not apply against the state when the state agency elects to use the notice to withhold rather than the warrant procedure. See Greene v. Franchise Tax Bd., 27 Cal. App.3d 38, 103 Cal. Rptr. 483 (1972)--copy attached hereto as Exhibit 2. The staff does not believe that the difference in procedures justifies the denial of exemptions which may be needed for the support of the tax debtor and the debtor's family. It was stated in Greene that the Franchise Tax Board generally employs the notice to withhold procedure to collect small tax debts to

avoid the additional expense that would result if the warrant procedure were used. Id. at 44. It is interesting that the notice of levy provided by Unemployment Insurance Code Section 1755 (see Exhibit 1), which corresponds to the notice to withhold under the Revenue and Taxation Code, is listed in Section 690.51 along with the warrant provisions (see, e.g., Unemp. Ins. Code § 1785 in Exhibit 1).

It has been held that the general exemption laws are not applicable against the state or a county or city seeking to collect taxes. Morrison v. Barham, 184 Cal. App.2d 267, 272, 7 Cal. Rptr. 442 (1960) (ad valorem tax on homesteaded property); Rev. & Tax. Code § 2192.1.

However, if the tax law gives the tax lien the effect of a judgment lien, the tax lien does not have priority over a prior recorded declaration of homestead. Curtis v. County of Kern, 37 Cal. App.3d 704, 706, 113 Cal. Rptr. 41 (1974) (collection of personal property tax liability by assertion of tax lien against real property); Rev. & Tax. Code § 2191.4.

The staff is of the opinion that the enforcement of property taxes justifies an exception to the exemption laws when the taxed property is sought to be reached. This principle is analogous to enforcement of a mortgage or other favored lien. In all other situations, however, we believe the policy reflected in Code of Civil Procedure Section 690.51, which makes exemptions applicable against certain state enforcement procedures, is more appropriate. We see no reason to hinge the application of exemption laws upon the enforcement procedure selected by the taxing agency or upon whether the tax is being enforced by the state as opposed to a local public entity. Accordingly, subdivisions (a) and (d) of draft Section 707.210 have been tentatively revised to apply exemptions to all tax debts (except property taxes asserted against the property taxed) regardless of whether a state or local tax is being enforced.

The Commission may want to consider some other approach. The exemption laws could be made completely inapplicable to the collection of tax debts. This approach prevails in several states, such as Illinois, Maryland, Missouri, and South Carolina. See Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779, 859 n.498 (1974). Section 10(a)(1)(iii)

of the Uniform Exemptions Act similarly provides a blanket exception in such cases. Or a more limited set of exemptions could be prescribed. Federal law provides a restricted set of exemptions from the enforcement of a federal tax liability. See I.R.C. § 6334. These exemptions include necessary clothing, fuel, furniture, provisions and personal effects not exceeding \$500 in value, trade and professional implements worth \$250, unemployment and worker's compensation benefits, child support payments, and some federal retirement payments. In the Recommendation Relating to Wage Garnishment, 13 Cal. L. Revision Comm'n Reports 1703, 1710 (1976), the Commission recommended that an earnings withholding order for taxes issued by the state should be restricted by the standard wage garnishment exemption. If the state desires to withhold a larger amount, under the recommendation, a withholding order would have to be obtained from a court. It would be consistent with this approach to provide that, if a tax agency obtains a judgment, only an amount of property necessary for the support of the debtor and the debtor's family would be exempt.

Subdivision (c) of Section 707.210 has been revised to provide that the taxing agency serves as the levying officer in a situation where no levying officer is involved. This generalizes the practice of the Department of Benefit Payments under Unemployment Insurance Code Section 1755. The notice to withhold and notice of levy procedures do not provide for any notice to the debtor so the period should run from when the debtor receives actual notice of the seizure. As an alternative, the tax laws could be amended to require the taxing authority to mail notice to the debtor.

Under existing law, there are several procedures through which a debtor may contest the summary assessment of the taxing authority. The debtor may post bond, request an administrative abatement of the assessment, sue for a refund, or seek injunctive relief. See Tarlow, Criminal Defendants and Abuse of Jeopardy Tax Procedures, 22 U.C.L.A. L. Rev. 1191, 1197-1205 (1975). However, since exemptions do not currently apply to the notice to withhold procedures, these remedies are unavailable for the assertion of an exemption claim. It is better to provide a special rule for making exemption claims at the same time that exemptions are extended to such enforcement procedures.

The staff does not believe that it is appropriate at this time to attempt a comprehensive review of the tax collection procedures. However, it should be noted that at least one form--seizure and sale--has not found favor with the courts. Revenue and Taxation Code Section 2951 permits the seizure of any of the debtor's property to satisfy property taxes due on unsecured property. In T.M. Cobb Co. v. County of Los Angeles, 16 Cal.3d 606, 547 P.2d 431, 128 Cal. Rptr. 655 (1976), the court stated that the seizure provision did not violate due process on the ground that the debtor was given no notice and opportunity for an administrative hearing prior to seizure, but that the property could not be sold without an opportunity for a prior administrative hearing. The same case also held that a prior perfected security interest is entitled to priority over the tax lien. See also Chrysler Credit Corp. v. Ostly, 42 Cal. App.3d 663, 117 Cal. Rptr. 167 (1974).

§ 707.520. Cemetery plot

Subdivision (c) has been revised to provide an exemption for one plot since in the case of married debtors this number will be doubled pursuant to Section 707.160.

§ 707.530. Motor vehicle; proceeds

Subdivision (a) has been revised in accordance with a decision at the April meeting. Subdivision (b) has been revised to permit the automatic exemption of proceeds in the case of married debtors.

§ 707.540. Household furnishings

The amount of this exemption has been raised from \$300 to \$500 in accordance with a decision at the April meeting.

Tentatively, Section 707.160 doubles the exemption for household furnishings. If spouses live separately or are legally separated, the one household exemption may be insufficient. However, spouses should not be able to move apart in an attempt to protect a greater amount of property. It may be desirable to limit the two household exemptions to legally separated persons.

§ 707.570. Tools of trade

This exemption is not doubled for spouses unless both spouses are engaged in the same or different trades. If only one spouse is engaged in a trade, the exemption is not doubled.

§ 707.580. Deposit accounts and money

The staff suggests that, in view of the doubling of exemptions in the case of married persons, this exemption be changed from \$2,000 to \$1,000.

§ 707.590. Deposit accounts in which social security payments are directly deposited

Subdivision (b) has been revised in accordance with a decision at the April meeting. This subdivision, which continues existing law, provides an automatic exemption of \$500, if one account holder is a designated recipient of social security payments, and \$750, if two or more are designated recipients. This is not in conflict with the spouse's exemption rights, however, since subdivision (c) provides an additional claimed exemption for all funds derived from social security payments in the account.

§ 707.600. Life insurance

Subdivision (b) has been revised.

At the April meeting, the Commission requested the staff to determine the manner in which the loan value of an unexpired life insurance policy may be reached. No California decisions have been found which decide this issue. In Union Central Life Ins. Co. v. Flicker, 101 F.2d 857, 862 (9th Cir. 1939), cert. den. 307 U.S. 641, it was assumed but not decided that the cash surrender value could be reached under California law. In In re Driscoll, 142 F. Supp. 300 (S.D. Cal. 1956), the loan value of a life insurance policy was found to be exempt in bankruptcy because the annual premiums were less than \$500. The loan and cash surrender values of nonexempt life insurance may be reached in bankruptcy. See 4A Collier on Bankruptcy ¶ 70.23 (14th ed. 1976). However, Section 70(a)(5) of the Bankruptcy Act permits the bankrupt to preserve the policy by paying or securing to the trustee the amount of the cash surrender value within 30 days after that value has been determined.

The general rule is said to be that the right to obtain a policy loan is a personal right to the debtor and is not subject to the reach of creditors unless the debtor makes an application for the loan. See Annot., 37 A.L.R.2d 268. However, cases from different states follow no

particular pattern. In some cases, the cash surrender value has been protected because of a lack of an appropriate procedure or the failure of the creditor to select the appropriate procedure. The result may also depend on the phrasing of the state's life insurance exemption or upon factors such as whether the insured or his estate is the beneficiary or whether the insured has reserved the right to change beneficiaries. See Riesenfeld, Life Insurance and Creditors' Remedies in the United States, 4 U.C.L.A. L. Rev. 583, 587-88 (1957). In New York and several other states, it is clear that the value of an unmatured policy may be reached through a creditor's bill, a motion to compel the debtor to turn the policy over to a receiver, an injunction to prevent the insurance company from paying to the debtor and for the appointment of a receiver, and supplementary proceedings. See Cohen, Execution Process and Life Insurance, 39 Colum. L. Rev. 139, 142-49 (1939). California supplementary procedures are based on the New York procedures and so should provide an adequate remedy although it is conceivable under existing law that the courts might follow the personal right cases and shield loan value by judicial fiat. The intent to permit creditors to reach loan value should be clear enough under the draft statute since it exempts loan value only to the extent of \$5,000 to \$15,000.

#### § 707.610. Retirement benefits

At the April meeting, an objection was made to the reference in the prior draft of this section to retirement benefits under "the Internal Revenue Code of 1954, as amended by the federal Employee Retirement Income Security Act of 1974 (Pub. L. No. 93-406) and by the Tax Reform Act of 1976 (Pub. L. No. 94-455)." This language was drawn from A.B. 1969, which is currently before the Legislature. As amended in the Senate on March 16, 1978, A.B. 1969 limits the exemption of self-employed retirement plans to the amount which is exempt from federal income taxation. In view of the fact that the Legislature is currently considering this exemption, the staff believes it would be inopportune to recommend the complete exemption of self-employed retirement plans. We have drafted Section 707.610, however, to implement the Commission decision at the April meeting and have deleted the specific reference to the federal provisions.



§ 707.620. Unemployment benefits and contributions

This provision has been revised to provide an exemption for strike benefits and to completely exempt unemployment and strike benefits after payment.

The staff is uncertain whether the Commission's decision to recommend an exemption for strike benefits was intended to apply to all strike benefits or only strike benefits which are received when the employee is ineligible for unemployment benefits. Unemployment Insurance Code Section 1262 provides that a person is not eligible for unemployment compensation if he or she stopped working because of a trade dispute. It appears that quite a bit of judicial effort has gone into interpreting this section. If the employee voluntarily left work because of the trade dispute, benefits may be denied but, if the employee was forced to leave, benefits may be available. The distinction between a voluntary strike and a lockout is not always clear. There is also a general policy against duplication of payments, but it is not known whether this applies to strike benefits received by an employee who can otherwise meet the requirements for unemployment compensation. See generally 1 B. Witkin, Summary of California Law Agency and Employment §§ 60-76, at 685-98 (8th ed. 1973).

§ 707.630. Disability and health benefits

Subdivision (a) of this provision has been revised to completely exempt disability and health benefits after payment, subject to the exception provided in subdivision (b).

§ 707.650. Damages for wrongful death

This provision has been separated from the life insurance and death benefit exemption as directed by the Commission.

Respectfully submitted,

Stan G. Ulrich  
Staff Counsel

## EXHIBIT 1

REVENUE AND TAXATION CODE**§ 7891. Authorization; grounds; auction; property liable**

Whenever any distributor is delinquent in the payment of the license tax, the Controller or his authorized representative may forthwith collect the license tax due in the following manner: The Controller shall seize any property, real or personal, of the distributor, and thereafter sell the property, or a sufficient part of it, at public auction to pay the license tax due together with any penalties, interest and any costs incurred on account of the seizure and sale.

(Added by Stats.1941, c. 37, p. 568, § 1. Amended by Stats.1943, c. 874, p. 2702, § 26.)

**§ 8951. Authority to require; deposit; amount; notice and sale; public or private sale; surplus**

The board, whenever it deems it necessary to insure compliance with this part or any rule or regulation adopted under this part, may require any user to deposit with it such security as it may determine. The board may sell the security at public sale if it becomes necessary so to do in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the manner prescribed for service of notice of a deficiency determination. Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price thereof. Upon any sale, any surplus above the amount due shall be returned to the person who deposited the security.

(Added by Stats.1941, c. 38, p. 583, § 1. Amended by Stats.1945, c. 752, p. 1439, § 5.)

**§ 14321. Issuance; time limit**

At any time after two years from the date of any decedent's death, the Controller may have a writ of execution issued for the enforcement of any order, decree, or judgment fixing tax in respect to any transfer made by the decedent.

(Added by Stats.1943, c. 658, p. 2316, § 1.)

- 1 -

**§ 18071. Issuance by controller; form; effect; levy and sale**

At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within three years after the last recording of a notice of state tax lien under Section 18083, the Controller or his authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

(Amended by Stats.1977, c. 481, p. —, § 41, operative July 1, 1978.)

**§ 18817. Withhold notice; service; duty of recipient**

The Franchise Tax Board may by notice, served personally or by registered mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a \* \* \* freeholders' charter, or a political body not a subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a taxpayer or to \* \* \* an employer or person who has failed to withhold and transmit amounts due pursuant to \* \* \* Section 18815 or 18816, to withhold, from such credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the taxpayer or the amount of any liability incurred by such employer or person for failure to withhold and transmit amounts due from a taxpayer under this part and to transmit the amount withheld to the Franchise Tax Board at such times as it may designate.

(Formerly § 18807, added by Stats.1943, c. 659, p. 2403, § 1. Amended by Stats.1951, c. 70, p. 267, § 1; Stats.1951, c. 213, p. 4651; Stats.1953, c. 484, p. 1731, § 3, eff. May 1, 1953; Stats.1957, c. 542, p. 1608, § 14, eff. May 30, 1957. Renumbered § 18817, and amended by Stats.1971, Ex.Sess., c. 1, p. 5038, § 175, urgency, eff. Dec. 8, 1971, operative Jan. 1, 1972.)

**§ 18881. Perfection and enforcement; procedure; effect**

*Text of section operative July 1, 1978.*

(a) If any taxpayer fails to pay any tax, interest or penalty imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien upon all property and rights to property whether real or personal, tangible, or intangible, including all after-acquired property and rights to property, belonging to such person and located in the state. Such lien shall not continue for more than 10 years unless recorded or filed as provided in this section.

For the purposes of this section only, "due and payable" means the date a return is required to be filed, without regard to any extension of time, without payment of the amount due, or the date an assessment made under this part becomes final, whichever is applicable.

(b) With respect to real property or any rights therein, at any time after creation of the lien pursuant to subdivision (a), the Franchise Tax Board may record in the office of the county recorder of the county in which such real property is located a notice of state tax lien as specified in subdivision (d).

The lien created by subdivision (a) shall not be valid against the right, title or interest of:

- (1) A successor in interest of the taxpayer without knowledge of the lien;
- (2) A holder of a security interest;
- (3) A mechanic's lienor; or

(4) A judgment lien creditor, where such right, title or interest was acquired or perfected prior to recording of a notice of state tax lien as provided in this subdivision.

(c) With respect to personal property, whether tangible or intangible, at any time after creation of the lien pursuant to subdivision (a) the Franchise Tax Board may file a notice of state tax lien with the Secretary of State pursuant to Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code.

The lien created by subdivision (a) shall not be valid as to personal property against:

(1) The holder of a security interest therein whose interest is perfected pursuant to Section 9503 of the Uniform Commercial Code prior to the time the notice of the state tax lien is filed as herein provided;

(2) Any person, other than a person liable for the tax, who acquires his interest in the property under the law of this state without knowledge of the lien or who perfects his interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State;

(3) A buyer in the ordinary course of business, as defined in subdivision (9) of Section 1201 of the Uniform Commercial Code, who, under Section 9807 of such code, would take free of a security interest created by his seller;

(4) Any person, other than a person liable for the tax, who, notwithstanding the prior filing of the notice of state tax lien:

(A) Is a holder in due course of a negotiable instrument, as defined in Section 3302 of the Uniform Commercial Code;

(B) Is a holder to whom a negotiable document of title has been duly negotiated as provided in Section 7501 of the Uniform Commercial Code;

(C) Is a bona fide purchaser of a security, as defined in Section 8302 of the Uniform Commercial Code;

(D) Is a purchaser of chattel paper, as defined in Section 9105(1)(b) of the Uniform Commercial Code, or an instrument, as defined in Section 9105(1)(i) of such code, who gives new value and takes possession of it in the ordinary course of business;

(E) Is a holder of a purchase money security interest, as defined in Section 9107 of the Uniform Commercial Code;

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4208 of the Uniform Commercial Code;

(G) Acquires a security interest in a deposit account, as defined in Section 9105(1)(c) of the Uniform Commercial Code, or in the beneficial interest in a trust or estate;

(H) Acquires any right or interest in letters of credit, advices of credit or money;

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums;

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of such security interest.

(d) The notice of state tax lien recorded or filed pursuant to subdivision (b) or (c) shall include the name and last known address of the person liable for the tax, the amount of the tax, a statement that the tax shall be a lien upon all real or personal property and rights to property, belonging to such person, and a statement that the Franchise Tax Board has complied with all the provisions of this part in the computation and levy of the amount assessed.

(e) Any lien arising pursuant to this section shall continue for 10 years from the date of recording or filing of a notice of state tax lien pursuant to subdivision (b) or (c), unless sooner released or otherwise discharged. The lien may, within 10 years from the date of the recording or filing of the notice of state tax lien or

within 10 years from the date of the last extension of the lien in the manner herein provided, be extended by recording or filing a new notice of state tax lien in the office of the county recorder of any county or with the Secretary of State as provided in subdivision (b) or (c), and from the time of such recording or filing the lien shall be extended for 10 years unless sooner released or otherwise discharged.

(f) Notwithstanding the provisions of Sections 688 and 688.1 of the Code of Civil Procedure, in the event the taxpayer is a party to an action or special proceeding in which the taxpayer may become entitled to property or a money judgment, a lien created pursuant to subdivision (a) shall extend to the taxpayer's cause of action and any judgment in favor of the taxpayer subsequently procured in such action or proceeding. Notice of such a lien shall be given to all parties who prior thereto have made an appearance in the action and to judgment creditors who prior thereto have been granted a lien or an order permitting intervention under Section 688.1, of the Code of Civil Procedure. Such lien shall have priority from the time of filing of the notice in the action. No compromise, dismissal, settlement, or satisfaction shall be entered into by or on behalf of the taxpayer with any other party, senior or intervenor in the action without the consent of the Franchise Tax Board unless the lien is sooner satisfied or discharged. The judge or clerk of the court shall endorse upon the judgment recovered in such action or proceeding a statement of the existence of the lien, the time of the filing of the notice in the action, and the place where entered, and any abstract issued upon the judgment shall contain, in addition to the matters set forth in Sections 674 and 688.1 of the Code of Civil Procedure, a statement of the lien in favor of the Franchise Tax Board.

(g) Any lien, and any rights or causes of action under such lien, heretofore recorded in any county pursuant to former Section 18881 or filed with the Secretary of State pursuant to former Section 18882.5, shall continue in full force and effect for a period of 10 years from the date of last recordation or filing or extension thereof and may, within such period of 10 years, be further extended in the manner provided for in subdivision (e) of this section. Upon recordation or filing of an extension, the lien shall have the same effect as a lien filed pursuant to this section. Such extended lien shall have the same priority as it originally had under the law in effect prior to January 1, 1978.

(Added by Stats.1977, c. 481, p. —, § 40, operative July 1, 1978.)

## UNEMPLOYMENT INSURANCE CODE

### **§ 1755. Service of notice of levy; duties of persons served**

If any person or employing unit is delinquent in the payment of any contributions, penalties or interest provided for in this division, the director may, not later than three years after the payment became delinquent or within 10 years after the last entry of a judgment under Article 5 (commencing with Section 1815) of this chapter or within 10 years after the last recording or filing of a notice of state tax lien under Section 1703, collect the delinquency or enforce any liens by levy served either personally or by certified mail, to all persons having in their possession or under their control any credits or, with respect to a bank or savings and loan association, other personal property belonging to the delinquent person or employing unit, or owing any debts to such person or employing unit at the time of the receipt of the notice of levy. Any person upon whom a levy has been served having in his possession or under his control any credits, or with respect to a bank or savings and loan association other personal property, belonging to the delinquent person or employing unit or owing any debts to such person or employing unit at the time of the receipt of the levy, shall surrender such credits or other personal property to the director or pay to the director the amount of any debt owing the delinquent employer within five days of service of the levy. Any such person in possession of any credits or other personal property or owing any debts to the delinquent person or employing unit who surrenders such credits or other personal property or pays such debts owing the delinquent person or employing unit shall be discharged from any obligation or liability to the delinquent person or employing unit with respect to the credits or personal property surrendered or debts paid to the director. If the levy is made on a deposit or credits or other personal property in the possession or under the control of a bank or savings and loan association, the notice of levy shall be delivered or mailed to the branch or office of such bank or savings and loan association at which such deposit is carried or at which such credits or personal property is held. (Amended by Stats.1977, c. 481, p. —, § 74, operative July 1, 1978.)

*1977 amendment operative July 1, 1978.*

### **§ 1756. Warrant for enforcement of liens; directed to sheriff; effect; levy and sale**

If any amount required to be paid under this division is not paid when due, the director or his authorized representative may, not later than three years after the payment became delinquent, or within 10 years after the last entry of a judgment under Article 5 of this chapter or within 10 years after the last recording or filing of a notice of state tax lien under Section 1703, issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this division. The warrant shall be directed to any sheriff, marshal or constable and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. (Amended by Stats.1977, c. 481, p. —, § 73, operative July 1, 1978.)

*1977 amendment operative July 1, 1978.*

[Civ. No. 11107, Fourth Dist., Div. One, Aug. 3, 1972.]

SHIRLEY GREENE, Plaintiff and Appellant, v.  
FRANCHISE TAX BOARD, Defendant and Respondent.

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**SUMMARY**

The trial court entered judgment denying a taxpayer's claim of exemption as to amounts withheld from her wages for unpaid income taxes due for prior years under an order of the Franchise Tax Board issued to her employer pursuant to former Rev. & Tax. Code, § 18807 (now § 18817). (Superior Court of San Diego County, No. 324442, Franklin B. Orfield, Judge.)

The Court of Appeal affirmed the judgment of the trial court, pointing out the plain language of Code Civ. Proc., § 690.51, permits the filing of an exemption claim where the board issues a warrant for collection of taxes but does not refer to statutes giving a tax collecting agency the authority to issue an order to withhold. The court took the view a statute permitting a delinquent taxpayer to exercise a claim of exemption, when the state acts to collect unpaid taxes, tends to limit the power of the state to collect taxes, and must be strictly construed. In rejecting the taxpayer's claim the statute violated due process, the court noted the tax debt had been acknowledged by her returns under penalty of perjury and thus no hearing was required to establish the validity or the amount of the claim. (Opinion by Ault, J., with Brown (Gerald), P. J., and Coughlin, J.,\* concurring.)

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\*Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairman of the Judicial Council.

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**HEADNOTES**

Classified to McKinney's Digest

**(1a, 1b) Taxation § 458(9)(a)—Income Taxes—Collection of Delinquencies.**—The trial court properly denied a taxpayer's claim of exemption as to an amount withheld from her wages for unpaid income taxes for prior years by order of the Franchise Tax Board issued to her employer pursuant to former Rev. & Tax. Code, § 18807 (now § 18817). Code Civ. Proc., § 690.51, is the only statute making the state subject to such an exemption and it applies, by its express terms, only when a warrant is issued for the collection of taxes and not when the board issues an order to the employer to withhold the amount due. The statute permitting a delinquent taxpayer to exercise a claim of exemption, when the state acts to collect unpaid taxes, tends to limit and impair the power of the state to collect taxes, and must be strictly construed.

[See Cal.Jur.2d, Income Taxes, § 49.]

**(2) Statutes § 171—Consequences of Particular Interpretation—Impairment of Prerogatives of Government.**—In exercising the power to levy and collect taxes, the state acts in its sovereign governmental capacity, and, since laws that tend to limit sovereignty are strictly construed, the liberal principles governing the construction of exemption statutes are not applicable to unpaid taxes.

**(3) Statutes § 171—Consequences of Particular Interpretation—Impairment of Prerogatives of Government.**—A statute will not be construed to impair or limit the sovereign power of the state to act in its governmental capacity and perform its governmental functions on behalf of the public in general, unless such intent clearly appears.

**(4) Taxation § 458(9)(a)—Income Taxes—Collection of Delinquencies.**—The withholding of amounts due for delinquent personal income taxes from a taxpayer's wages under an order of the Franchise Tax Board pursuant to former Rev. & Tax. Code, § 18807 (now § 18817), did not violate either procedural or substantive due process, where the taxpayer had filed returns under penalty of perjury declaring the amounts withheld were due, where she was notified of the delinquency and given the opportunity to pay the tax in small installments, and where she had never claimed she did not owe the tax.

[Aug. 1972]



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**COUNSEL**

Richard Gross, Alphonse L. Pazos, Allen M. Gruber and Andrew J. Freeman for Plaintiff and Appellant.

Evelle J. Younger, Attorney General, Philip C. Griffin and Neal J. Gobar, Deputy Attorneys General, for Defendant and Respondent.

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**OPINION**

**AULT, J.**—Plaintiff taxpayer appeals from a judgment denying her claim of exemption filed under Code of Civil Procedure sections 690.6, 690.50 and 690.51. By the claim she sought the release of \$72.44 in wages withheld by her employer and transmitted to the defendant Franchise Tax Board (Board) pursuant to its order issued under Revenue and Taxation Code section 18807 (now renumbered § 18817). All facts necessary to a determination of the claim were settled by a written stipulation.

**CONTENTIONS ON APPEAL**

On appeal, plaintiff contends: (1) A taxpayer is entitled to the exemptions provided in Code of Civil Procedure section 690 et seq. where the state proceeds to collect delinquent income tax payments under Revenue and Taxation Code section 18807. (2) If construed to disallow such exemptions, section 18807 is void as violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

**FACTS**

Plaintiff Shirley Greene and her husband, John H. Greene, filed joint California income tax returns reporting, under penalty of perjury, a \$39 tax due on account of their 1968 incomes (\$9,653.27), and a \$42 tax due on account of their 1969 income (\$9,757). Both returns were filed without payment.

The Greenes lived together with their four minor children. Both were employed, Mr. Greene as a federal civil service worker at the North Island Naval Air Station, and Mrs. Greene as a maid at the Royal Inn in San Diego. Mr. Greene paid the rent from his income, and Mrs. Greene paid the other household expenses for the family from her wages. The stipulation reflects Mr. Greene earned over \$7,600 in 1968 and Mrs. Greene earned \$14.20 per day plus tips.

[Aug. 1972]

The Franchise Tax Board tried to collect the \$81 in delinquent taxes from the Greens. Mr. Greene's salary could not be reached because he was a federal employee. In late 1969, Mrs. Greene went to the Board office in San Diego and agreed to pay \$13 each payday on the back taxes. Only one payment was made.

On March 8, 1971, pursuant to Revenue and Taxation Code section 18807,<sup>1</sup> the Board sent Mrs. Greene's employer an order to withhold and transmit her unpaid income tax in the amount of \$72.44. When Mrs. Greene's attorney contacted the Board office he was advised of the Board's policy to withdraw the order to withhold and to permit installment payments if it was established full payment would create extreme hardship for the taxpayer. He was told Mrs. Greene's case would be given consideration if she would come to the office and fill out a financial statement. She did not do so and, instead, filed a claim of exemption in the superior court. On March 24, 1971, Mrs. Greene's employer transmitted the \$72.44 withheld from her wages to the Board. This was applied to the Greene's tax liability and satisfied the delinquency in full.

#### DISCUSSION

(1a) Code of Civil Procedure section 690 provides that certain property, described and enumerated in sections 690.1 through 690.29, is exempt from execution or attachment when a claim for exemption is filed as provided in section 690.50. The exemption for earnings for personal services is found in section 690.6. The only section which makes the state of California subject to these exemptions is Code of Civil Procedure section 690.51 which, at the time in question, provided in pertinent part:

"In cases in which a warrant . . . is issued by the State of California, or a department or agency thereof, pursuant to . . . 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 690.29, inclusive, and all the provisions of Section 690.50 shall be applicable to the assertion and determination thereof."

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<sup>1</sup>The section read in relevant part: "The Franchise Tax Board may by notice, served personally or by registered mail, require any person . . . having in their [his] possession, or under their [his] control, any credits or other personal property or other things of value, belonging to a taxpayer . . . to withhold, from such credits . . . the amount of any tax, interest or penalties due from the taxpayer . . . and to transmit the amount withheld to the Franchise Tax Board . . ."

In the Revenue and Taxation Code, the Legislature has uniformly provided state taxing agencies with two separate and distinct procedures for the collection of unpaid, delinquent taxes: (1) The taxing agency may issue a warrant to a sheriff, constable, or marshal which has the same effect as a writ of execution. (2) The agency may issue a notice or order to withhold to any person, who has in his possession or control any credit or other property of value, belonging to the tax debtor, directing such person to withhold and transmit the credit or property to the taxing agency.

Code of Civil Procedure section 690.51, by its terms, refers only to the warrant sections in the Revenue and Taxation Code and not to the sections giving state tax collecting agencies the authority to use the order to withhold. Its effect is to give the tax debtor the benefit of the exemption statutes when the State pursues collection by way of warrant, but not when an order to withhold is used to collect the tax.

Despite the plain language of the Code of Civil Procedure section 690.51, Mrs. Greene asserts the exemptions still apply. Citing cases which hold the exemption statutes are deeply rooted in public policy and liberally construed (*Holmes v. Marshall*, 145 Cal. 777, 778-779 [79 P. 534]; *Perfection Paint Products v. Johnson*, 164 Cal.App.2d 739, 741 [330 P.2d 829]), she contends a tax debtor would be entitled to the benefit of the exemption statutes even if there were no express statute so providing. She views section 690.51 of the Code of Civil Procedure as merely procedural, arguing the omission of the withhold order sections from the statutes enumerated in the section has no substantive effect. She buttresses her position by reference to cases which hold the exemption statutes applicable to ordinary debts owed the state (hospital bills), in the absence of an express statute so providing. (*Estate of Ferrarazza*, 219 Cal. 668, 672 [28 P.2d 670]; *Guardianship of Bayly*, 95 Cal.App.2d 174, 175 [212 P.2d 587].)

(2) The liberal principles governing the construction of exemption statutes are not applicable to unpaid taxes (*Estate of Ferrarazza, supra*, 219 Cal. 668, 672). The power to levy and collect taxes is a vital, essential attribute of government without which it could not function (*Watchtower B. & T. Soc. v. County of L. A.*, 30 Cal.2d 426, 429 [182 P.2d 178]). In exercising the power, the State acts in its sovereign, governmental capacity and is in no sense engaging in business (*Douglas Aircraft Co. v. County of L. A.*, 137 Cal.App.2d 803, 806 [291 P.2d 85]). Laws which tend to limit sovereignty are strictly construed in favor of the State. (3) "A statute will not be construed to impair or limit the sovereign power of the state to act in its governmental capacity and perform its governmental

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functions in behalf of the public in general, *unless such intent clearly appears.*" (Italics added.) (*People v. Centr-O-Murt*, 34 Cal.2d 702, 703-704 [214 P.2d 378].)

(1b) A statute which permits a delinquent taxpayer to exercise a claim of exemption, when the state acts to collect unpaid taxes, tends to limit and impair the power of the state to collect taxes, and must be strictly construed. Since Code of Civil Procedure section 690.51 makes the preceding exemptions applicable to warrant procedures, specifying the sections of the Revenue and Taxation Code providing for such procedures, and makes no reference to the equal number of statutes allowing the same taxes to be collected by the withholding procedure, the rules of statutory construction referred to above require the conclusion the omission was intentional.<sup>2</sup>

(4) Mrs. Greene contends Revenue and Taxation Code section 18807, establishing the withholding procedure for delinquent personal income taxes, violates both procedural and substantive due process, because it authorizes the Board to collect the taxes without notice and without a hearing to establish that the amount claimed is due. She likens the seizure of her wages to satisfy her delinquent 1968 and 1969 income taxes to the prejudgment wage garnishment held to violate due process in *Sniadach v. Family Finance Corp.*, 395 U.S. 337 [23 L.Ed.2d 349, 89 S.Ct. 1820]. (See also *McCallop v. Carberry*, 1 Cal.3d 903 [83 Cal.Rptr. 666, 464 P.2d 122]; *Cline v. Credit Bureau of Santa Clara Valley*, 1 Cal.3d 908 [83 Cal.Rptr. 669, 464 P.2d 125]; *Blair v. Pitchess*, 5 Cal.3d 258 [96 Cal.Rptr. 42, 486 P.2d 1242]; *Randone v. Appellate Department*, 5 Cal.3d 536 [96 Cal.Rptr. 709, 488 P.2d 13].) Here, as distinguished from *Sniadach*, *McCallop*, *Cline*, *Blair* and *Randone*, we are dealing with an acknowledged tax debt, declared to be due by the taxpayer herself under penalty of perjury, not a private business obligation. In a very real sense, this tax was self-assessed. The requirements of due process are met when the debtor's tax liability is shown on the face of his own tax return, as well as when it has been established by an administrative or judicial pro-

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<sup>2</sup>The California Law Revision Commission has likewise concluded the Legislature has effectively distinguished between the warrant and order to withhold procedures with respect to exemptions. In its 1971 *Recommendation to the Governor and Legislature relating to Attachment, Garnishment, and Exemptions from Execution*, the Commission points out that in contrast to the warrant procedure no exemptions are applicable to the funds or property required to be withheld under the notice to withhold statute (p. 721). While we agree with the Commission's recommendation for modification and change of both procedures in relation to the exemption statutes, such changes should be effected through legislative rather than court action.

ceeding at which he had notice and an opportunity to be heard. (See 1971 *Recommendation of the California Law Revision Commission, supra*, p. 721.) No hearing was required to establish the validity or the amount of the state's claim.

The order to withhold procedure provided for in Revenue and Taxation Code section 18807 has recently been upheld against the charge it violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment, by the United States Court of Appeals for the Ninth Circuit. In a case very similar to this one, the court stated:

"We do not think *Sniadach v. Family Finance Corp.*, 1969, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349, upon which appellant relies, requires a different result. That case dealt with pre-judgment wage garnishment, levied without any notice to the debtor. The procedure here is more like post-judgment execution. Appellant had assessed his own liability and has never claimed that he does not owe the tax. Moreover, he was twice notified of his delinquency and never responded to either notice." (*Randall v. Franchise Tax Board of State of California*, 453 F.2d 381, 382.)

Like the taxpayer in *Randall*, Mrs. Greene has never claimed she did not owe the tax. She was notified of the delinquency and given the opportunity to pay the tax in small installments. The procedures used by the Board to collect the unpaid tax did not violate due process.

In the stipulated statement of facts, the Board acknowledges it uses the order to withhold procedure set out in Revenue and Taxation Code section 18807, rather than the warrant procedure, to collect relatively small amounts of delinquent income tax. Since claims of exemption may be asserted against warrants, Mrs. Greene contends a holding they cannot be used under section 18807 would have the effect of creating "an invidious discrimination against the poor," in violation of the Equal Protection Clause.

The argument is directed to the Board's policy of using the withholding notice to collect small tax debts, not against the statute itself, which does not require its use in that manner. Moreover, it is based upon an incomplete and unfair statement of the Board's policy. The stipulation of facts also states the Board uses the withhold procedure to collect small tax debts to avoid the additional expense to the taxpayer which would be incurred if warrants were issued and levied by the sheriff. The stipulation further states: "It is the practice and procedure of the Franchise Tax Board that whenever the taxpayer appears . . . and establishes that col-

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lection of the full amount owed or the full amount subject to the order to withhold would create extreme hardship, the Board will withdraw its order to withhold and allow the payments to be made in installments." This policy was specifically called to the attention of Mrs. Greene's attorney. Far from being invidious toward the poor, the stipulated facts show Board policy reflects a conscious contrary effort.

The judgment is affirmed.

Brown (Gerald), P. J., and Coughlin, J.,\* concurred.

A petition for a rehearing was denied August 18, 1972.

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\*Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairman of the Judicial Council.

[Aug. 1972]

STAFF DRAFT

EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS

Introduction

Since 1851, California law has provided that certain property of judgment debtors is exempt from the enforcement of a money judgment.<sup>1</sup> These exemptions are among the most generous in the United States.<sup>2</sup> In general, exemption laws are intended to reserve an amount of property sufficient to support the debtor and the debtor's family and to facilitate the financial rehabilitation of the debtor.<sup>3</sup> They also serve to shift the cost of social welfare from the community to creditors.<sup>4</sup>

The substantive exemptions were comprehensively revised in 1970 in response to a 1967 report by the State Bar Committee on Debtor and Creditor.<sup>5</sup> Both the substantive exemptions and the procedural provisions are in need of further revision. Important factors prompting the

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1. 1851 Cal. Stats., Ch. 123, § 219.
  2. D. Cowans, Bankruptcy Law and Practice § 589, at 326 (1963); Committee on Debtor and Creditor of State Bar of California, Modernization of Statutory Exemptions, 42 Cal. St. B.J. 369, \_\_\_ (1967).
  3. Bailey v. Superior Court, 215 Cal. 543, 554, 11 P.2d 365, 367 (1932); see generally Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779, 782-98 (1974). It has also been suggested that early exemptions were enacted to attract settlers in newly admitted states. See Haskins, Homestead Exemptions, 63 Harv. L. Rev. 1289, 1290 (1950).
  4. See Comment, Bankruptcy Exemptions: Critique and Suggestions, 63 Yale L.J. 1459, 1497-1502 (1959). Although it has been suggested that no property should be exempt and that insolvent debtors should rely on social welfare legislation, this alternative is undesirable because of the cost to the community of providing welfare and the low level of available benefits, because most creditors are in a position to control their extension of credit and can take account of exemption laws, and because the lack of exemptions would drive greater numbers of debtors into bankruptcy. See id.
  5. See Committee on Debtor and Creditor of State Bar of California, Modernization of Statutory Exemptions, 42 Cal. St. B.J. 369 (1967). Not all of the committee's recommendations were enacted.

proposals in this recommendation include the dramatic inflation occurring over the past several years, the introduction of bills to revise the bankruptcy laws of the United States,<sup>6</sup> and the approval of a Uniform Exemptions Act by the National Conference of Commissioners on Uniform State Laws in 1976.

#### Exempt Property

The substantive exemption provisions should strike a fair balance between the interest of the debtor in maintaining a basic standard of living for the debtor and the debtor's family and the interest of creditors in satisfying money judgments. Exemptions should shield property in such a manner that debtors will be afforded the basic protection without regard to the type of assets held. Accordingly, the general approach of the proposed law is to protect important items of property, such as a home,<sup>7</sup> household furnishings, clothes, provisions, a motor vehicle, and tools of a trade, and also important sources of income, such as wages, insurance benefits, retirement benefits, unemployment benefits, and aid.

In drafting the proposed exemptions, the Commission has sought to strike a balance between designating specific items as exempt and creating general categories of exempt property.<sup>9</sup> Specific exemptions result in more certainty but they can be overly restrictive and are more likely to be rendered obsolete over time. General exemptions provide a greater

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6. See Report of the Commission on the Bankruptcy Laws of the United States, House Doc. No. 93-137, Part I, 93d Cong., 1st Sess. (1973); H.R. 8200, 95th Cong., 2d Sess. (1977).

7. The revision of the homestead exemption is not included in this draft.

8. The form of the wage garnishment exemption depends upon legislative action on A.E. 393 and is not included in this draft.

9. See generally Joslin, Debtors' Exemption Laws: Time for Modernization, 34 Ind. L.J. 355, 356-57 (1959); Note, Debtor Exemptions in Personal Property--Proposals for Modernization, 52 Kent. L.J. 456, (1964); Fombauer, Debtors' Exemption Statutes--Revision Ideas, 36 Wash. L. Rev. 494, \_\_\_ (1961).



flexibility and equality of treatment but are more difficult to administer. The Commission's recommendations are also tempered with the knowledge that exemption laws are highly controversial.<sup>10</sup>

Although most of the statutory exemptions are collected in Sections 690.1 through 690.31 of the Code of Civil Procedure, some exemptions are set forth in other codes.<sup>11</sup> Some property is exempt without making a claim<sup>12</sup> and other property must be claimed as exempt or the exemption is waived.<sup>13</sup> Section 690 provides that property which is exempt without filing a claim is not subject to levy of attachment or execution in any manner. There is no clear distinction between these concepts. Consequently, in the proposed law, property which is exempt without the necessity of making a claim is consistently described as property not subject to the enforcement of a money judgment.<sup>14</sup> In the proposed law, property which is described as not subject to the enforcement of a money judgment should be readily identifiable.<sup>15</sup>

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10. The Advisory Committee in charge of the revision of New York laws on enforcement of money judgments gave as a reason for declining to recommend changes in exemption provisions that they are the result of legislative compromise; that they reflect the diverse pulls of various groups within the state. C. J. Weinstein, E. Korn, & A. Miller, *New York Civil Practice* § 5205.01 (1976).
  11. E.g., Fin. Code § 15406 (credit union account), Labor Code § 270.5 (property held in trust by logging employer).
  12. E.g., Sections 690.6 (portion of earnings), 690.8a (relocation benefits), 690.175 (unemployment compensation prior to payment).
  13. E.g., Sections 690.1 (household furnishings, etc.), 690.2 (motor vehicle), 690.9 (life insurance benefits).
  14. Property which is exempt from levy is also exempt from other procedures for the enforcement of a money judgment. See, e.g., Section 719 (order in supplementary proceedings to apply nonexempt property toward the satisfaction of the judgment. See the discussion under "Property Subject to the Enforcement of a Money Judgment" supra).
  15. This type of property in general consists of funds under the control of a third person, such as an insurance company, a retirement plan, or a governmental entity. Licenses are also not subject to enforcement in the proposed law, consistent with Section 630(e); however, a procedure is recommended for reaching liquor licenses. See the discussion under Receiver to Enforce Judgment infra.

The following material discusses the major statutory exemptions of existing law and the more important revisions proposed by the Commission.<sup>16</sup>

Household Furnishings, Wearing Apparel, and Personal Effects

Existing law provides a general exemption for necessary household furnishings, appliances, and wearing apparel, and a specific exemption for a piano, radio, television receiver, shotgun, rifle, provisions and fuel for three months, and works of art by the debtor or the debtor's resident family.<sup>17</sup> Under this provision, the courts have applied a station-in-life test so as to permit the exemption of substantial amounts of personal property.<sup>18</sup>

The proposed law provides a more restrictive exemption for this type of property. It would protect household furnishings, appliances, wearing apparel, provisions, and other personal effects reasonably necessary for one household and personally used or procured for use by the debtor and members of the debtor's household for use at their principal residence so long as the item of property claimed as exempt does not exceed \$500 in value.<sup>19</sup> In most cases, a debtor will have few if any items of personal property which will bring at least \$500 at an execution sale.<sup>20</sup> To prevent abuse by debtors investing in valuable

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16. The more technical revisions are discussed in the Comments to the proposed sections, infra and in the Comments to the repealed sections in the Appendix, infra.

17. Section 690.1.

18. See *Independence Bank v. Heller*, 275 Cal. App. 84, 79 Cal. Rptr. 368 (1969) (furniture worth over \$22,000 held exempt); *Newport Nat'l Bank v. Adair*, 2 Cal. App.3d 1043, 83 Cal. Rptr. 1 (1969) (furniture for 14-room apartment held exempt); Comment, California's New Household Goods Exemption and the Problem of Personal Accountability, 12 Santa Clara Law. 155 (1972).

19. Section 8(a) of the Uniform Exemptions Act (1976) provides a similar exemption.

20. The proposed law precludes an execution sale of property which is exempt to a particular value unless the amount bid at least equals the exempt value. The \$500 value limitation in this provision of the proposed law does not exempt proceeds when there is a sale as in the case of the motor vehicle exemption. It is strictly a ceiling on the value of property that may be claimed as exempt. If an item of property may be sold at an execution sale for over \$500, the proceeds are applied toward the satisfaction of the judgment.

items and thereby insulating assets from creditors, items having a value in excess of \$500 would be nonexempt. Nonnecessary property would not be exempt regardless of its value.

A limited exemption, not subject to the necessity standard, is provided for jewelry, heirlooms, and works of art which in the aggregate do not exceed \$500 in value.<sup>21</sup> This exemption is intended to protect some items of relatively modest value that are likely to be of sentimental value.

#### Motor Vehicle

Existing law provides an exemption for one motor vehicle with a value, over all liens and encumbrances on the vehicle, not exceeding \$500.<sup>22</sup> The value of the vehicle is required to be determined from used car price guides customarily used by California automobile dealers or, if not listed, by fair market value. If the debtor's equity in the motor vehicle exceeds \$500, it may be sold at an execution sale, but the proceeds remaining after satisfaction of liens and encumbrances are exempt in the amount of \$500 for a period of 90 days.

Under the proposed law, a motor vehicle would be exempt if the debtor's equity does not exceed \$1,000. The exemption for proceeds is extended to proceeds from a voluntary sale or from insurance or other indemnification received for the damage or destruction of the vehicle.<sup>23</sup> Although permitting reference to used car guides, the proposed law would not require such reference because other factors may be relevant, such as in cases where the vehicle has been customized. The interest of the debtor is protected by the exemption of proceeds and the prohibition of an execution sale where no bid sufficient to satisfy liens and encumbrances and pay the debtor the amount of the exemption is received.

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21. Section 8(a)(3) of the Uniform Exemptions Act (1976) exempts family portraits and heirlooms of particular sentimental value if the value of the item does not exceed \$500 and Section 8(b) exempts jewelry not exceeding \$750 in aggregate value.
  22. Section 690.2. Section 690.4 also provides an exemption for a commercial motor vehicle used in the debtor's trade, calling, or profession.
  23. Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months.

### Tools of a Trade

Existing law provides an exemption for tools and other items, including one commercial fishing boat and one commercial motor vehicle, ordinarily and reasonably necessary for the use of the debtor in the exercise of the trade, calling, or profession by which the debtor earns a livelihood, to the maximum aggregate actual cash value of \$2,500 in excess of liens and encumbrances on such items.<sup>24</sup> The proposed law continues this exemption and includes building materials for which existing law provides a separate exemption in the amount of \$1,000.<sup>25</sup> The proposed law would also exempt proceeds from the sale or indemnification for the loss, damage, or destruction of such items in the amount of \$2,500 for a period of 90 days after a voluntary sale or, in other cases, after receipt of the proceeds or indemnification.<sup>26</sup>

### Health Aids

Existing law provides an exemption for prosthetic and orthopedic appliances personally used by the debtor.<sup>27</sup> This exemption is too narrow<sup>28</sup> and should be expanded to include health aids reasonably necessary to enable the debtor or the spouse or dependents of the debtor to work or sustain health.<sup>29</sup> This provision would permit the exemption of items such as a wheel chair for a person unable to walk to work, an air conditioner for a person afflicted with asthma, or an elevator for a person unable to climb stairs, but would not exempt a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to good health.

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24. Section 690.4.

25. Section 690.17.

26. Section 9(a) of the Uniform Exemptions Act (1976) provides a similar exemption traceable for 18 months. The 90 day limitation on the protection of proceeds is the same as that provided by Section 690.2(e) in the case of a motor vehicle.

27. Section 690.5.

28. "Prosthesis" is defined as the "addition to the human body of some artificial part, as a leg, eye, or tooth." Webster's New Collegiate Dictionary 678 (1956). "Orthopedics" is defined as the "correction or prevention of deformities, esp. in children." Id. at 593.

29. This provision is derived from Section 5(2) of the Uniform Exemptions Act (1976).

### Deposit Accounts

Existing law provides exemptions for \$1,000 in a savings and loan association account<sup>30</sup> and \$1,500 in a credit union account.<sup>31</sup> An account into which social security benefits are directly deposited is protected from levy to the extent of \$500 if there is one recipient and \$750 if there are two or more recipients, and is exempt to the extent that additional amounts consist of social security payments.<sup>32</sup> There is no specific exemption for savings or checking accounts in banks.<sup>33</sup>

There is no justifiable reason for distinguishing between different types of deposit accounts.<sup>34</sup> Under the proposed law, a deposit account in any financial institution and money<sup>35</sup> are exempt in the aggregate

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30. Section 690.7.

31. Fin. Code § 15406.

32. Section 690.30. Section 690.30 requires the judgment creditor to initiate the exemption proceedings to determine whether nonexempt amounts reside in the account. At the hearing, however, the judgment debtor has the burden of proof. This provision, enacted by 1976 Cal. Stats., Ch. 810, § 1, appears to be in reaction to *Phillips v. Bartholomie*, 46 Cal. App.3d 346, 121 Cal. Rptr. 56 (1975), which held that a judgment debtor is not entitled to a hearing before social security, AFDC, county welfare, and veterans' benefits in a bank account could be levied upon. Of course, such benefits are exempt when a claim is made under general principles regarding tracing of exempt benefits. See *Philpott v. Essex County Welfare Bd.*, 409 U.S. 413, 416-17 (1973) (disability benefits in bank account); *Kruger v. Wells Fargo Bank*, 11 Cal.2d 352, 367, 521 P.2d 441, \_\_\_, 113 Cal. Rptr. 449, \_\_\_ (1974) (unemployment benefits in checking account). Section 690.30 provides an additional protection since it shields a certain portion of the account from the reach of creditors without the necessity of making a claim of exemption.

33. Exempt amounts may be traced into bank accounts under existing law. See the discussion under "Tracing Exempt Amounts" infra.

34. A report by the State Bar Committee on Debtor and Creditor recommended consolidation of deposit account exemptions in 1967. See Committee on Debtor and Creditor of State Bar of California, Modernization of Statutory Exemptions, 42 Cal. St. B.J. 869, \_\_\_ (1967).

35. The proposed exemption would also supersede Section 690.21 (prisoner's trust fund exempt in amount of \$40). Section 487.010(c)(7) in the Attachment Law also provides an aggregate exemption for deposit accounts and money.

amount of [\$1,000]. The proposed law would continue the special procedural protections regarding accounts into which social security benefits are directly deposited and would clarify the procedure for claiming additional amounts as exempt.<sup>36</sup>

### Life Insurance

Existing law exempts benefits growing out of life insurance in an amount resulting from payment of a \$500 annual premium and provides an additional exemption in the same amount in favor of the insured's spouse or minor children.<sup>37</sup> Group life insurance is completely exempt.<sup>38</sup>

Death benefits from a public entity or a private retirement plan are also exempt.<sup>39</sup> The life insurance exemption shields benefits from the reach of creditors of the insured and of the beneficiary.<sup>40</sup> The exemption also protects a beneficiary under a credit insurance policy.<sup>41</sup>

Consistent with the policy of protecting a minimal amount of property necessary to support the debtor and the debtor's family, the proposed law would substantially revise these exemptions. A creditor would not be able to reach the cash surrender value of a policy. The proposed law would, however, permit the creditor to reach the loan value of the policy to the extent it exceeds \$5,000.<sup>42</sup> The debtor should not be

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36. See the Comment to proposed Section 707.590 infra.

37. Section 690.9. The exemption also applies to endowment and annuity policies. See Hing v. Lee, 37 Cal. App. 313, \_\_\_, 174 P. 356, \_\_\_ (1918). Where there are multiple beneficiaries entitled to claim the exemption, each beneficiary is entitled to assert an exemption in proportion to the total proceeds of the policy. Jackson v. Fisher, 56 Cal.2d 196, 201, 363 P.2d 479, \_\_\_, 14 Cal. Rptr. 439, \_\_\_ (1961).

38. Section 690.10; Ins. Code § 10213. This exemption does not apply in certain cases. See Ins. Code §§ 10203.5 (borrower and installment purchaser groups), 10203.6 (credit union groups), 10203.8 (savings account depositors).

39. Section 690.18.

40. Holmes v. Marshall, 145 Cal. 777, 779-82, 79 P.2d 534, \_\_\_ (1905).

41. Jackson v. Fisher, 56 Cal.2d 196, 199, 363 P.2d 479, \_\_\_, 14 Cal. Rptr. 439, \_\_\_ (1961).

42. Where the debtor has not claimed a dwelling exemption, the maximum exempt loan value under the proposed law would be \$15,000 in recognition of the need to provide for housing.

forced to surrender the policy because the debtor may be uninsurable or insurable only at a prohibitive premium.

The proposed law provides an exemption of benefits from a matured life insurance, endowment, or annuity policy, or from death benefits in an amount reasonably necessary for the support of the insured and the spouse and dependents of the insured or decedent, if the benefits are payable to a living insured or to a spouse or dependent of a living or decedent insured.<sup>43</sup> This exemption would protect benefits from creditors of the insured as well as from creditors of the spouse or dependent beneficiary. The proposed law would eliminate the arbitrary feature of existing law which exempts benefits to the extent represented by a \$500 annual premium.<sup>44</sup> The existing standard can result in widely varying exempt amounts depending upon the type of policy (e.g., straight life, endowment, or annuity), the type of insurer (e.g., private, group, industrial, government), the age of the insured when the policy was taken out, and the length of coverage.<sup>45</sup>

#### Retirement Benefits

Existing law exempts retirement plan benefits both before payment, when no claim is required to be made, and after payment, when the

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43. Section 6(a)(4) of the Uniform Exemptions Act (1976) provides a similar exemption.

44. This standard dates from 1868 when the life insurance exemption was enacted. 1868 Cal. Stats., Ch. 404, § 1. The first life insurance exemption provision, the Verplanck Act enacted in New York in 1840, also based the exemption upon the amount of the annual premium. See Riesenfeld, Life Insurance and Creditors' Remedies in the United States, 4 U.C.L.A. L. Rev. 583, 589 (1957). At the time such exemptions were first enacted, life insurance was used to provide support for the family of the deceased. Today, a majority of payments under life insurance policies are made to policyholders. See Institute of Life Insurance, Life Insurance Fact Book '77, at 49-50 (1977); Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779, 810 & n.183 (1974).

45. For example, the exempt benefits deriving from a \$500 premium amounted to \$113,200 in Jackson v. Fisher, 56 Cal.2d 196, 363 P.2d 479, 14 Cal. Rptr. 439 (1961) (\$383 annual premium on \$100,000 policy with double indemnity clause), and \$8,900 in California United States Bond & Mort. Corp. v. Grodzins, 139 Cal. App. 240, 34 P.2d 193 (1934) (\$558 annual premium on \$10,000 policy).

exemption must be claimed.<sup>46</sup> The exemption does not apply, however, against a judgment for child or spousal support.<sup>47</sup> The proposed law would continue the substance of this exemption.

#### Disability and Health Benefits

Existing law provides several exemptions for benefits from a disability or health insurance policy or program. Disability or health insurance benefits are exempt to the extent represented by a \$500 annual premium.<sup>48</sup> Money of a fraternal organization used to pay sick benefits to members of the organization is exempt in the amount of \$500.<sup>49</sup> Money paid by a fraternal benefit society is exempt before and after payment.<sup>50</sup> Disability benefits under a retirement plan are exempt to the same extent as other retirement benefits.<sup>51</sup>

Under the proposed law, disability and health benefits, before payment, are not subject to the enforcement of a money judgment and, after payment, are exempt. This exemption would not apply where the creditor provided health care concerning the condition for which the benefits are collected.

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46. Section 690.18. This exemption covers pensions, annuities, and retirement, disability, death, or other benefits from a public entity and money held or paid by a private retirement plan, union retirement plan, or profit-sharing plan designed and used for retirement purposes. Section 690.18(c) also provides an exception to the exemption for private retirement plans with regard to amounts withheld from employees' wages under provisions of the Unemployment Insurance Code. The proposed law does not continue this exception.

47. Section 690.18. See the discussion under "Exception for Judgments for Spousal or Child Support" infra.

48. Section 690.11. For a discussion of tying the exemption of insurance benefits to the amount of the premium, see the discussion under "Life Insurance" supra.

49. Section 690.13.

50. Section 690.14.

51. Section 690.18. See the discussion under "Retirement Benefits" supra.



### Damages for Personal Injury

Existing law provides an exemption for insurance benefits for injury<sup>52</sup> or death<sup>53</sup> but does not exempt settlements or awards for the bodily injury of the debtor. The proposed law provides an exemption for a settlement or award arising out of the bodily injury of the debtor to the extent necessary for the support of the debtor and the spouse and dependents of the debtor.<sup>54</sup> This exemption would not apply when the creditor provided health care for the bodily injury for which the settlement or award was made.

### Wrongful Death Awards

Existing law does not exempt wrongful death settlements or awards. The proposed law would exempt settlements and awards arising out of the wrongful death of a person of whom the judgment debtor was a spouse or a dependent to the extent reasonably necessary for support.<sup>55</sup>

### Unemployment Benefits and Contributions, Strike Benefits

Under existing law, contributions of employees and employers to unemployment programs, and benefits from such programs, prior to payment, are exempt without making a claim.<sup>56</sup> After payment, these benefits are exempt if a claim is made.<sup>57</sup> The proposed law would continue

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52. See Section 690.11 (disability and health insurance).

53. See Sections 690.9 (life insurance), 690.10 (group life insurance).

54. Section 6(a)(3) of the Uniform Exemptions Act (1976) provides a similar exemption.

55. Section 6(a)(3) of the Uniform Exemptions Act (1976) provides a similar exemption.

56. See Sections 690.13 (\$500 used by fraternal organization as unemployment benefits for members), 690.16 (contributions to the Unemployment Compensation Disability Fund and the Unemployment Fund), 690.175 (state and federal-state benefits and payments under a plan or system established by an employer for employees generally or for a class or group of employees for the purpose of supplementing unemployment compensation benefits), 690.18(b) (contributions and reimbursement for benefits received under Unemployment Insurance Code by government employees); Unemp. Ins. Code §§ 988 (incorporating Section 690.16), 1342 (incorporating Sections 690.175, 690.18).

57. See Sections 690.13, 690.175.

the substance of this exemption and would also provide a similar exemption for strike benefits paid to a union member.

#### Aid

Existing law provides a complete exemption for aid given under a public assistance program<sup>58</sup> and for aid from a fraternal benefit society.<sup>59</sup> Under the proposed law, these exemptions are combined and the protection is extended to aid of the same nature given by a charitable organization.

#### Relocation Benefits

Under existing law, relocation benefits for displacement from a dwelling owned or rented by the debtor are exempt without filing a claim.<sup>60</sup> Under the proposed law, once the benefits have been paid, an exemption claim must be made since it is necessary for the debtor to trace the funds to their source in order to qualify for the exemption.

#### Cemetery Plot

Existing law exempts a debtor's cemetery lot, not exceeding one-quarter of an acre and, in the case of a religious or benevolent association or corporation, not exceeding five acres.<sup>61</sup> The proposed exemption provision incorporates a definition of "plot" which includes graves, crypts, vaults, and niches,<sup>62</sup> whereas existing law specifically applies only to land to be used for burial purposes and fixtures. The proposed law exempts a cemetery plot for one person.<sup>63</sup> The proposed law also protects a family plot<sup>64</sup> from enforcement of a money judgment.

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58. Section 690.19. Before payment, the aid is exempt without making a claim; after payment, a claim of exemption must be made.

59. Section 690.14. This exemption must be claimed.

60. Section 690.8a.

61. Section 690.24.

62. See Health & Saf. Code § 7022.

63. The spouse of the debtor would also be permitted to claim an exemption for one plot. See the discussion under "Exemption Rights of Married Debtors" infra.

64. For provisions concerning family plots, see Health & Saf. Code §§ 3650-8653.

Land which is held for the purpose of sale as cemetery plots would be nonexempt, as under existing law.<sup>65</sup> The five-acre limitation on the exemption for religious or benevolent associations or corporations is unnecessary and is not continued in the proposed law.

#### Church Pews

Existing law exempts pews in churches and meetinghouses used for religious purposes and owned by the debtor.<sup>66</sup> The proposed law does not continue this exemption because it is obsolete, the practice of member ownership of pews having generally ceased.<sup>67</sup>

#### Applicability of Exemptions

It is implicit under existing law that property which is exempt from execution is also exempt from other procedures for the enforcement of a money judgment.<sup>68</sup> This principle is made explicit in the proposed

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65. Section 690.24. The proposed law would also continue portions of Section 690.24 which provide that property dedicated as a cemetery is not subject to enforcement of a debt due from an individual owner of a plot and that money from the sale of unused cemetery lands is not subject to enforcement of a money judgment if used for the purposes specified in Health and Safety Code Section 7925.
66. Section 690.25.
67. See 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5205.15 (rev. 1976).
68. Section 690(a) provides that the property mentioned in Sections 690.1-690.29 is "exempt from execution." Section 690.31 exempts a dwelling house from "execution" and Civil Code Section 1240 provides that a homestead is "exempt from execution or forced sale." Section 690.50(1) provides that the judgment rendered in exemption proceedings thereunder is "determinative as to the right of the creditor . . . to subject the property to payment or other satisfaction of his judgment." Section 710(c) incorporates Section 690.50 for the determination of exemption claims concerning money owed to the debtor by a public entity. Section 719 provides that the court in supplementary proceedings may order the application of property "not exempt from execution" toward the satisfaction of the judgment. Section 690.51 incorporates Section 690.50 for the determination of exemption claims when property is levied upon pursuant to certain warrants or notices of levy for the collection of tax liability. Section 302(c) of the Consumer Credit Protection Act, 15 U.S.C. § 1672(c) (1970), defines garnishment to mean "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."

law, and provisions for the determination of exemption claims are included in the special procedures for enforcement of money judgments where appropriate.<sup>69</sup>

The principle that exemptions do not apply where the judgment is for the purchase price of the property involved or is for the foreclosure of a lien on the property (other than a lien created in the course of enforcing a general money judgment)<sup>70</sup> is continued in the proposed law.

The proposed law also makes clear that exemptions are to be determined and applied as of the date the exemption claim is made. This provision is intended to reject the holding in California United States Bond & Mortgage Corp. v. Grodzins<sup>71</sup> which held that the portion of life insurance benefits which exceeded the exempt amount at the time they were received was "earmarked" for creditors even though the amount of benefits remaining at the time they were levied upon was less than the amount protected by statute.<sup>72</sup> Exemption laws are intended to protect an amount of property sufficient for the support of the debtor and the debtor's family at the time it is needed, i.e., when the creditor attempts to enforce the judgment. The question of exemption of property

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69. See the discussion under "Special Procedures for the Enforcement of Money Judgments" infra.

70. See Civil Code § 1241; Code Civ. Proc. §§ 690.28, 690.31, 690.52; Willen v. Willen, 121 Cal. App. 351, \_\_\_, 8 P.2d 942, \_\_\_ (1932) (lien on insurance policies created by court order in proceedings to enforce alimony award foreclosed by execution).

71. 139 Cal. App. 240, 34 P.2d 193 (1934).

72. In Grodzins, the surviving wife received \$10,000 in life insurance benefits, deposited \$5,000 in a savings and loan account, and spent the remainder for the support of herself and her minor children. Under the exemption in effect at the time, approximately \$8,900 of the \$10,000 would have been exempt if the creditor had levied upon the funds immediately. The creditor was permitted to reach \$1,100 of the remaining \$5,000. The result could have been more pernicious since, if the lump-sum originally received at some remote time before levy had been \$18,000, for example, and the wife had spent \$9,000 of it before levy, the creditor would have been able to apply the remaining \$9,000 to the judgment.

does not arise until the creditor seeks to reach the property and apply it toward the satisfaction of a judgment.<sup>73</sup>

#### Exception for Judgments for Spousal or Child Support

Under existing law, the standard exemptions of earnings<sup>74</sup> and retirement benefits<sup>75</sup> do not apply where the money judgment being enforced is for child or spousal support. The proposed law would extend this exception to all exemptions.<sup>76</sup> Since a major purpose of exemption laws is to protect an amount of property sufficient for the debtor to support dependents, it makes no sense to protect the debtor's property from a judgment for the support of those dependents. Where the debtor has a family from a new marriage, the court would be empowered to make an equitable division of the property that takes into account the needs of all the persons the debtor is required to support.<sup>77</sup>

#### Exception for Welfare Payment Reimbursement

Existing law provides that the debtor is entitled to a more limited set of exemptions against a claim by a county for reimbursement for county aid used to support the debtor than is available against claims

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73. Medical Fin. Ass'n v. Rambo, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159, \_\_\_ (1939). This case involved the garnishment of wages at a time when one-half of the earnings received during a 30-day period were exempt. The debtor had already received some earnings and the creditor argued that those earnings should be counted toward the exemption, leaving the remainder earned during the 30-day period subject to levy in the amount of one-half of the total.
74. Section 690.6 provides an exemption for one-half of the debtor's earnings. This exemption is superseded by the more restrictive federal provision pursuant to Section 303(c) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(c) (1970). In the case of a judgment for support, greater amounts may be garnished. Consumer Credit Protection Act § 303(b)(1), 15 U.S.C. § 1673(b)(1) (\_\_\_).
75. Section 690.18 [as proposed to be amended by S.B. 1360 and A.B. 1969 in the 1978 legislative session].
76. Section 10 of the Uniform Exemptions Act (1976) provides a similar exception. Under the proposed law, the spouse or dependent would not be able to reach property which is not subject to the enforcement of a money judgment, but only that which is described as exempt.
77. This codifies the holding in Rankins v. Rankins, 52 Cal. App.2d 231, 234-35, 126 P.2d 125, \_\_\_ (1942).

of creditors generally.<sup>78</sup> This exception to the standard exemptions is not continued in the proposed law because it is constitutionally suspect under the equal protection clause.<sup>79</sup>

#### Exemption Rights of Married Debtors

The interrelation between the creditor's remedies and exemption laws, community property laws, and other laws pertaining to the manner of holding title to property is complicated and sometimes inconsistent. Generally, only the property of the judgment debtor may be applied toward the satisfaction of a money judgment.<sup>80</sup> Thus, if the judgment debtor is a joint tenant, only the interest of the judgment debtor may be reached.<sup>81</sup> However, if one spouse is a judgment debtor, the community property, in which the spouses have equal interests,<sup>82</sup> is generally liable for the satisfaction of the judgment<sup>83</sup> and, where the debt was

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78. See Section 690.19; Welf. & Inst. Code § 17409. Welfare and Institutions Code Section 17409 provides the following exemptions in such cases: \$50 in cash, personal effects and household furniture with a value of \$500, a cemetery plot, \$500 placed in trust for funeral expenses, insurance policies with a cash surrender value of \$500, and relocation assistance benefits.
79. 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).
80. See the discussion under "Property Subject to Enforcement of a Money Judgment" supra.
81. See *In re Rauer's Collection Co.*, 87 Cal. App.2d 238, 259, 19 P.2d 303, \_\_\_ (1948); *Russel v. Lescalet*, 248 Cal. App.2d 310, 312, 56 Cal. Rptr. 399, \_\_\_ (1967); 5 B. Witkin, *California Procedure Enforcement of Judgment* § 13, at 3398 (2d ed. 1971).
82. Civil Code § 5105.
83. Civil Code §§ 5116, 5120, 5122, 5125; see D. Reith, *California Debt Collection Practice Supplement* 176-77 (Cal. Cont. Ed. Bar 1976). Either spouse has management and control of the community property with certain exceptions. Civil Code § 5125(a). It has been declared by the Legislature that the "liability of community property for the debts of the spouses has been coextensive with the right to manage and control community property and should remain so." 1974 Cal. Stats., Ch. 1206, § 1. It seems fairly certain, however, that community business property that is subject to the sole management and control of operating spouse pursuant to Civil Code Section 5125(d) is liable for the debts of the nonbusiness spouse. See H.

incurred for necessities of life after marriage, the separate property of the nondebtor spouse may also be reached.<sup>84</sup>

A nondebtor spouse is clearly entitled to prevent the application of property which is not liable under applicable law toward the satisfaction of the judgment.<sup>85</sup> If only one spouse is a judgment debtor and the separate property of the nondebtor spouse has been levied upon, the nondebtor spouse has been permitted to seek the release of the property through the third-party claims procedure.<sup>86</sup>

The generally stated policy underlying the exemption laws is to protect an amount of property sufficient to support the debtor and the debtor's family.<sup>87</sup> It is clear that, if only one spouse is the debtor, the spouses may reduce the amount of property available to satisfy the

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Verrall, Cases and Materials on California Community Property 396-97, 401 (3d ed. 1977); Comment, The Implications of the New Community Property Laws for Creditors' Remedies and Bankruptcy, 63 Calif. L. Rev. 1610, 1628-34 (1975).

84. Civil Code § 5121. Resort must first be had to community and quasi-community property. See Civil Code § 5132; Reppy, Retroactivity of 1975 California Community Property Reforms, 48 So. Cal. L. Rev. 977, 1033 n. 174 (1975).
85. 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 Sections 5121 and 5132, 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, 542 (1971).
86. Sherwood v. Cornfield, 216 Cal. App.2d 364, 369, 31 Cal. Rptr. 264, 267-68 (1963); Adler v. Blair, 169 Cal. App.2d 92, \_\_\_, 336 P.2d 971, \_\_\_ (1959); Spear v. Farwell, 5 Cal. App.2d 111, 112, 42 P.2d 391, \_\_\_ (1935). In one case, a third-party claim was filed on the basis that the husband's wages were exempt because the wife's debt for necessities was incurred before marriage, making the exception to the wage garnishment exemption inapplicable. White v. Gobey, 130 Cal. App. Supp. 789, 790-91, 19 P.2d 876, \_\_\_ (1933). See the discussion under "Third Party Claims" infra.
87. See Bailey v. Superior Court, 215 Cal. 548, 554, 11 P.2d 865, 867 (1932).

the spouses may reduce the amount of property available to satisfy the judgment by holding it in joint tenancy rather than as community property.<sup>88</sup> Existing law, however, provides no general rule governing whether joint debtor spouses may each claim exemptions in community or separate property, or whether a nondebtor spouse may claim an exemption in community property (or in separate property in the case of a debt for necessities).

In general the availability or amount of an exemption does not appear to depend upon whether the debtor is married or has any dependents. There are several exceptions:

(1) A head of a family may select a homestead not exceeding \$30,000 in value, whereas any other person under 65 years of age may select a homestead of only \$15,000 in value.<sup>89</sup>

(2) Household furnishings, wearing apparel, and the like, is exempt to the extent "ordinarily and reasonably necessary to, and personally used by, the debtor and his resident family."<sup>90</sup> This exemption specifically takes into account the needs of the debtor's spouse and dependents and should not vary depending upon whether one or both spouses are liable on the judgment.

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88. See *Siberell v. Siberell*, 214 Cal. 767, 772-74, 7 P.2d 1003, \_\_\_ (1932); *In re Rauer's Collection Co.*, 87 Cal. App.2d 248, 257, 196 P.2d 803, \_\_\_ (1948); 7 B. Witkin, *Summary of California Law Community Property* § 48, at 5139 (8th ed. 1974). It should be noted, however, that a transfer of a debtor spouse's interest in property to the nondebtor's spouse, such as by way of changing community property to separate property, is voidable as a fraudulent conveyance. See *Wikes v. Smith*, 465 F.2d 1142, \_\_\_ (9th Cir. 1972); *Gould v. Fuller*, 249 Cal. App.2d 18, 24-27, 57 Cal. Rptr. 23, \_\_\_ (1967).

89. Civil Code § 1260 (declared homestead); Code Civ. Proc. §§ 690.3 (mobilehomes and vessels), 690.31 (claimed dwelling). A person aged 65 is entitled to the same exemption as a head of a family. Civil Code Section 1261 provides that a head of a family includes husband and wife when the claimant is married and any person who resides with and cares for or maintains certain relatives. A homestead may be selected from community property, quasi-community property, property held by the spouses as tenants in common or in joint tenancy, or separate property. Civil Code § 1238.

90. Section 690.1.



(3) The exemption of earnings from garnishment depends in part on amounts withheld pursuant to the tax withholding laws<sup>91</sup> and consequently is affected by the number of deductions the wage earner claims. However, the federal restrictions on wage garnishment permit a creditor to reach a larger amount of earnings where the debtor claims a greater number of tax withholding deductions.<sup>92</sup> The additional hardship exemption is based upon the amount "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."<sup>93</sup> It may also be assumed that, if both spouses are liable on the judgment, the garnishment of each spouse's wages is restricted by the federal law.

(4) The life insurance exemption is doubled in favor of the spouse of the insured.<sup>94</sup>

(5) The exemption for deposit accounts into which social security benefits are directly deposited is increased from \$500 to \$750 where two or more depositors to the account are designated payees of the benefits.<sup>95</sup>

(6) The exemption for savings and loan accounts is specifically stated to be a maximum of \$1,000 "per person, whether the character of the property be separate or community."<sup>96</sup> The meaning of this provision

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91. See Consumer Credit Protection Act § 302(b), 15 U.S.C. § 1672(b) (1970) (defining "disposable earnings" which provide the basis for determining the amount subject to garnishment, as the amount remaining after the deduction of any amounts required by law to be withheld).

92. This is so because a wage earner claiming more withholding deductions will have a larger disposable income at the same level of earnings than a wage earner claiming fewer deductions. The federal formula permits garnishment of all of the debtor's disposable weekly earnings that exceed 30 times the minimum wage but that do not exceed 40 times the minimum wage or, when the earnings exceed 40 times the minimum wage, 25% of the total amount of disposable earnings. See Consumer Credit Protection Act § 303(a), 15 U.S.C. § 1673(a) (1970).

93. Section 690.6(b).

94. Section 690.9(b).

95. Section 690.30(a).

96. Section 690.7(b). The exemption for credit union accounts does not have this feature. Fin. Code § 15406.

is unclear and it has not been interpreted by the courts. It might be read to permit both spouses, whether jointly liable or not, to claim exemptions. It might mean that only debtor spouses may claim an exemption (if the view is taken that only debtors may claim exemptions) and that, in the case of a joint account, the levy severs the joint tenancy and thus preserves the separate half interest of the nondebtor spouse.

(7) On the other hand, the motor vehicle exemption appears to protect only one vehicle registered in the debtor's name,<sup>97</sup> apparently without regard to the nature of title.<sup>98</sup>

The proposed law clarifies the policy regarding the exemption rights of married persons. It provides that exemptions may be claimed from any property--community or separate--that is liable for the satisfaction of the money judgment and grants each spouse the right to a separate set of exemptions, regardless of whether one or both are judgment debtors. This equalizes the treatment of unmarried joint debtors and married persons, insofar as the exemption laws are concerned.<sup>99</sup> This principle would apply to all exemptions [except the homestead exemption which is doubled for a head of a family, whether married or not]. Married persons would be able to claim exemptions for two motor vehicles so long as neither exceeded \$1,000 in value over liens and encumbrances. The exemption for the spouse's interest in tools of a trade would be doubled only if both spouses were engaged in the trade or had separate trades.

#### Tracing Exempt Amounts

An exemption for money derived from a particular source, such as retirement or life insurance benefits, is illusory if the exemption is lost when the benefits are deposited in a bank or held in the form of a

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97. Section 690.2(d).

98. See Veh. Code §§ 4150.5, 5600.5 (coownership of motor vehicle).

99. Of course, the community property laws would continue the unique principle that makes a nondebtor spouse's interest in community property liable for the satisfaction of a judgment against the other spouse.

check or cash. Presently, case law and, to a limited extent, statutory law, recognize the right of a debtor to trace exempt amounts through a change in form.<sup>100</sup> The proposed law contains a general provision which would permit the judgment debtor to trace exempt amounts through deposit accounts and in the form of cash and the equivalent of cash, including cashier's checks, certified checks, and money orders. This tracing provision would apply to relocation, life insurance, retirement, unemployment, disability, health, social security, and veteran's benefits, worker's compensation, aid, and proceeds from the sale of or indemnification for a dwelling, a motor vehicle, and tools of a trade.<sup>101</sup> Consistent with the general burden on the debtor to claim exemptions,<sup>102</sup> the debtor should have the burden of tracing the exempt amount.

#### Automatic Adjustment of Exempt Dollar Amounts

Exemptions subject to dollar amount limitations have the virtue of certainty and prevent the abuse that arises where specific items are exempt without value limits. Legislatures have typically been slow to adjust exemptions in response to changes in the value of the dollar.<sup>103</sup>

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100. See, e.g., Sections 690.18(a) (pension benefits exempt in debtor's possession and when deposited), 690.30 (direct deposit of social security payments); *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); *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).

101. The opportunity to trace exempt proceeds from the sale of a dwelling would be limited to six months and from the sale of a motor vehicle or tools to 90 days.

102. See Section 690.50(i).

103. See Countryman, For a New Exemption Policy in Bankruptcy, 14 Rutgers L. Rev. 678, 683 (1960); Joslin, Debtors' Exemption Laws: Time for Modernization, 34 Ind. L.J. 355, 356 (1959).

For example, the exemption for an account in a savings and loan association<sup>104</sup> was set at \$1,000 in 1901.<sup>105</sup> The dollar was worth approximately seven times as much in 1901 as it is now,<sup>106</sup> yet the amount of the exemption remains unchanged. The credit union account exemption<sup>107</sup> was raised to \$1,500 in 1939<sup>108</sup> when the dollar was worth approximately four times as much.<sup>109</sup> The life insurance exemption<sup>110</sup> was set at the amount of benefits represented by a \$500 annual premium in 1868<sup>111</sup> when the dollar was worth approximately six times what it is today.<sup>112</sup> Less dramatic, but still significant, disparities have occurred in exemptions such as the motor vehicle exemption which has been frequently amended since its original enactment in 1935.<sup>113</sup> The protection of a motor

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104. Section 690.7.

105. 1901 Cal. Stats., Ch. 28, § 1 (then building and loan associations).

106. See Bureau of Census, Historical Statistics of the United States, Table E-183, at 212, (1975) [hereinafter cited as Historical Statistics]. Bureau of Census, Statistical Abstract of the United States: 1976, Table No. 708, at 439 [hereinafter cited as Statistical Abstract].

107. Fin. Code § 15406.

108. 1939 Cal. Stats., Ch. 965, § 2.

109. See Historical Statistics, supra note 106, Table E-135, at 210; Statistical Abstract, supra note 106, Table No. 708, at 439.

110. Section 690.9.

111. 1868 Cal. Stats., Ch. 404, § 1.

112. Historical Statistics, supra note 106, Table E-183, at 212; Statistical Abstract, supra note 106, Table No. 708, at 439.

113. 1935 Cal. Stats., Ch. 723, § 24. The motor vehicle exemption at first protected a vehicle valued at \$100, regardless of the extent of the debtor's equity. This limit was raised to \$250 in 1949 and to \$350 in 1959. In 1967 the debtor's equity was protected in the amount of \$350 so long as the vehicle was not worth more than \$1,000. The equity exemption was raised to \$500 in 1972 and in 1976 the value limitation was repealed. See 1949 Cal. Stats., Ch. 628, § 1; 1959 Cal. Stats., Ch. 1474, § 1; 1967 Cal. Stats., Ch. 1241, § 1; 1972 Cal. Stats., Ch. 744, § 1; 1976 Cal. Stats., Ch. 1210, § 2.

vehicle in which the debtor has no more than \$500 equity, established in 1972, has been significantly eroded because by 1976 the average price of new cars had risen over 20% and the average price of used cars had risen over 40 percent.<sup>114</sup>

The proposed law provides for the automatic adjustment of the dollar amount of exemptions based upon changes in the consumer price index.<sup>115</sup> The change would be made at two-year intervals if the increase or decrease in the consumer price index over that time was at least 10 percent of the index on the operative date of the proposed law.<sup>116</sup> The Judicial Council would be given the responsibility of calculating the change and adopting a rule announcing the change. The revised amount would apply to any claims made when the change is in effect. This has the effect of measuring the amount of the exemption from the time it is claimed rather than from the time the exemption was enacted.

#### Procedure for Claiming Exemptions After Levy

Existing law provides a detailed procedure through which exemptions may be claimed and determined.<sup>117</sup> The debtor or the debtor's agent may, within 10 days after property has been levied upon, claim an exemption by filing an affidavit with the levying officer; otherwise the exemption is waived and the property will be applied toward the satisfaction of

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114. Statistical Abstract, supra note 106, Table No. 709, at 440.

115. Cost of living adjustment provisions are contained in the Uniform Consumer Credit Code § 1.106 (1974 version) and the Uniform Exemptions Act § 2 (1976) and in several California statutes. See Govt. Code § 9360.9 (legislative retirement system), 21221(c) (public employees' retirement benefits), 31870 (county employees' retirement benefits), 82001 (campaign spending limits); Welf. & Inst. Code §§ 11453 (AFDC payments), 12201(i) (aged, blind, and disabled payments).

116. For examples of the operation of the proposed section, see the Comment to proposed Section 707.210 infra.

117. Section 690.50; see generally 5 B. Witkin, California Procedure Enforcement of Judgment §§ 88-92 (2d ed. 1971 & Supp. 1977). Special procedures are provided for determining certain exemptions. See Sections 690.30 (deposit account into which social security benefits directly deposited), 690.31 (dwelling exemption).

the judgment.<sup>118</sup> If the debtor files an affidavit, the levying officer immediately serves it on the judgment creditor along with a notice that the property will be released unless the creditor files a counteraffidavit with the levying officer within five days after the debtor's affidavit is served. The creditor is also required to serve a copy of this counteraffidavit on the debtor and file proof of service with the levying officer. Once the counteraffidavit is filed, either party is permitted to make a motion for an order determining the exemption claim within five days after the filing of the counteraffidavit. The hearing is required to be held within 15 days after the motion is made unless a continuance is granted. The moving party must give at least five days' notice of the hearing to the other party and to the levying officer. If no motion is made within five days after the counteraffidavit is filed or if the levying officer is not served with notice of the hearing within 10 days after such filing, the property is required to be released to the debtor. At the hearing the debtor has the burden of proof. The affidavit and counteraffidavit are filed with the court by the levying officer and constitute the pleadings of the parties, subject to the power of the court to permit amendments. The court may also permit the production of other evidence. At the conclusion of the hearing, the court determines the exemption and makes any necessary orders for the disposition of the property.

The proposed law would make several changes in this procedure.<sup>119</sup> Since the debtor may not receive notice of levy for some time after levy has occurred,<sup>120</sup> the 10-day period within which the claim of exemption

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118. Section 690(a). Some exemptions are not subject to waiver. See, e.g., Section 690.6(b) (portion of earnings not subject to garnishment), 690.15 (worker's compensation benefits prior to payment), 690.19 (aid under public assistance program prior to payment), *Smith v. Rhea*, 72 Cal. App.3d 361, 370-72, \_\_\_ Cal. Rptr. \_\_\_, \_\_\_ (1977) (exempt portion of proceeds from execution sale of motor vehicle).

119. For other minor and technical revisions, see the Comments to the sections in the proposed law, infra, and to the repealed sections in the Appendix, infra.

120. Notice of levy is required to be given the judgment debtor promptly after levy. See Section 688(b) (incorporating the levy provisions in the Attachment Law, Sections 488.310-488.430).

must be filed with the levying officer runs from the date notice of levy is mailed or delivered to the judgment debtor. The five-day period for filing the counteraffidavit should be increased to 10 days, but this period should not be extended where the claim of exemption is served on the creditor by mail.<sup>121</sup> As a condition of claiming an exemption for a motor vehicle, heirlooms, works of art, jewelry, or tools of a trade, the debtor should be required to describe other property of the same type for which an exemption is not claimed. Similarly, where the debtor claims an exemption for deposit accounts and money or for the loan value of an insurance policy, the debtor should describe all other such funds. This will enable the creditor to obtain information regarding other property of the debtor and will help ensure that the policy of the exemptions laws to protect only a limited amount of the debtor's property is carried out.

The right of the judgment debtor to move for a hearing on the exemption claim should be eliminated as unnecessary. Under the proposed law, if the creditor does not file the notice of opposition with the levying officer and file notice of motion within the 10-day period after service of the claim of exemption, the property will be released and the creditor will be precluded from levying on it again absent a showing of changed circumstances. Accordingly, the debtor has nothing to gain by moving for a hearing on the exemption claim. The 15-day period after the motion is filed, during which the hearing is required to be commenced, should be increased to 20 days so that the debtor may be given 10 days' rather than five days' notice of the hearing.<sup>122</sup>

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121. See Section 1013 (general provision for extension of time where notice served by mail).

122. This period should not be subject to the extension of time provided by Section 1013.

## TABLE OF CONTENTS

CHAPTER 7. PROPERTY SUBJECT TO ENFORCEMENT OF  
MONEY JUDGMENTS AND EXEMPTIONS

	<u>Page</u>
Article 1. General Provisions. . . . .	7-1
§ 707.110. Claimant . . . . .	7-1
§ 707.120. Property subject to enforcement of money judgment. . . . .	7-1
§ 707.130. Property not subject to enforcement of a money judgment. . . . .	7-3
§ 707.140. Applicability of exemptions. . . . .	7-4
§ 707.150. Waiver of exemptions . . . . .	7-4
§ 707.160. Exemption rights of married persons. . . . .	7-5
§ 707.170. Exemptions inapplicable against support judgment . . . . .	7-6
§ 707.180. Tracing exempt amounts . . . . .	7-7
§ 707.190. Loss of exemption from change in circumstances . . . . .	7-8
§ 707.200. Adjustments of dollar amounts of exemptions. . . . .	7-8
§ 707.210. Exemptions from tax liability. . . . .	7-10
Article 2. Procedure for Claiming Exemptions After Levy. . . . .	7-12
§ 707.310. Applicable procedure for claiming exemptions . . . . .	7-12
§ 707.320. Claim of exemption . . . . .	7-12
§ 707.330. Notice of claim of exemption . . . . .	7-13
§ 707.340. Contest of exemption claim . . . . .	7-13
§ 707.350. Contents of notice of opposition . . . . .	7-14
§ 707.360. Notice of motion for hearing . . . . .	7-14
§ 707.370. Release. . . . .	7-15
§ 707.380. Hearing and order. . . . .	7-15
§ 707.390. Extension of time. . . . .	7-16
§ 707.400. Appeal . . . . .	7-17
§ 707.410. Disposition of property during pendency of proceedings . . . . .	7-17
Article 3. Exempt Property . . . . .	7-18
§ 707.510. Dwelling . . . . .	7-18
§ 707.520. Cemetery plot. . . . .	7-18
§ 707.530. Motor vehicle; proceeds. . . . .	7-19
§ 707.540. Household furnishings, wearing apparel, personal effects . . . . .	7-20



§ 707.550. Jewelry, heirlooms, works of art . . . . . 7-20

§ 707.560. Health aids. . . . . 7-21

§ 707.570. Tools, etc., used in trade, business or profes-  
sion; proceeds. . . . . 7-21

§ 707.580. Deposit accounts and money . . . . . 7-22

§ 707.590. Deposit account in which social security payments  
are directly deposited. . . . . 7-22

§ 707.600. Life insurance, endowment, annuity policies; death  
benefits. . . . . 7-25

§ 707.610. Retirement benefits. . . . . 7-26

§ 707.620. Unemployment benefits and contributions. . . . . 7-26

§ 707.630. Disability and health benefits . . . . . 7-27

§ 707.640. Damages for personal injury. . . . . 7-28

§ 707.650. Damages for wrongful death . . . . . 7-28

§ 707.660. Worker's compensation. . . . . 7-28

§ 707.670. Aid. . . . . 7-28

§ 707.680. Relocation benefits. . . . . 7-29

§ 707.690. Licenses . . . . . 7-29

STAFF DRAFT

CHAPTER 7. PROPERTY SUBJECT TO ENFORCEMENT OF  
MONEY JUDGMENTS AND EXEMPTIONS

Article 1. General Provisions

§ 707.110. Claimant

707.110. As used in this chapter, "claimant" includes all of the following:

- (a) An individual judgment debtor.
- (b) A person authorized to exercise the rights of a judgment debtor.
- (c) The judgment debtor's spouse who is entitled to claim exemptions pursuant to Section 707.160.

Comment. Section 707.110 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. Subdivision (b) permits agents, guardians, conservators, and persons holding a power of attorney to claim exemptions. Subdivision (c) is new.

4265

§ 707.120. Property subject to enforcement of money judgment

707.120. (a) Except as provided in Section 707.130, the following property is subject to enforcement of a money judgment:

- (1) All the property of the judgment debtor.
- (2) If the judgment debtor is married:
  - (i) The separate property of the judgment debtor.
  - (ii) The community property, to the extent provided in the community property laws.
  - (iii) The separate property of the spouse of the judgment debtor, to the extent provided in Sections 5121 and 5132 of the Civil Code.

(b) Subject to Section 702.320, property described in subdivision (a) remains subject to enforcement of a money judgment notwithstanding transfer or other disposition if the property is subject to an attachment lien, judgment lien, execution lien, or other lien in favor of the judgment creditor arising in the action or from enforcement of the judgment.

Comment. Subdivision (a)(1) of Section 707.120 supersedes a portion of subdivision (a) of former Section 688. The reference in former law to "any interest" in property and the enumeration of certain types of property ("goods, chattels, moneys or other property") are deleted; the deletion 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, 589-90, 132 Cal. Rptr. 424, 429-30 (1976). See also 1 A. Freeman, *Law of Executions* §§ 110, 112, 159, 162 (3d ed. 1900); 2 *id.* §§ 172, 177; 3 *id.* § 425. Except to the extent provided in Article 6 (commencing with Section 705.610) of Chapter 5 (order of assignment of right to future payments), 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, 737, 131 Cal. Rptr. 768, 777 (1976); *Dawson v. Bank of America*, 100 Cal. App.2d 305, 309, 223 P.2d 280, 283 (1950); *Clecak v. Dunn*, 95 Cal. App. 537, 540, 272 P. 1104, 1105 (1928).

Paragraph (2) of subdivision (a) incorporates the special rules governing the liability of a married person's property to the satisfaction of a judgment provided in the community property laws. See Civil Code §§ 5116, 5120, 5121, 5122, 5123, 5131, 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 Sections 5121 and 5132, 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, 542 (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 the 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, 267-68 (1963); *Adler v. Blair*, 169 Cal. App.2d 92, \_\_\_, 336 P.2d 971, \_\_\_ (1959). This procedure is distinct from the procedure under this chapter for claiming an exemption.

Subdivision (b) continues 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, 832 (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, 245 (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, 844 (1939) (creditor's suit creates equitable lien on property sought to be reached from time of service of process). For provisions concerning the creation of liens, see Sections 488.500, 488.510 (attachment lien), 486.110 (temporary protective order in attachment), 674 (judgment lien), 703.250 (execution lien), 704. \_\_\_ (lien of earnings withholding order),

705.120 (lien of order for examination of judgment debtor), 705.130 (lien of order for examination of judgment debtor's debtor), 705.250 (lien of creditor's suit), 705.340 (receiver's lien), 705.420 (lien of charging order), 705.510 (lien on cause of action and nonfinal judgment), 705.620 (lien of assignment order), 705.780 (lien on money owed judgment debtor as creditor of public entity). See also Section 702.310 (relation back of liens). The introductory clause of subdivision (b) recognizes that a lien may not follow property when it is transferred to a bona fide purchaser. See Section 702.320 and the Comment thereto.

968/606

§ 707.130. Property not subject to enforcement of a money judgment

707.130. Property that is not subject to enforcement of a money judgment pursuant to Article 3 (commencing with Section 707.510) or pursuant to any other law may not in any manner be applied toward the satisfaction of a money judgment.

Comment. Section 707.130 supersedes former Section 690.(b) which provided that property for which a claim of exemption was not required to be filed was not subject to levy of attachment or execution in any manner. The category of property exempt without filing a claim of exemption is not continued in this title since it does not differ from property which is not subject to enforcement of a money judgment. Property which has been determined to be exempt by a court or which is exempt because the judgment creditor has failed to oppose a claim of exemption may not be applied toward the satisfaction of the judgment without a showing of changed circumstances under Section 707.190 just as is the case with property which is not subject to enforcement of a money judgment. However, if a timely claim of exemption is not made, as a general rule, property described as exempt may be reached. See Section 707.150.

Section 707.130 also recognizes that the description of property which is not subject to the enforcement of a money judgment in Article 3 is not comprehensive. For example, property in custodia legis is not subject to execution under certain circumstances. See, 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* §§ 21-23, at 3402-04 (2d ed. 1971). A trademark may only be reached in connection with the business in which it is used. See *Ward-Chander Bldg. Co. v. Caldwell*, 8 Cal. App.2d 375, 378-79, 47 P.2d 758, \_\_\_ (1935). The portion of a cemetery containing human remains is not subject to enforcement of a money judgment. See *Peebler v. Danziger*, 104 Cal. App.2d 491, \_\_\_, 231 P.2d 895, \_\_\_ (1951). Other statutes designate certain property as not subject to enforcement of a money judgment. See, e.g., Civil Code § 765 (estates at will); Educ. Code § 21116 (educational endowment funds); Health & Saf. Code §§ 7925 (money from purchase of unused cemetery lands), 32508 (hospital endowment funds); Labor Code §§ 270.5 (property held in trust by logging

employer, except on claim by employee), 270.6 (property held in trust by employer of certain salespersons, except on claim by employee). Federal law also precludes the application of certain types of property to the satisfaction of a money judgment. See, e.g., 22 U.S.C. § 1104 ( ) (foreign service retirement); 33 U.S.C. § 916 ( ) (longshoreman retirement); 42 U.S.C. § 407 ( ) (social security); 45 U.S.C. § 2281 ( ) (railroad retirement).

4435

#### § 707.140. Applicability of exemptions

707.140. (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 money judgment.

(b) Exemptions do not apply where the judgment to be enforced is for the purchase price of the property or is for the foreclosure of a mortgage or other lien on the property other than a lien created pursuant to this title.

(c) Exemptions shall be determined as of the date the judgment debtor makes an exemption claim.

Comment. Subdivision (a) of Section 707.140 makes clear that the exemptions provided by this chapter apply regardless of the procedure selected for the enforcement of a money judgment. This provision supersedes subdivision (a) of former Section 690. However, certain exemptions do not apply where a judgment for child or spousal support is being enforced (see Section 707.170) [or a property tax is being collected (see Section 707.210(d)).]

Subdivision (b) continues the substance of former Section 690.52 and the last sentence of former Section 690.28.

Subdivision (c) makes clear that the exemption claimed is to be determined as of the time a claim of exemption is made pursuant to the applicable procedure. This codifies the result in *Medical Fin. Ass'n v. Rambo*, 33 Cal. App.2d Supp. 756, 758-60, 86 P.2d 159, \_\_\_ (1939) and rejects the holding in *California United States Bond & Mort. Corp. v. Grodzins*, 139 Cal. App. 240, 242-43, 34 P.2d 193, \_\_\_ (1934) (portion of life insurance benefits which exceeded exempt amount when received was earmarked for creditors even though benefits remaining at time of levy were below exempt amount). In order to take advantage of the principle stated in subdivision (d), the judgment debtor must trace the funds for which an exemption is claimed. See Section 707.180 (tracing).

28766

#### § 707.150. Waiver of exemptions

707.150. Except as provided in Section 473, an exemption is waived unless it is claimed within the time provided and pursuant to the applicable procedure.

Comment. Section 707.150 continues the principle of subdivision (a) of former Section 690 but is broader in its application since it is not limited to exemptions provided in this chapter. Former law also referred to exemptions "from execution" whereas this section makes clear that exemptions apply in all proceedings for the enforcement of a money judgment. See Section 707.140(a). Where property is levied upon by a levying officer, the applicable procedure for claiming an exemption is that provided in Article 2 (commencing with Section 707.310) of this chapter. This procedure is also incorporated in other instances: e.g., where property is attached under an ex parte writ of attachment (see Section 485.610) or where a warrant or notice of levy for the collection of taxes is treated as a writ of execution (see Section 707.210). If the property is sought to be reached by some process other than a levy under a writ, such as an order in examination proceedings (see Sections 705.110-705.190) or an assignment order (see Sections 705.610-705.630), the procedures for claiming exemptions provided by this chapter do not apply. In these situations, a court hearing is required and exemption claims will be determined at such time or later upon noticed motion. See, e.g., Sections 705.160(c) (determination of exemption claim in examination proceedings).

The introductory clause recognizes the power of the court under Section 473 to relieve the claimant from the consequences of failure to timely file a claim of exemption through mistake, inadvertance, surprise, or excusable neglect.

29214

§ 707.160. Exemption rights of married persons

707.160. (a) Married persons may claim exemptions in community property and in separate property which is liable under the community property laws.

(b) Except as provided in Sections [707.510] and 707.570, each spouse may claim a separate set of exemptions, regardless of whether the spouse 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 separate property of the nondebtor spouse, which is sought to be applied to the satisfaction of a money judgment against the judgment debtor consistent with the community property laws. See Section 707.120; Civil Code §§ 5116, 5120, 5121, 5122, 5125, 5131, 5132. Such a 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). Section 707.160 permits the nondebtor spouse to take advantage of exemptions to the same extent as if the nondebtor spouse 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 the

property is community property, and the judgment is against one or both spouses, or the property is held in joint tenancy, and the judgment is against both spouses. For example, a \$4,000 deposit account which is community property would be exempt in the amount of \$2,000 (\$1,000 exemption under Section 707.580 for each spouse) whether the judgment was against one or both spouses. Similarly, if the judgment is against both spouses, each may claim a \$1,000 exemption in the respective half interest where the account is held in joint tenancy. However, if the account is held in joint tenancy, a nondebtor spouse has no need of an exemption since only the judgment debtor's interest in the joint tenancy account may be reached.

The introductory clause of subdivision (b) prevents the doubling of the dwelling exemption. See Section [707.510]. The larger dwelling exemption is granted to the head of the family, regardless of marital status. The spouse must meet the terms of the exemption in order to make a successful claim. Accordingly, a spouse with no trade, business, or profession is not entitled to a separate exemption for tools of a trade under Section 707.570 although, if both spouses are engaged in the same trade, the exemption is doubled to \$5,000.

A nondebtor spouse who claims that the community property or separate property is not liable for the satisfaction of the judgment pursuant to the community property laws may not assert the claim pursuant to this chapter. Such a claim 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.

4443

§ 707.170. Exemptions inapplicable against support judgment

707.170. (a) The exemptions provided by this chapter do not apply where the judgment being enforced is for child or spousal support.

(b) Where property for which an exemption is provided by this chapter is sought to be applied toward the satisfaction of a judgment for child or spousal support, the court shall, upon motion of an interested party, make an equitable division of the property that takes into account the needs of all the persons the judgment debtor is required by law to support. The court shall effectuate the equitable division by an order determining the amount of the property to be applied toward the satisfaction of the judgment.

(c) The person making the motion shall notify the levying officer of the motion and the levying officer shall not dispose of the property until receipt of the court order for application of the property.

Comment. Subdivision (a) of Section 707.170 provides a general exception to the application of the exemptions provided by Sections 707.510-707.680. Former Section 690.18 provided such an exception

applicable only to the exemption of pensions, annuities, and retirement, disability, death, or other benefits, from a public entity or, in the case of child support only, under the federal Employee Retirement Income Security Act of 1974 [unless amended by AB 1969, 1978 session].

Subdivision (b) codifies and makes generally applicable the case law concerning the equitable division of earnings levied upon to enforce a support judgment. See *Rankins v. Rankins*, 52 Cal. App.2d 231, 234-35, 126 P.2d 125, \_\_\_ (1942).

Subdivision (c) requires notice of the motion to be given the levying officer in order to preserve the status quo until the court makes its order.

4444

§ 707.180. Tracing exempt amounts

707.180. (a) An exempt amount remains exempt to the extent that it may be traced through deposit accounts and in the form of cash and the equivalent of cash.

(b) The claimant has the burden of tracing exempt amounts.

Comment. Section 707.180 provides the general rule concerning the duration of an exemption for payments to the judgment debtor through deposit accounts and in the form of cash and its equivalents, including cashier's checks, certified checks, and money orders. 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 [707.510 (proceeds from homestead),] 707.530 (proceeds from motor vehicle), 707.570 (proceeds from tools of trade), 707.580 (deposit accounts and money), 707.590 (deposit account into which Social Security benefits are paid), 707.600 (life insurance benefits), 707.610 (retirement benefits), 707.620 (unemployment benefits), 707.630 (disability and health benefits), 707.640 (damages for personal injury), 707.650 (damages for wrongful death), 707.606 (worker's compensation), 707.670 (aid), and 707.680 (relocation benefits). Proceeds from a dwelling, motor vehicle, or tools may be traced only during the applicable period. See Sections [707.510 (six months in case of dwelling),] 707.530 (90 days in case of motor vehicle), and 707.570 (90 days in case of tools).

Subdivision (b) states the rule under former law concerning the burden of tracing exempt funds. This is consistent with the general burden on the claimant in exemption proceedings. See Section 707.380(b).



§ 707.190. Loss of exemption from change in circumstances

707.190. If the judgment creditor has failed to oppose a claim of exemption within the time allowed by Section 707.340 or if property has been determined to be exempt pursuant to a court order, the judgment creditor may not levy upon or otherwise seek to apply the property toward the satisfaction of the same money judgment 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 had expired, that renders the property not exempt in whole or in part.

Comment. Section 707.190 is new. A court order determining exemptions may be issued pursuant to Sections \_\_\_\_\_.

968/995

§ 707.200. Adjustments of dollar amounts of exemptions

707.200. (a) Except as provided in subdivision (e), 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 the Los Angeles-Long Beach area and for the San Francisco-Oakland area compiled by the Bureau of Labor Statistics of the United States Department of Labor.

(2) "Reference Base Index" means the Index for June [1980--June of the even-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. The dollar amounts of the exemptions change on January 1 of each odd-numbered year if the difference between the Index for the preceding June and the Reference Base Index is not less than 10 percent of the Reference Base Index.

(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 difference computed pursuant to subdivision (b) between the Index for the preceding June and the Reference Base Index.

(d) The Judicial Council shall compute the changes in dollar amounts and adopt a rule announcing the changes before December 1 immediately preceding the day on which the change occurs. A change in the amount of exemptions applies to claims of exemption made on or after the day on which the change occurs.

(e) 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 707.200 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 employees' retirement benefits), 82001 (campaign spending limits); Welf. & Inst. Code §§ 11453 (AFDC payments), 12201(i) (aged, blind, and disabled payments). Section 707.200 is also based on provisions in some uniform laws. See Uniform Consumer Credit Code § 1.106 (1974 version); Uniform Exemptions Act § 2 (1976). See also [11 U.S.C. § 104 (Supp. 197 ) (adjustments of dollar amounts under Bankruptcy Act determined by Judicial Conference based on change in cost of living)].

Under Section 707.200, the dollar amounts of exemptions provided in this chapter automatically change on January 1 of each odd-numbered year if the change in the Index (as defined in subdivision (a)(1)) is great enough. This change in the Index is figured in June of even-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 (d).

It should be noted that this section does not apply to exemptions not provided by this chapter. Subdivision (b). Hence, the exemption of earnings from garnishment 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 707.580:

(1) Assume that the Reference Base Index (which, pursuant to subdivision (a)(2), is the Index for June 1980) is 190. If the Index for

June 1982 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 1984 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 January 1, 1985.

(3) If the Index for June of 1986 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, no change in exemption amounts occurs because the change was already made in the previous adjustment.

(4) If the Index for June of 1988 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 January 1, 1989.

(5) If the Index for June of 1990 is 220, the change from the Reference Base Index of 190 is approximately 16 percent. Note that a decline in the Index from 1988 to 1990 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 1980. 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 707.580. Ten percent of \$2,000 is \$200 so the deposit account of exemption is \$2,200 beginning on January 1, 1991.

(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 (e). If a new base period is selected, such as 1990 equals 100, the Reference Base Index will have to be revised when the determination of the changes is made in 1992. 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 1992 is 112 (1990 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 January 1, 1993.

Note. The Comment will be revised if the deposit account exemption is changed to \$1,000. See Section 707.580.

4456

#### § 707.210. Exemptions from tax liability

707.210. (a) Except as otherwise provided in this section, the provisions of this chapter apply where a tax liability is sought to be collected pursuant to the Revenue and Taxation Code or the Unemployment

Insurance Code. For the purpose of this section, "judgment creditor" means the public entity which seeks to collect the tax, and "judgment debtor" means the tax debtor.

(b) Claims of exemption shall be heard and determined in the superior court of the county where the property is located as if the property were levied upon under a writ of execution issued from such court.

(c) If a levy is not made by a levying officer, the claim of exemption shall be filed with the court within 10 days after the judgment debtor is notified of the levy, withholding, or seizure.

(d) If the tax liability arises from assessment of property tax, an exemption may not be claimed for the property subject to the tax.

Comment. Section 707.210 supersedes former Section 690.51, which applied the exemptions from execution to certain procedures for the collection of several state taxes. Section 707.210 makes all tax collections by the state or by local public entities subject to the substantive and procedural provisions of this chapter except as provided in subdivision (d). This provision changes the general rule under former law that the exemption laws did not apply to the collection of tax liabilities except where specifically provided otherwise, as in former Section 690.50, or where a homestead had been declared prior to the attachment of a tax lien having the effect of a judgment lien. See Curtis v. County of Kern, 37 Cal. App.3d 704, 706, 113 Cal. Rptr. 41, \_\_\_ (1974); Greene v. Franchise Tax Bd., 27 Cal. App.3d 38, 103 Cal. Rptr. 483 (1972); Morrison v. Barham, 184 Cal. App.2d 267, 272, 7 Cal. Rptr. 442, \_\_\_ (1960).

Subdivision (b) continues the substance of the second sentence of former Section 690.51.

Subdivision (c) is a general provision which codifies the practice developed under Unemployment Insurance Code Section 1755.

Subdivision (d) is new.

Article 2. Procedure for Claiming Exemptions After Levy

§ 707.310. Applicable procedure for claiming exemptions

707.310. Except as otherwise provided by statute, where property has been levied upon by a levying officer, the property may be claimed to be exempt as provided in this article.

Comment. Section 707.310 indicates the scope of the application of the exemption procedure provided in this article. As noted in the introductory clause, special exemption procedures apply in certain cases where property has been levied upon. See, e.g., Sections 704.\_\_\_\_ (garnished earnings), [704.510 (dwellings),] 707.590 (deposit accounts consisting of Social Security benefits). This continues the introductory portion of former Section 690.50(a).

16/973

§ 707.320. Claim of exemption

707.320. (a) The claimant shall, within 10 days after the date the notice of levy was mailed or delivered to 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 the address where service by mail may be made upon the claimant of the notice of opposition to the claim of exemption.

(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. If an exemption is claimed pursuant to Section 707.530, 707.550, or 707.570, the claimant shall describe all other property of the same type and state which items are claimed as exempt. If an exemption is claimed pursuant to Section 707.580 or subdivision (b) of Section 707.600, the claimant shall describe all other funds of the same type.

(4) A statement of all sources of income of the judgment debtor and of the judgment debtor's spouse and dependents, if the property is claimed as exempt pursuant to a provision exempting property to the extent it is necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(5) A citation of the provision of this chapter or other law upon which the claim is based.

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

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

Comment. Section 707.320 supersedes subdivision (a) of former Section 690.50. The form of the claim of exemption is prescribed by the Judicial Council pursuant to Section 702.170. See also Section 707.110 ("claimant" defined).

16/972

§ 707.330. Notice of claim of exemption

707.330. Upon the filing of the claim of exemption, the levying officer shall promptly mail to the judgment creditor 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 707.330 supersedes 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 702.200 (personal delivery permitted). The form of the notice of claim of exemption is prescribed by the Judicial Council pursuant to Section 702.170.

968/708

§ 707.340. Contest of exemption claim

707.340. 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 707.340 supersedes portions of subdivisions (c) and (e) of former Section 690.50. Section 707.340, 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 707.370, making a hearing unnecessary. Consequently, the delay between the filing of the counteraffidavit and the notice of motion provided by subdivision (e) of former Section 690.50 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

§ 707.350. Contents of notice of opposition

707.350. 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 provision of this chapter or other law relied upon or that the value of the judgment debtor's interest in the property claimed to be exempt, exclusive of liens and encumbrances superior to the judgment creditor's lien, is in excess of the amount stated in the applicable provision.
- (d) A statement of the facts necessary to support the allegation.
- (e) Points and authorities supporting any legal issues raised.

Comment. Section 707.350 supersedes a portion of subdivision (c) of former Section 690.50. The form of the notice of opposition is prescribed by the Judicial Council pursuant to Section 702.170.

16/970

§ 707.360. Notice of motion for hearing

707.360. (a) If the notice of opposition to the claim of exemption and the notice of motion are filed as provided by Section 707.340, 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 mail notice of the hearing to the levying officer and shall

mail a notice of the hearing and a copy of the notice of opposition to the claim of exemption to the claimant and to the judgment debtor, if other than the claimant. Mailing 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 whom notice is to be mailed at the address stated in the claim of exemption. The judgment creditor shall file proof of mailing 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 707.360 supersedes portions of subdivisions (c) and (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 also Section 707.110 ("claimant" defined).

16/969

§ 707.370. Release

707.370. If the levying officer does not receive a notice of opposition to the claim of exemption within the time prescribed by Section 707.340 and a notice of the hearing within the time prescribed by Section 707.360, the levying officer shall immediately release the property to the extent it is claimed to be exempt in the manner provided by Section 703.290.

Comment. Section 707.370 supersedes subdivisions (d) (release if no counteraffidavit served) and (f) (release if no motion) of former Section 690.50.

16/968

§ 707.380. Hearing and order

707.380. (a) The claim of exemption and notice of opposition to the claim of exemption filed with the court constitute the pleadings, subject to the power of the court to permit amendments in the interests of justice. The claim of exemption shall be deemed controverted by the notice of opposition to the claim of exemption.

(b) At a hearing under this section, the claimant has the burden of proof.



(c) If the court is not satisfied that sufficient facts are shown by the claim of exemption, the notice of opposition to the claim of exemption, or other evidence, the court shall order the hearing continued for the production of other evidence, oral or documentary. No findings are required in a proceeding under this section.

(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 apply the property toward the satisfaction of the judgment. Where some, but not all, of the funds of the type for which an exemption may be claimed pursuant to Section 707.580 or subdivision (b) of Section 707.600 have been levied upon, the court shall first apply the exemption to the funds which have not been levied upon.

(e) The clerk shall immediately transmit a copy of the order entered in the court to the levying officer. The levying officer shall release the property in the manner provided by Section 703.290, or apply the property toward the satisfaction of the judgment, in compliance with the order.

Comment. Subdivisions (a)-(d) of Section 707.380 continue the substance of subdivision (i) of former Section 690.50, with the exception of the jury trial provision, which is not continued, and the provision requiring court order of disposition of property and proceeds, which is unnecessary. See, e.g., Section [703.750] (disposition of proceeds).

Subdivision (e) continues the substance of the first sentence of subdivision (j) of former Section 690.50.

See also Section 707.110 ("claimant" defined).

101/133  
§ 707.390. Extension of time.

707.390. If the court extends the time allowed for an act to be done under this article, written notice of the extension shall be given promptly to the levying officer.

Comment. Section 707.390 continues the substance of a portion of former Section 690.50(1). The portion of subdivision (1) relating to notice to the opposing party is not continued. See Section 1054 (general provision for extension of time).

§ 707.400. Appeal

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

Comment. Section 707.400 continues the substance of subdivision (m) of former Section 690.50.

§ 707.410. Disposition of property during pendency of proceedings

707.410. (a) The levying officer may not release the property until the final determination of the claim of exemption. The property may not be sold prior to the final determination except pursuant to an order of the court.

(b) At any time while the exemption 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 and direct the disposition of the proceeds of the sale and (2) make such other orders as may be proper under the circumstances of the case.

(c) An order made under subdivision (b) may be modified or vacated by the court at any time during the pendency of the exemption proceedings upon such terms as are just.

Comment. Subdivision (a) of Section 707.410 continues the substance of subdivision (h) and the second sentence of subdivision (j) of former Section 690.50. It requires, as did former Section 690.50(h), that the levying officer preserve the status quo by maintaining the lien on the property.

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

See also Section 707.110 ("claimant" defined).

Article 3. Exempt Property

§ 707.510. Dwelling

707.510. [The drafting of this section awaits Commission consideration of a consultant's study.]

§ 707.520. Cemetery plot

707.520. (a) As used in this section:

(1) "Cemetery" has the meaning provided by Section 7003 of the Health and Safety Code.

(2) "Family plot" is a plot which satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) "Plot" has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is not subject to the enforcement of a money judgment.

(c) Except as provided in subdivision (d), a cemetery plot for one person is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

(e) Notwithstanding subdivision (b) of Section 707.140, property dedicated as a cemetery by a cemetery authority is not subject to enforcement of a claim on a debt due from an individual owner of a cemetery plot.

Comment. Section 707.520 supersedes portions of former Section 690.24 which provided an exemption for a cemetery lot not exceeding one-quarter of an acre in size or, in the case of a religious or benevolent association or corporation, five acres in size. Subdivision (b) recognizes that family plots are inalienable. See Health & Saf. Code § 8650. Subdivision (c) exempts a cemetery lot for one person, but the spouse of the debtor may also exempt a cemetery plot pursuant to Section 707.160. See also Health & Saf. Code § 8601 (spouse's vested right of interment). Subdivision (d) continues the substance of the third paragraph of former Section 690.24. Subdivision (e) continues the substance of the fourth paragraph of former Section 690.24. The portion of land containing graves of human beings is not subject to enforcement of a money judgment. See *Peebler v. Danziger*, 104 Cal. App.2d 491, 493, 231 P.2d 895, \_\_\_ (1951).

§ 707.530. Motor vehicle; proceeds

707.530. (a) One motor vehicle is exempt if its value does not exceed one thousand dollars (\$1,000), exclusive of liens and encumbrances superior to the judgment creditor's lien. The fair market value of the motor vehicle may be determined by reference to used car price guides customarily used by California automobile dealers.

(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 dollars (\$1,000) for a period of 90 days after the sale, in the case of a voluntary sale, or 90 days after receipt of the proceeds, in all other cases. Notwithstanding Section 707.150, if the judgment debtor has only one motor vehicle, or if the judgment debtor and the judgment debtor's spouse have only two motor vehicles which are subject to enforcement of the money judgment, no claim of exemption need be made for proceeds of an execution sale of the motor vehicle.

Comment. Section 707.530 supersedes subdivisions (a) and (e) of former Section 690.2. Subdivision (a) of this section increases the motor vehicle exemption from \$500 to \$1,000. Under subdivision (a), the court is permitted to refer to used car price guides, but is not required to do so as under former Section 690.2(a). Another motor vehicle may be exempt under subdivision (a) in a case where the spouse's exemption right provided by Section 707.160 is applicable. See also Section 707.200 (adjustments of dollar amounts of exemptions).

Subdivision (b) provides an exemption for proceeds of sale, or of 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).

The second sentence of subdivision (b) makes clear that the exemption of proceeds from an execution sale is not waived for failure to make a timely claim in certain circumstances. See Section 707.150. Section [703.750] requires distribution of such proceeds to the judgment debtor before the judgment creditor. See also Section [703. \_\_\_] (sale price required to exceed liens, costs, and proceeds exemption).

§ 707.540. Household furnishings, wearing apparel, personal effects

707.540. 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, are exempt if the judgment debtor's interest, not exceeding five hundred dollars (\$500) per item in value, exclusive of liens and encumbrances superior to the judgment creditor's lien.

Comment. Section 707.540 supersedes the first sentence of 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 707.540 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). See also Section 707.200 (adjustment of dollar amounts of exemptions).

§ 707.550. Jewelry, heirlooms, works of art

707.550. Jewelry, heirlooms, and works of art are exempt to the extent that their aggregate value does not exceed five hundred dollars (\$500), exclusive of liens and encumbrances superior to the judgment creditor's lien.

Comment. Section 707.550 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 707.550 depends upon an estimation of its value rather than upon its being ordinarily and reasonably necessary to the judgment debtor. See Section 707.160 (spouse's exemption right). See also Section 707.200 (adjustments of dollar amounts of exemptions).

§ 707.560. Health aids.

707.560. Health aids reasonably necessary to enable the judgment debtor or a spouse or dependent of the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt.

Comment. Section 707.560 supersedes former Section 690.5 which exempted prosthetic and orthopedic appliances used by the debtor. Section 707.560 is based on Section 5(2) of the Uniform Exemptions Act (1976). The requirement that health aids be reasonably necessary to enable the individual to work or sustain health permits the exemption of such items as a wheel chair for a person unable to walk to work, an air conditioner for a person afflicted with asthma, or an elevator for a person unable to climb stairs, but does not permit the exemption of a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to maintaining good health.

045/222

§ 707.570. Tools, etc., used in trade, business, or profession; proceeds.

707.570. (a) Tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one vehicle, one vessel, and other personal property, which are 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 are exempt to the extent that the aggregate value of the judgment debtor's interest therein does not exceed two thousand five hundred dollars (\$2,500), exclusive of liens and encumbrances superior to the judgment creditor's lien.

(b) The spouse of a judgment debtor may not claim the exemption provided in subdivision (a) unless the item claimed as exempt is reasonably necessary to and actually used by the spouse in the trade, business, or profession by which the spouse earns a livelihood.

(c) 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 of two thousand five hundred dollars (\$2,500), less the value of other items exempt pursuant to subdivision (a), 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 707.570 continues the substance of former Section 690.4 and a portion of former Section 690.17 (building materials not exceeding \$1,000). See also Section 707.200 (adjustments of dollar amounts of exemptions).

Subdivision (c) provides an exemption for the proceeds of sale or of insurance or other indemnification analogous to that provided by Section 707.530(b).

27/867

§ 707.580. Deposit accounts and money

707.580. Any combination of deposit accounts and money is exempt in the maximum aggregate amount of [one] thousand dollars [(\$1,000)].

Comment. Section 707.580 supersedes former Sections 690.7 (\$1,000 of savings deposits in, shares or other accounts in, or shares of stock of, savings and loan associations) and 690.21 (inmate's trust account) 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 707.580 also aggregates the deposit account exemption with money. Under this section, \$1,000 is exempt 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 determining right to levy on deposit accounts in amounts less than \$1,000), 707.160 (spouse's exemption right), 707.590 (exemption of deposit account into which social security payments are directly deposited). See also Section 707.200 (adjustment of dollar amounts of exemptions).

12/824

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

707.590. (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 not subject to the enforcement of a money judgment:

(1) Where one depositor is the designated payee of the directly deposited payments, in the amount of five hundred dollars (\$500).

(2) Where two or more depositors are the designated payees of the directly deposited payments, in the amount of seven hundred fifty dollars (\$750) unless such depositors are joint payees of directly deposited payments which represent a benefit to only one of the depositors in

which case only five hundred dollars (\$500) is not subject to the enforcement of a money judgment.

(c) The amount of the deposit account in excess of the amount not subject to the enforcement of a money judgment pursuant to subdivision (b) is exempt to the extent that it consists of payments authorized by the Social Security Administration.

(d) The financial institution shall either place the excess amount in a suspense account or otherwise prohibit withdrawal of the excess amount pending notification of the judicial determination of the exempt status of the 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.

(e) Notwithstanding Article 2 (commencing with Section 707.310), an excess amount exempt under subdivision (c) shall be determined as follows:

(1) A judgment creditor who desires to claim that the 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 707.350, and a hearing shall be set and held, and notice given, as provided by Sections 707.360 and 707.380. 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 707.350, 707.360, and 707.380 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 in the manner provided in Section 703.290. 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.

(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 apply the excess amount toward the satisfaction of the judgment. No findings are required in a proceeding under this subdivision.

(6) Upon determining that all or part of the excess amount of the deposit account is exempt, the clerk shall immediately transmit a copy of the order to the levying officer and the levying officer shall serve the copy of the order on the financial institution. The financial institution shall comply with the order within three business days after its receipt.

Comment. Section 703.590 supersedes former Section 690.30. Social Security payments may be directly deposited pursuant to 31 U.S.C. § 492 (1970, Supp. V 1975). Subdivision (a) continues former Section 690.30(c). 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. Subdivision (d) makes explicit what was implicit in a portion of former Section 690.30(b)(2).

Subdivision (e) 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 707.310) (which supersedes former Section 690.50, incorporated by reference in former Section 690.30). Paragraph (1) 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 Section 690.30(b)(2) placed the burden of showing the excess amount to be exempt on the judgment debtor. If the judgment debtor does not comply with paragraph (1) by filing the counteraffidavit within the time provided and sending a copy to the judgment creditor and the levying officer, no hearing is held and the

property is applied toward the satisfaction of the judgment. Paragraph (5) supersedes former Section 690.30(b)(3). The provision for an order determining priority or dividing the property between several creditors is not continued. Paragraph (6) continues former Section 690.30(b)(4).

Where a deposit account is not one described by subdivision (b), the procedures provided in Article 2 (commencing with Section 707.310) apply to the determination of the exemption provided for deposit accounts generally in Section 707.580. Where an account described in subdivision (b) exceeds the amount not subject to enforcement, the exemption provided by subdivision (c) is determined pursuant to subdivision (e), not by Article 2 procedures.

See also Sections 701. ( "deposit account" defined), 703.290 (release), 707.200 (adjustment of dollar amounts of exemptions).

101/153

§ 707.600. Life insurance, endowment, annuity policies; death benefits

707.600. (a) Except as otherwise provided in subdivision (b), unmaturred life insurance, endowment, and annuity policies are not subject to the enforcement of a money judgment.

(b) The aggregate loan value of unmaturred life insurance, endowment, and annuity policies is subject to the enforcement of a money judgment but is exempt in the amount of five thousand dollars (\$5,000).

(c) Benefits from maturred life insurance, endowment, and annuity policies, and death benefits, payable to the insured or a spouse or dependent of the insured or decedent, are exempt to the extent reasonably necessary for the support of the insured and the spouse and dependents of the insured or decedent.

(d) If a dwelling exemption has not been obtained, the amount of the exemption provided by subdivision (b) is increased by ten thousand dollars (\$10,000). If the exemption provided by this subdivision is obtained and the claimant later claims a dwelling exemption, the dwelling exemption shall be reduced by the amount of the exemption claimed under this subdivision.

Comment. Section 707.600 supersedes the exemptions provided in former Sections 690.9 (life insurance represented by \$500 annual premium), 690.10 (group life insurance), 690.14 (fraternal benefit society), and portions of former Section 690.18 (death benefits from public entity). Under subdivision (a), the judgment creditor is precluded from reaching an unmaturred policy except to the extent provided by subdivision (b). Subdivision (a) prevents the judgment creditor from forcing the judgment debtor to surrender a life insurance policy for its cash value. See Section 707.160 (spouse's exemption right).

Subdivision (c) limits the exemption of benefits from a life insurance policy to the insured or a spouse or dependent of the insured who need the benefits for support. 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). The exemption may be asserted against creditors of the insured or of the spouse or dependents of the insured. See *Holmes v. Marshall*, 145 Cal. 777, 779-82, 79 P. 534, \_\_\_ (1905).

Subdivision (d) is new. See Section 707.510 (dwelling exemption). See also Section 707.200 (adjustment of dollar amounts of exemptions).

968/999

§ 707.610. Retirement benefits

707.610. (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, union, or other private entity (including a profit-sharing plan designed and used for retirement purposes) or under self-employed retirement plans and individual retirement annuities and accounts which are exempt from federal income taxation.

(b) Before payment, retirement benefits are not subject to the enforcement of a money judgment. After payment, retirement benefits are exempt.

Comment. Section 707.610, in conjunction with Section 707.170 (exemptions not applicable in case of support judgment), supersedes the provisions relating to exemptions for retirement benefits (other than disability payments from retirement plans covered by Section 707.630) provided by former Section 690.18 [as proposed to be amended by S.B. 1360 and A.B. 1969 in the 1978 session].

405/355

§ 707.620. Unemployment benefits and contributions

707.620. (a) Contributions by workers payable to the Unemployment Compensation Disability Fund and by employers payable to the Unemployment Fund are not subject to the enforcement of a money judgment.

(b) Before payment, the following benefits are not subject to the enforcement of a money judgment:

(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.

(7) Money used exclusively in the payment of unemployment benefits by a fraternal organization to bona fide members.

(8) Benefits used in the payment by a union to a union member due to a labor dispute.

(c) After payment, the benefits described in subdivision (b) are exempt.

Comment. Section 707.620 supersedes former Sections 690.13, 690.16, and 690.175 and portions of Unemployment Insurance Code Sections 988 and 1342. Subdivision (b)(8) is new.

15331

§ 707.630. Disability and health benefits

707.630. (a) Before payment, benefits from a disability or health insurance policy or program are not subject to the enforcement of a money judgment. After payment, the benefits are exempt.

(b) 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. Subdivision (a) of Section 707.630 supersedes former Section 690.11 (disability or health insurance benefits represented by \$500 annual premium), 690.13 (money used exclusively in payment of sick benefits by fraternal organization to bona fide members), 690.14 (fraternal benefit society funds), and portions of former Section 690.18 (disability benefits from retirement plans). Subdivision (b) is new.

§ 707.640. Damages for personal injury

707.640. (a) An award of damages or a settlement arising out of bodily injury of the judgment debtor is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

(b) Subdivision (a) does not apply to a claim by a provider of health care whose claim arises out of the bodily injury for which the award or settlement was made.

Comment. Section 707.640 is new.

29215

§ 707.650. Damages for wrongful death

707.650. An award of damages or a settlement arising out of the wrongful death of a person of whom the judgment debtor was a spouse or a dependent is exempt to the extent reasonably necessary for support.

Comment. Section 707.650 is new.

405/354

§ 707.660. Worker's compensation

707.660. Except as provided by Chapter 1 (commencing with Section 4900) of the Labor Code, before payment, a claim for worker's compensation or compensation awarded or adjudged is not subject to the enforcement of a money judgment. After payment, the award is exempt.

Comment. Section 707.660 continues the substance of former Section 690.15.

405/346

§ 707.670. Aid

707.670. Before 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 or a fraternal benefit society as defined in Section 10990 of the Insurance Code, to the judgment debtor or for the benefit of the judgment debtor is not subject to the enforcement of a money judgment. After payment, the aid is exempt.

Comment. Section 707.670 is based on former Sections 690.14 and 690.19. This section exempts local aid as well as federal aid administered by the state pursuant to the Welfare and Institutions Code. See also Welf. & Inst. Code § 10052 ("aid" defined).

Section 707.670 also expands the category of nongovernmental aid that is exempt. Former Section 690.14 applied only to fraternal benefit societies.

27/872

§ 707.680. Relocation benefits

707.680. Before payment, relocation benefits for displacement from a dwelling actually owned or rented by the judgment debtor which are to be paid by 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 not subject to the enforcement of a money judgment. After payment, such benefits are exempt.

Comment. Section 707.680 supersedes Section 690.8a. The last sentence of Section 707.680 requires the debtor to claim an exemption for such benefits after payment, whereas under former law these benefits were designated as exempt without filing a claim.

27/823

§ 707.690. Licenses

707.690. Except as provided in Section 705.330, a license to engage in any business, profession, or activity issued by a public entity is not subject to the enforcement of a money judgment.

Comment. Section 707.690 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." See Section 705.330 (receiver to sell liquor license).