

Memorandum 2012-47

**Third Decennial Review of Exemptions from
Enforcement of Money Judgments
(Comments on Tentative Recommendation)**

Code of Civil Procedure Section 703.120 directs the Commission to review the amounts that are exempt from the enforcement of money judgments, every 10 years:

703.120. (a) Ten years following the operative date of this title and every 10 years thereafter, the California Law Revision Commission shall review the exempt amounts provided in this chapter and in other statutes and recommend to the Governor and the Legislature any changes in exempt amounts that appear proper.

(b) Nothing in this section precludes the commission from making recommendations concerning exempt amounts more frequently than required by subdivision (a) or from making recommendations concerning any other aspect of this title, and the commission is authorized to maintain a continuing review of and submit recommendations concerning enforcement of judgments.

The decennial periods run from July 1, 1983, the operative date of the Enforcement of Judgments Law. Thus, the deadline for the third decennial review is July 1, 2013.

In August 2012, the Commission circulated a tentative recommendation on this topic, with a public comment deadline of November 1, 2012. In summary, the Commission found that existing law, providing for automatic adjustment of exemption amounts, is working well. This appears to obviate the need for any further periodic manual adjustment. For that reason, the Commission proposed that Section 703.120 be amended to eliminate the decennial review requirement.

The Commission has not received any public comment in response to the tentative recommendation. This is not surprising, as the Commission's proposal is modest and presents very little scope for controversy.

The staff has attached a draft of a final recommendation. The draft is largely identical to the tentative recommendation, but minor changes have been made to reflect the procedural posture of a final recommendation and to reflect legislative developments that have occurred since the tentative recommendation was

released (e.g., legislation that had been described as “pending” has since been enacted).

Unless concerns are raised before or at the Commission’s December meeting, the staff recommends that the Commission approve the attached draft as its final recommendation. If the recommendation is approved, it should be possible to introduce implementing legislation in 2013.

Respectfully submitted,

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Executive Director

#D-356

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Third Decennial Review of Exemptions from
Enforcement of Money Judgments

December 2012

California Law Revision Commission
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SUMMARY OF RECOMMENDATION

Code of Civil Procedure Section 703.120 requires the Law Revision Commission, every 10 years, to review the amounts that are exempt from the enforcement of money judgments.

In its first two decennial reviews, the Commission recommended adjustments to the exemption amounts, to account for inflation since the amounts had last been adjusted. Those adjustments were enacted into law.

In its second decennial review, the Commission also recommended the creation of a statutory cost of living adjustment (“COLA”) mechanism, to automatically increase the exemption amounts every three years. The recommended COLA mechanism was enacted into law.

The Commission has now completed its third decennial review. It finds that the automatic COLA mechanism has been operating as intended. Consequently, the statutory exemption amounts do not require manual adjustment at this time.

Because the COLA mechanism is properly adjusting the exemption amounts to account for inflation, the Commission sees no need for further decennial review of the exemption amounts. The Commission therefore recommends that Section 703.120 be amended to delete the decennial review requirement.

THIRD DECENNIAL REVIEW OF EXEMPTIONS FROM ENFORCEMENT OF MONEY JUDGMENTS

1 The Enforcement of Judgments Law was enacted on the Commission's
2 recommendation.¹

3 One long-standing feature of the Enforcement of Judgments Law is a set of
4 exemptions that limit the enforcement of a money judgment. Exemptions are
5 intended to protect an amount of property sufficient to support the judgment
6 debtor and the judgment debtor's family and to facilitate the financial
7 rehabilitation of the judgment debtor.²

8 Exemptions that are based on dollar amount limitations need to be periodically
9 adjusted, to avoid an unintended reduction in the value of the exemption over
10 time, as a result of inflation. To provide for continuing review and adjustment of
11 exemption amounts, the Commission recommended the enactment of Code of
12 Civil Procedure Section 703.120(a),³ which provides:

13 Ten years following the operative date of this title and every 10 years
14 thereafter, the California Law Revision Commission shall review the exempt
15 amounts provided in this chapter and in other statutes and recommend to the
16 Governor and the Legislature any changes in exempt amounts that appear proper.

17 Pursuant to that mandate, the Commission conducted its first decennial review
18 of exemption amounts in 1993.⁴ The second decennial review was conducted in
19 2003.⁵

20 The findings and recommendation set out in this report are the results of the
21 Commission's third decennial review.

GENERAL BACKGROUND

22
23 The Enforcement of Judgments Law includes two main sets of exemptions: the
24 exemptions available when enforcing a money judgment (Section 704.010 *et seq.*,
25 hereafter the "Section 704 money judgment exemptions") and an alternative set of
26 exemptions that are only available in bankruptcy (Section 703.140(b), hereafter
27 the "Section 703 bankruptcy exemptions").

1. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980); 1982 Cal. Stat. ch. 482.

2. *Id.* at 2075-2100. See also *1982 Creditors' Remedies Legislation*, 16 Cal. L. Revision Comm'n Reports 1001, 1079-1109 (1982).

3. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001, 2103-04 (1980).

4. See generally *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm'n Reports 1 (1995).

5. See generally *Exemptions from Enforcement of Money Judgments: Second Decennial Review*, 33 Cal. L. Revision Comm'n Reports 113 (2003).

1 **Section 704 Money Judgment Exemptions**

2 The Section 704 money judgment exemptions fall into three categories:

- 3 (1) *Exemptions that protect personal property without regard to the monetary*
4 *value of the property.*⁶ Because those exemptions are not limited to a
5 specified dollar amount, they are not subject to degradation in value as a
6 result of inflation. Consequently, there is no need to review or adjust any
7 “amounts” in connection with these exemptions.
- 8 (2) *Exemptions that protect personal property up to a specified amount of*
9 *value.*⁷ Because these exemptions are based on specified dollar amounts,
10 they require periodic adjustment to maintain their intended value.
- 11 (3) *The “homestead exemption,” which protects part of the value of real*
12 *property under specified circumstances.*⁸ In its prior decennial reviews, the
13 Commission has not made any recommendation to adjust the amount of the
14 homestead exemption.

15 **Bankruptcy Exemptions**

16 Federal bankruptcy law provides its own set of exemptions that are available in
17 personal bankruptcy.⁹ However, each state may opt out of the federal exemption
18 set, in which case the state’s own judgment enforcement exemptions apply in the
19 state’s bankruptcy proceedings.¹⁰

20 California has opted out of the federal bankruptcy exemption set.¹¹ This means
21 that the Section 704 money judgment exemptions are available in bankruptcy in
22 California, in lieu of the federal exemption set.

23 However, when California opted out of the federal bankruptcy exemptions, it
24 also enacted the Section 703 bankruptcy exemptions. Those exemptions were
25 modeled after the federal bankruptcy exemptions. They serve as an optional
26 alternative to the Section 704 money judgment exemptions. Thus, a bankruptcy
27 filer in California may choose between the state’s general money judgment

6. See Code Civ. Proc. §§ 704.020 (“ordinary and reasonably necessary” household furnishings, appliances, provisions, wearing apparel, personal effects), 704.050 (“reasonably necessary” health aids, including prostheses and orthopedic appliances).

7. See Code Civ. Proc. §§ 704.010 (motor vehicle), 704.030 (residential repair materials), 704.040 (jewelry, heirlooms, and works of art), 704.060 (tools of trade), 704.080 (directly deposited Social Security and public benefit payments), 704.090 (inmate trust account), and 704.100 (life insurance policy). Some of the exemption dollar amounts are increased if the judgment debtor is married. See Code Civ. Proc. §§ 704.060 (tools of trade), 704.090 (inmate trust account), 704.100 (life insurance policy). But the general rule is that married persons are not entitled to increased or doubled exemption amounts, regardless of whether one or both of the spouses are debtors and regardless of the separate or community nature of the property. See Code Civ. Proc. § 703.110(a).

8. See Code Civ. Proc. § 704.730.

9. See 11 U.S.C. § 522(d).

10. See 11 U.S.C. § 522(b)(1).

11. See Code Civ. Proc. § 703.130.

1 exemptions and an alternative exemption set that mirrors those provided under
2 federal law.

3 SCOPE OF PRIOR DECENNIAL REVIEWS

4 The Commission’s authority is not limited to review of the exemption amounts.
5 Code of Civil Procedure Section 703.120(b) makes clear that the Commission also
6 has general authority to “maintain a continuing review of and submit
7 recommendations concerning enforcement of judgments.” The Commission’s
8 resolution of authority also provides broad authority to study “enforcement of
9 judgments.”¹²

10 However, the decennial review required by Section 703.120(a) only addresses
11 the exemption “amounts.” The Commission is not required to consider other issues
12 as part of that review. Historically, the Commission has not gone beyond that
13 narrow mandate in conducting its decennial reviews. That approach was based on
14 the limited purpose of Section 703.120(a) (to provide a mechanism for periodic
15 review and adjustment of the exemption amounts) and the Commission’s view that
16 any major rebalancing of the equities of the existing exemption scheme should be
17 addressed by the Legislature through the political process.

18 In its prior decennial reviews, the Commission has not made any
19 recommendation to adjust the amount of the homestead exemption. That is
20 because the amount of the homestead exemption receives regular legislative
21 attention, obviating the need for Commission review. Since 1990, the homestead
22 exemption amount has been adjusted four times (most recently in 2012).¹³

23 The Commission has also not made any recommendation to change the amount
24 of the inmate trust account exemption, as it applies to victim restitution claims.¹⁴
25 The extent to which inmate funds should be shielded from court-ordered victim
26 restitution is fundamentally a political question that is best decided by the
27 Legislature and the Governor.

12. See 2009 Cal. Stat. res. ch. 98. See also ACR 98 (Wagner) (2012). Commission recommendations on enforcement of judgments include: *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm’n Reports 2001 (1980); *Attachment*, 16 Cal. L. Revision Comm’n Reports 701 (1982); *1982 Creditors’ Remedies Legislation*, 16 Cal. L. Revision Comm’n Reports 1001 (1982); *Creditors’ Remedies*, 17 Cal. L. Revision Comm’n Reports 975 (1984); *Creditors’ Remedies*, 19 Cal. L. Revision Comm’n Reports 1251 (1988); *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm’n Reports 1 (1995); *Homestead Exemption*, 26 Cal. L. Revision Comm’n Reports 37 (1996); *Attachment by Undersecured Creditors*, 26 Cal. L. Revision Comm’n Reports 307 (1996); *Debtor-Creditor Law: Technical Revisions*, 31 Cal. L. Revision Comm’n Reports 123 (2001); *Enforcement of Judgments Under the Family Code*, 35 Cal. L. Revision Comm’n Reports 161 (2005).

13. See 1990 Cal. Stat. ch. 155, § 1; 1997 Cal. Stat. ch. 82, § 1; 2003 Cal. Stat. ch. 64; 2009 Cal. Stat. ch. 499, § 2; 2012 Cal. Stat. ch. 678, § 3.

14. See Code Civ. Proc. § 704.090(b).

1 **First Decennial Review**

2 At the time of the Commission’s first decennial review in 1994, the exemption
3 amounts had not been updated since they became operative in 1983. Between
4 1983 and 1994, the purchasing value of the dollar had declined by one-third or
5 more. To account for this change in purchasing value due to inflation, the
6 Commission recommended increases in the Section 704 money judgment
7 exemptions. The Commission also recommended increases in the Section 703
8 bankruptcy exemptions (to keep pace with the federal bankruptcy exemptions).¹⁵
9 The Commission’s recommendations were enacted into law.¹⁶

10 **Second Decennial Review**

11 At the time of the Commission’s second decennial review in 2003, the
12 exemption amounts had not been updated since the enactment of the
13 Commission’s 1994 recommendations.

14 The Commission again recommended that the Section 704 money judgment
15 exemptions be increased to account for inflation.¹⁷ The recommended adjustments
16 were enacted into law.¹⁸

17 The Commission did not recommend any changes to the Section 703 bankruptcy
18 exemption amounts, because the Legislature had adjusted those amounts in 2001.¹⁹
19 In the same legislation, the Legislature had also created an automatic triennial
20 Cost of Living Adjustment (“COLA”) for the Section 703 bankruptcy exemptions.
21 It did so by incorporating a COLA mechanism from federal law, which
22 automatically updates the amounts of the federal bankruptcy exemptions.²⁰ This
23 COLA mechanism ensured that the Section 703 bankruptcy exemptions would
24 maintain rough parity with the federal bankruptcy exemption amounts. It was
25 therefore not necessary for the Commission to recommend any other adjustments
26 to the Section 703 bankruptcy exemptions.

27 Instead, the Commission recommended that the automatic COLA approach be
28 broadened, so that it would also apply to the Section 704 general exemption
29 amounts. This would be done by replacing former Code of Civil Procedure
30 Section 703.140(c) with Code of Civil Procedure Section 703.150, which would
31 govern both sets of exemptions.²¹ The proposed COLA provision would not apply

15. See generally *Debtor-Creditor Relations*, 25 Cal. L. Revision Comm’n Reports 1 (1995).

16. See 1995 Cal. Stat. ch. 196.

17. See generally *Exemptions from Enforcement of Money Judgments: Second Decennial Review*, 33 Cal. L. Revision Comm’n Reports 113 (2003).

18. See 2003 Cal. Stat. ch. 379.

19. See 2001 Cal. Stat. ch. 42, § 1.

20. See former Code Civ. Proc. § 703.140(c); 11 U.S.C. § 104(b)(1)(A).

21. See 2009 Cal. Stat. ch. 379, §§ 3-4.

1 to the homestead exemption or the exemption of inmate trust accounts from victim
2 restitution claims.

3 Under Code of Civil Procedure Section 703.150, the Judicial Council would
4 have the responsibility of determining and publishing the triennially adjusted
5 amounts, based on the change in the annual California Consumer Price Index for
6 All Urban Consumers, with each adjusted amount rounded to the nearest twenty-
7 five dollars (\$25). The \$25 rounding factor was drawn from federal law.²²

8 The recommended COLA mechanism was enacted into law.²³

9 THIRD DECENNIAL REVIEW

10 Consistent with the approach taken in prior decennial reviews, the
11 Commission's third decennial review focuses on whether the amounts for the
12 Section 704 money judgment exemptions and the Section 703 bankruptcy
13 exemptions need to be adjusted to account for inflation.

14 Those exemptions do not need to be manually adjusted at this time, because they
15 have been adjusted properly by the statutory COLA mechanism.

16 The Commission checked all of the adjustments that were required to be made
17 since enactment of the COLA mechanism and confirmed the accuracy of those
18 calculations and of the final adjusted amounts.²⁴ In addition, the Commission
19 confirmed that the adjusted exemption amounts are being published by the Judicial
20 Council as required by law and are readily available to the public.²⁵

21 The Commission is not aware of any problem with the operation of the COLA
22 mechanism. The Commission found no court decision or secondary source that
23 identified any legal or practical problem with the operation of the COLA
24 mechanism.²⁶ Nor has any interested group expressed any concerns about the
25 operation of the COLA mechanism.²⁷

26 One recent development suggests that the Legislature is satisfied with the
27 operation of the COLA mechanism. In 2009, the application of the COLA
28 mechanism was broadened. It is now used to calculate the effect of inflation on the
29 amount of the homestead exemption.²⁸

22. See 11 U.S.C. § 104(b)(1)(B).

23. See 2003 Cal. Stat. ch. 379.

24. See Commission Staff Memorandum 2012-10, pp. 6-7 (Mar. 19, 2012).

25. In addition to being posted on the Internet, the Judicial Council's list of current exemption amounts must be served with a writ of execution. This gives the debtor actual notice of the current exemption amounts. See Code Civ. Proc. § 700.010; Commission Staff Memorandum 2012-10, p. 7 (Mar. 19, 2012).

26. Commission Staff Memorandum 2012-10, p. 8 (Mar. 19, 2012).

27. The Commission solicited input on the efficacy of the COLA mechanism from the Judicial Council, the California State Sheriffs' Association, the California Association of Collectors, the California Bankers Association, the California State Bar Insolvency Committee, and the Western Center on Law and Poverty. *Id.* at 7-8.

28. See 2009 Cal. Stat. ch. 499 (AB 1046 (Anderson)).

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RECOMMENDATION

2 Current law appears to provide an adequate means for automatic adjustment of
3 the exemption amounts over time, without the need for the Commission to
4 periodically review those amounts and manually adjust them. In fact, the
5 automatic adjustments appear to be superior to the Commission's decennial review
6 process, because the adjustments take place at three-year intervals, rather than
7 every 10 years.

8 For those reasons, the Commission recommends that Civil Code Section
9 703.120 be amended to delete the decennial review requirement.

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 703.120 (amended). Law Revision Commission review**

2 SECTION 1. Section 703.120 of the Code of Civil Procedure is amended to
3 read:

4 ~~703.120. (a) Ten years following the operative date of this title and every 10~~
5 ~~years thereafter, the California Law Revision Commission shall review the exempt~~
6 ~~amounts provided in this chapter and in other statutes and recommend to the~~
7 ~~Governor and the Legislature any changes in exempt amounts that appear proper.~~

8 ~~(b) Nothing in this section precludes the commission from making~~
9 ~~recommendations concerning exempt amounts more frequently than required by~~
10 ~~subdivision (a) or from making recommendations concerning any other aspect of~~
11 ~~this title, and the commission~~ The California Law Revision Commission is
12 authorized to maintain a continuing review of and submit recommendations
13 concerning enforcement of judgments.

14 **Comment.** Section 703.120 is amended to delete the requirement that the Law Revision
15 Commission conduct a decennial review of exemption amounts. The Commission's general
16 authority to review the Enforcement of Judgments Law is unaffected.
