

#D-300

8/13/80

Memorandum 80-72

Subject: Study D-300 - Enforcement of Judgments (Forms)

Attached to this memorandum are selected forms to be used with the enforcement of judgments statute. The forms are intended for interim use only until the Judicial Council is able to prepare forms. The staff has reservations about the advisability of continuing Spanish-language versions of the homestead forms in Sections 693.050 and 693.060, even though these forms have been recently enacted. Section 681.030 permits the Judicial Council to prescribe forms in languages other than English.

Respectfully submitted,

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Assistant Executive Secretary

CHAPTER 19. FORMS

Comment. This chapter provides the forms that are to be used until such time as the Judicial Council issues superseding forms pursuant to Section 681.030.

§ 693.010. Form of writ of execution, possession, and sale

693.010. Until superseded by a form prepared by the Judicial Council, a writ of execution, writ of possession of personal property, writ of possession of real property, and writ of sale shall be in substantially the following form:

NAME AND ADDRESS OF ATTORNEY:	TELEPHONE:	FOR COURT USE ONLY
ATTORNEY FOR:		
Insert name of court, judicial district or branch court, if any, and post office and street address:		
PLAINTIFF		CASE NUMBER:
DEFENDANT		FOR RECORDER'S USE ONLY
WRIT OF: <input type="checkbox"/> EXECUTION (MONEY JUDGMENT) <input type="checkbox"/> JOINT DEBTOR <input type="checkbox"/> POSSESSION OF: <input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> REAL PROPERTY <input type="checkbox"/> SALE		

1. To the Sheriff or any Marshal or Constable of the County of:

You are directed to enforce the judgment described below, with interest and costs and your costs as provided by law.

2. To a registered process server: You are authorized to serve this writ only in accord with CCP 699.080.

3. Judgment creditor (name)

4. Judgment debtor (name and mailing address)

Additional name and address on reverse.

5. Judgment entered on (date)

6. Notice of sale under this writ

- has not been requested
 has been requested as set forth on the reverse

7. Joint debtor information set forth on the reverse.

8. Real or personal property to be delivered or sold under a writ of possession or sale described on reverse.

(SEAL)

9. Total judgment as entered

- a. Principal: \$
- b. Attorney fees: \$
- c. Interest: \$
- d. Costs: \$
- e. Total (add 9a, b, c, d): \$

10. Total judgment and accrued costs

- a. Costs (per filed order or memo per CCP 685.090) \$
- b. Fee for issuance of writ \$
- c. Total (add 9e, 10a, 10b): \$

11. Net balance due on judgment

- a. Payments and partial satisfactions: \$
- b. Net balance due (subtract 11a from 10c): \$

12. Interest

- a. Interest due on date of issuance of writ (per filed affidavit CCP 685.050): \$
- b. Levying officer: Add the following daily interest from date of writ to date of levy (at legal rate on item 11b): \$

Issued by:

Clerk, By _____, Deputy

Dated: _____

NOTICE TO PERSON SERVED: SEE REVERSE FOR IMPORTANT INFORMATION

(Continued on reverse)

4. Additional judgment debtor (name and address):

6. Notice of sale has been requested by (name and address):

7. Joint debtor was declared bound by the judgment (CCP 989-994)

a. On (date):

a. On (date):

b. Name and address of joint debtor:

b. Name and address of joint debtor:

c. Additional costs against certain joint debtors (itemize):

8. Judgment was entered for the following:

- a. Possession of personal property. If delivery cannot be had, then for the value (itemize in 8e) specified in the judgment.
- b. Possession of real property.
- c. Sale of personal property.
- d. Sale of real property.
- e. Description:

NOTICE TO PERSON SERVED

- Writ of execution or sale. Your rights and duties are indicated on the accompanying Notice of Levy.
- Writ of possession of personal property. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment.
- Writ of possession of real property. If the premises are not vacated within five days after the date of service on an occupant or, if service is by posting, within five days after service on you, the levying officer will place the judgment creditor in possession of the property. Personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

§ 693.020. Form of notice of levy

693.020. Until superseded by a form prescribed by the Judicial Council, the notice of levy shall be in substantially the following form:

NAME AND ADDRESS OF ATTORNEY:	TELEPHONE:	FOR COURT USE ONLY
ATTORNEY FOR: Insert name of court, judicial district or branch court, if any and post office and street address:		
PLAINTIFF		CASE NUMBER:
DEFENDANT		FOR RECORDER'S USE ONLY
NOTICE OF LEVY under: WRIT OF: <input type="checkbox"/> EXECUTION (MONEY JUDGMENT) <input type="checkbox"/> JOINT DEBTOR <input type="checkbox"/> SALE		

NOTICE TO PERSON SERVED (name): _____

The judgment creditor (name) _____ seeks to levy upon property in which the judgment debtor (name) _____ has an interest and apply it to the satisfaction of a judgment. The property to be levied upon is described:

- In the accompanying writ of possession or writ of sale.
 As follows:

1. You are served as a judgment debtor. See item 3.
2. You are served as a person other than the judgment debtor. See items 4, 5, 6, and 7.
3. Notice to judgment debtor:
 - a. The levying officer is required to take into custody property in your possession that is to be levied upon.

- b. You may claim any available exemption for your property. Common exemptions in limited amounts are provided for such items as dwellings, automobiles, household goods, personal belongings, tools of trade, bank accounts, and wages. If you wish to claim an exemption, you must do so within 10 days after this notice was delivered to you or 15 days after this notice was mailed to you by filing a claim of exemption with the levying officer, together with a copy thereof, as provided in Section 703.520 of the Code of Civil Procedure. If you wish to seek the advice of an attorney in this matter, you should do so immediately so that a claim of exemption may be filed on time.
- c. You are not entitled to claim an exemption for property that is levied upon under a judgment for sale of property. This property is described in the accompanying writ of sale. You may, however, claim available exemptions for property levied upon to satisfy damages or costs awarded in such a judgment.
- d. You may obtain the release of your property by paying the amount of a money judgment remaining unpaid and any interest and costs remaining unpaid.
- e. If your property is levied upon under a writ of execution or to satisfy damages and costs under a writ of possession or sale, the property may be sold at an execution sale, perhaps at a price substantially below its value. Notice of sale will be given to you. Notice of sale of real property (other than a leasehold estate with an unexpired term of less than two years) may not be given until at least 120 days after this notice is served on you. This grace period is intended to afford you an opportunity to settle with the judgment creditor, obtain a satisfactory buyer for the property, or encourage other potential buyers to attend the execution sale.
- f. All sales at an execution sale are final; there is no right of redemption.
4. Notice to person other than the judgment debtor. You are served as:
- a. Person in possession of:
- | | |
|---|--------------------------------------|
| <input type="checkbox"/> Goods | <input type="checkbox"/> Money |
| <input type="checkbox"/> Negotiable documents | <input type="checkbox"/> Instruments |
| <input type="checkbox"/> Chattel paper | |
- b. Bailee of goods not covered by negotiable document
- c. Financial institution. Your rights and duties are set forth in CCP 700.140-700.160.
- d. As to a security:
- | | |
|---|---|
| <input type="checkbox"/> Person in possession | <input type="checkbox"/> Holder in escrow |
| <input type="checkbox"/> Issuer | <input type="checkbox"/> Secured party |
| <input type="checkbox"/> Financial intermediary | |
- e. Person obligated on instrument. If the levying officer has custody of the instrument, you must make payments to the levying officer as they come due.

f. Person obligated on:

- Account receivable General intangibles
 Chattel paper

If you have been making payments to a person other than the judgment debtor you must continue to make such payments until the obligation is satisfied and thereafter to the levying officer, unless otherwise directed by the person or by court order.

g. Person to whom payments are made on:

- Account receivable General intangibles

h. Personal representative of a decedent in whose estate the judgment debtor has an interest in personal property. Your rights and duties are set forth in CCP 700.190.

i. Occupant of:

- Personal property
 Real Property

j. Person in whose name stands:

- Real property Growing crops
 Timber to be cut Deposit account
 Safe deposit box

k. Legal owner of:

- Vehicle Vessel

l. Secured party who has filed financing statement on:

- Growing crops Timber to be cut

m. Levying officer having custody of property.

n. Other: _____

5. If the property levied upon is in your possession or under your control and you do not claim the right to possession or a security interest, you must deliver the property to the levying officer. If you do not deny an obligation levied upon or do not claim a priority over the judgment creditor's lien, you must pay to the levying officer the amount that is due and payable and that becomes due and payable during the period of the execution lien. You must execute and deliver any documents necessary to effect the transfer of the property.

6. You must complete the accompanying garnishee's memorandum.

7. If you claim ownership or the right to possession of real or personal property levied upon or if you claim a security interest in or

lien on personal property levied upon you may make a third-party claim and obtain the release of the property pursuant to CCP 720.010-720.800.

(name of levying officer)

(address of levying officer)

- Date mailed:
- Date delivered:
- Date posted:

Signed by:

Levying officer: _____

Registered process server: _____

§ 693.030. Form of garnishee's memorandum

693.030. Until superseded by a form prescribed by the Judicial Council, the garnishee's memorandum shall be in substantially the following form:

MEMORANDUM OF GARNISHEE

Notice to person served with writ and notice of levy: This memorandum must be completed and returned to the levying officer within 10 days after service of the writ and notice of levy unless you have fully complied with the levy. Failure to complete and return this memorandum may render you liable for the costs of obtaining the required information.

This memorandum is to be mailed or delivered to:

(name of levying officer)

(address of levying officer)

This memorandum does not apply to garnishment of earnings.

1. If you are not delivering to the levying officer any property levied upon, describe the property and the reason for not delivering it:

2. Describe any property of the judgment debtor not levied upon that is in your possession or under your control:

3. If you owe money to the judgment debtor which you are not paying to the levying officer, describe the amount and terms of the obligation and the reason for not paying it to the levying officer:

4. Describe the amount and terms of any obligation owed to the judgment debtor that is levied upon but is not yet due and payable:

5. Describe the amount and terms of any obligation owed to the judgment debtor that is not levied upon:

6. Describe any claims and rights of other persons to the property or obligation levied upon that are known to you and the names and addresses of the other persons:

DECLARATION

I certify (declare) under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (date) _____ at (place) _____, California.

(Type or print name)

(Signature of declarant)

If you need more space to provide the information required by this memorandum, you may attach additional pages. Total number of pages attached: _____.

§ 693.040. [reserved]

§ 693.050. Notice of hearing for sale of dwelling

693.050. Until superseded by a form prepared by the Judicial Council, the notice of the hearing required by Section 704.770 shall be in both English and Spanish, in at least 10-point bold type, and in substantially the following form:

"IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. Your house is in danger of being sold to satisfy a judgment obtained in court. You may be able to protect the house and real property described in the accompanying application from forced sale if you or your family now actually reside on the property. YOU OR YOUR SPOUSE SHOULD COME TO THE HEARING TO SHOW THIS FACT.

2. If you or your spouse want to contest the forced sale of this property, you or your spouse must appear at

_____ on _____
 (Location set forth in OSC) (Date and time)

and be prepared to answer questions concerning the statements made in the attached application. THE ONLY PURPOSE OF THE HEARING WILL BE TO DETERMINE WHETHER THE PROPERTY CAN BE SOLD, NOT WHETHER YOU OWE THE MONEY.

3. If you own this property together with the debtor, any sale of the property will include your interest. The amount of your interest will be determined by the court and you will have the first right to purchase the property. YOU SHOULD COME TO THE HEARING TO PROTECT YOUR RIGHTS.

4. FOR YOUR OWN PROTECTION, YOU SHOULD PROMPTLY SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR OR OWNER, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD."

"IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y
 RESIDENTE

1. Su casa está en peligro de ser vendida para cumplir con una orden judicial obtenida en la corte. Usted podría proteger la casa y los bienes raíces descritos en la solicitud adjunta de la venta forzosa

si usted o su familia actualmente residen en la propiedad. USTED O SU ESPOSO(A) DEBEN VENIR A LA AUDIENCIA PARA DEMOSTRAR ESTE PUNTO.

2. Si usted o su esposo(a) quieren disputar la venta forzosa de esta propiedad, usted o su esposo(a) deberán presentarse a

_____ el _____
(Location set forth in O.S.C.) (Date and time)

y estar preparados para contestar las preguntas acerca de las declaraciones puestas en la solicitud adjunta. EL ÚNICO PROPÓSITO DE ESTA AUDIENCIA SERÁ EL DE DETERMINAR SI LA PROPIEDAD PUEDE SER VENDIDA, Y NO SI USTED DEBE DINERO.

3. Si usted es el dueño de esta propiedad junto con el deudor, cualquier venta de la propiedad incluya su interés. La cantidad de su interés será determinada por la corte y usted tendrá el primer derecho de comprar la propiedad. USTED DEBERÍA ATENDER LA AUDIENCIA PARA PROTEGER SUS DERECHOS.

4. PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA PRONTAMENTE DE BUSCAR EL CONSEJO DE UN ABOGADO EN ESTE ASUNTO. SI USTED ES UN RESIDENTE DE ESTA PROPIEDAD Y NO ES EL DEUDOR(A) O EL DUEÑO(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DÉSELO A SU ARRENDADOR."

Comment. Section 693.050 supersedes former Civil Code Section 1246 and former Code of Civil Procedure Section 690.31(d) and (o).

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§ 693.060. Notice of order for sale

693.060. (a) Until superseded by a form prepared by the Judicial Council, the notice of order for sale required by Section 704.800 shall be in both English and Spanish, in at least 10-point bold type, and in substantially the following form:

"IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

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

2. Your absence at the hearing has contributed to the issuance of the accompanying order for sale. If the absence of you or your attorney at the hearing was legally excusable and you believe in good faith that

your home may be entitled to an exemption, you should complete the form below and date, sign, and return the form below no later than _____. (Insert date no later than 10 days after date of service or 15 days if service is by mail.)

3. FOR YOUR OWN PROTECTION, YOU SHOULD IMMEDIATELY SEEK THE ADVICE OF AN ATTORNEY. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR OR OWNER, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.

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

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

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

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at _____, California
(Date) (City or county)

(Signature of debtor or debtor's spouse)

"IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y RESIDENTE

1. Recientemente se le entregó una orden de la corte pidiendo su presencia para una audiencia para determinar el porqué la corte no debería de extenderle una orden para la venta forzosa de su casa. USTED Y SU ESPOSO(A) NO VINIERON A LA AUDIENCIA Y LA CORTE HA ORDENADO QUE SU CASA SEA VENDIDA PARA SATISFACER EL JUICIO EN CONTRA DE USTEDES.

2. Su ausencia a la audiencia ha contribuido para la emisión de la orden de venta adjunta. Si la ausencia de ustedes o de su abogado en la audiencia es excusable legalmente y creen de buena fe que su casa puede tener derecho a una exención, debería de completar el formato que está debajo y fecharlo, firmarlo, y devolverlo no a mas tardar del _____.

(Insert date no later than 10 days after date of service or 15 days if service is by mail.)

3. PARA SU PROPIA PROTECCIÓN, USTED DEBERÍA INMEDIATAMENTE BUSCAR EL CONSEJO DE UN ABOGADO. SI USTED ES UN RESIDENTE DE ESTA PROPIEDAD Y NO ES EL DEUDOR(A) O EL DUEÑO(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DESELO A SU ARRENDADOR.

.....(Corte y Devuelva Este Formato a).....

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

Declaro que mi ausencia en la pasada audiencia sobre si esta propiedad debería de ser vendida o no fue legalmente excusable. Yo, o mi esposo(a), actualmente residimos en esta propiedad y deseo una audiencia adicional para hacer valer mi exención de casa y disputar la venta de mi casa. Entiendo que el oficial de la corte me notificara de la fecha y del lugar de esta audiencia si devuelvo este formato inmediatamente y que debo asistir a esta audiencia.

Declaro bajo pena de perjurio que lo anterior es verdadero y está correcto.

Firmado el _____ en _____, California
(Fecha) (Ciudad o condado)

(Firma del Deudor(a) o de la Esposa(o) del Deudor(a))

(b) Timely completion and return of the return portion of the Spanish language form has the same force and effect as timely completion and return of the English language form.

Comment. Section 693.060 continues the substance of former Civil Code Section 1251 and former Code of Civil Procedure Section 690.31(g) and (p).