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eferences

C – Civil Code

CP – Code of Civil Procedure

ORP – Corporations Code

GC – Government Code

PROB – Probate Code

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• 6-14/000.00 Miscellaneous Remedies For Judgment Creditors

Certain remedies are available to a judgment creditor. The creditor may:

- Obtain an order to examine the debtor concerning the debtor's property. (CCP 708.110)
- File a creditor's suit against a third party. (708.210)
- Propound written interrogatories to the debtor.(CCP 708.020)
- Inspect documents (CCP 708.030)
- Obtain a charging order against the debtor's interest in a partnership. (CCP 708.310)
- Obtain a lien in a pending action or proceeding. (CCP 708.410)
- Obtain an assignment order (CCP 708.510)
- Seek the appointment of a receiver (CCP 708.620)
- Collect money owed the debtor by a public entity (CCP 708.710)
- Seek an order against a franchise granted by a public entity (CCP 708.910)
- Seek an order for enforcement against a trust (CCP 709.010)
- Seek an order enforcement against nonvested property (CCP 709.020)
- Seek an order enforcement against property in a guardianship or conservatorship (CCP 709.030)

• 6-14/100.00 Order For Examination of Judgment Debtor

The judgment creditor may obtain an Order to Appear for Examination (AT-138/EJ-125) compelling the judgment debtor to appear in court and answer questions about the debtor's assets.

• • 6-14/100.10 Court Seal Not Required

CCP 153 Except as otherwise expressly provided by law, the seal of a court need not be affixed to any proceeding therein, or to any document, except to the following:

a. A writ.
b. A summons.
c. A warrant of arrest.

• • 6-14/110.20 Service

Written instructions, the fee deposit and a copy of the order are required for service. The order must be personally served at least 10 days before the hearing. Failure to appear is punishable as a contempt of court. Service of the order creates a lien on the debtor's property for one year. Unless good cause is shown, a creditor shall not examine a debtor more often than once every 120 days. Service of the order creates a lien on the debtor's personal property for one year from the date of the order. The order contains a warning that the debtor is subject to arrest for contempt for failure to appear at the hearing. (CCP 708.110)

• • 6-14/110.30 Affidavit of Identity

Pursuant to an affidavit of identity, the creditor may attempt to levy on property in the possession of a third person which stands in an additional name (alias) used by the debtor and not listed in the judgment. The affidavit of identity sets forth grounds establishing an alias name of the debtor and is submitted to the court for approval when applying for a writ of execution. The court may, without notice or hearing, approve the affidavit of identity and order the clerk to add the debtor's alias name to the writ of execution. The garnishee shall not transfer property levied on under an alias named in an affidavit of identity until directed to do so by the levying officer. The levying officer shall not direct delivery sooner than 15 days after levy. An affidavit of identity is inapplicable to an earnings withholding order or seizure from the possession of the debtor. The notice of levy shall include any name listed in the affidavit of identity. After levy, the levying officer shall promptly serve on the debtor, personally or by mail, a copy of the writ of execution, notice of levy, exemptions list (if the debtor is a natural person) and affidavit of identity. The creditor is liable to any person not the debtor whose property is wrongfully attached. (CCP 685.135, 699.510, 699.520, 699.540, 699.545, 700.010, 700.160)

• • 6-14/110.40 Travel Distance

A debtor and the debtor of a judgment debtor are not required to attend an examination in another county unless the distance is less than 150 miles from their place of residence. Witnesses may testify at examination hearings. (CCP 708.160)

• • 6-14/110.50 Appearance by Artificial Person

An order for examination of a corporation, partnership or other organization may be directed to a specified individual or the organization. (CCP 708.150)

• • 6-14/110.60 Failure to Appear

If an order requiring a person to appear for an examination was served by a sheriff, marshal, a person specially appointed by the court in the order, or a registered process server, and the person fails to appear, the court may issue a warrant pursuant to CCP 1993, find the person in contempt, or both. A person who willfully makes an improper service of an order for an examination which subsequently results in the person's arrest is guilty of a misdemeanor. (CCP 708.170)

• • 6-14/120.00 Order For Examination of Debtor of Judgment Debtor

A judgment creditor may obtain an order to examine a third party in possession of the judgment debtor's property. Mileage fees at the rate of $0.20 a mile to and from the third party's residence must be tendered at the time of service. Service of the order creates a lien on the debtor's property for one year. The debtor must also be served personally or by mail at least ten days before the hearing. Failure to appear to punishable as a contempt. The third party may not be required to appear before a court outside the county of the third party's residence unless the distance is less than 150 miles. The court may issue an order forbidding the transfer of the property to the debtor until ownership is determined or a creditor's lawsuit is filed. The court may also order that the property be applied toward the satisfaction of a money judgment thereby creating a lien on the property. A court seal is not required on the order. The debtor may file a claim of exemption with the court. (CCP 708.120)

• • • 6-14/120.10 Service on Debtor of Judgment Debtor

Written instructions, the fee deposit and a copy of the order are required for service. The order must be served personally at least 10 days before the hearing. (CCP 708.120)

• • • 6-14/120.20 Service on Judgment Debtor

In addition to service of the order for appearance of the debtor of the judgment, the judgment debtor must also be served either personally or by mail at least 10 days prior to the hearing date. If service is by mail, the time is extended by 5, 10 or 20 days if mailed to a California address, another United States address or a foreign country address, respectively. Consequently, the order must be deposited in the mail at least 15 days prior to the hearing date if the judgment debtor's address is in the State of California. Service on the debtor is a separate service requiring a separate service fee. There is no requirement that the same person make both services. (CCP 708.120, 684.120)

• • • 6-14/120.30 Certificate of Service

Most courts, by court rule, require the original order, unless kept in the court file, and the proof of service be filed with the court a specific number of court days prior to the hearing, and will not issue a warrant for failure to appear or allow any costs if the return is not filed timely. Unless specifically requested otherwise, send the return directly to the clerk of court as soon as possible after service rather than the party requesting service. In Limited Civil cases, including small claims cases, send the return directly to the referee who presides in these matters, or the referee's clerk. Most courts, however, will proceed with the examination whether or not the return has been filed, if all the parties are present and ready to proceed at the time set.

• • • 6-14/120.40 Lien

The court may order the judgment debtor's interest in the property in the possession or under the control of the judgment debtor or the third person or a debt owed by the third person to the judgment debtor to be applied toward the satisfaction of the money judgment if the property is not exempt from enforcement of a money judgment. Such an order creates a lien on the property or debt. (CCP 708.205)The court may order the judgment debtor's interest in the property in the possession or under the control of the judgment debtor or the third person or a debt owed by the third person to the judgment debtor to be applied toward the satisfaction of the money judgment if the property is not exempt from enforcement of a money judgment. Such an order creates a lien on the property or debt. (CCP 708.205)The court may order the judgment debtor's interest in the property in the possession or under the control of the judgment debtor or the third person or a debt owed by the third person to the judgment debtor to be applied toward the satisfaction of the money judgment if the property is not exempt from enforcement of a money judgment. Such an order creates a lien on the property or debt. (CCP 708.205)

• 6-14/200.00 Creditorâ€™s Suit

If a third person possesses or controls property in which the judgment debtor has an interest or is indebted to the judgment debtor, the judgment creditor may bring suit against the person to apply the property or debt to the money judgment. A creditor's suit may be filed if: the third person fails to perform the duties of a garnishee; the court refuses to determine disputed ownership of property; or the third person is uncooperative. (CCP 491.170, 708.180)

The court may require the judgment creditor to provide an undertaking. The court may enter judgment against a third person who transfers property or pays a debt in violation of a restraining order. The third person may also be held in contempt. The judgment debtor may claim an exemption with the court for property that is the subject of a creditor's suit. The court may order the property or debt applied to satisfy the creditor's judgment against the judgment debtor. The court may also order the third person not to transfer the property in which the judgment debtor has an interest until it can be levied upon or otherwise applied to satisfy the judgment. Judgment will be entered against the third person if the third person transferred property subject to a lien in favor of the judgment creditor or contrary to a court. Judgment is in an amount equal to the lesser of the value of the judgment debtor's interest in the transferred property or the amount of the repaid debt or the unsatisfied amount of the creditor's judgment against the judgment debtor.

• • 6-14/200.10 Grounds for Suit

If a third person has possession or control of property in which the judgment debtor has an interest or is indebted to the judgment debtor, the judgment creditor may bring an action against the third person to have the interest or debt applied to the satisfaction of the money judgment. (CCP 708.210)

• • 6-14/200.20 Restraining Order

The judgment creditor may obtain a restraining order, temporary restraining order or preliminary injunction enjoining the third person from transferring property in which the judgment debtor has an interest. The order remains in effect until judgment is entered in the creditor's suit. (CCP 708.240)

• • 6-14/200.30 Lien

Service of summons on the third person defendant creates a lien on the judgment debtor's interest in property possessed or controlled by the third person. The lien continues until the judgment becomes unenforceable. There is no right to a jury trial in a creditor's suit. (CCP 708.250)

• 6-14/300.00 Receiver

• • 6-14/300.10 Grounds for Receiver

The court may appoint a receiver to enforce a judgment if the judgment creditor can show that the appointment of a receiver is a reasonable method to obtain the fair and orderly satisfaction of the judgment. (CCP 708.620)

• • 6-14/300.20 Alcoholic Beverage License

The receiver may transfer the debtor's interest in an alcoholic beverage license. (CCP 708.630)

• • 6-14/310.00 Written Interrogatories

The judgment creditor may propound written interrogatories to the judgment debtor requesting information to aid in enforcement of the money judgment. Interrogatories may be enforced in the

same manner as interrogatories in a civil action. (CCP 708.020)

• • 6-14/320.00 Inspection of Documents

The judgment creditor may demand that any judgment debtor produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to copy a document that is in the possession, custody, or control of the party on whom the demand is made. Inspection demands served pursuant to this section may be enforced to the extent practicable, in the same manner as inspection demands in a civil action. (CCP 708.030)

• • 6-14/330.00 Charging Order

Certain types of property are not subject to an execution levy but may be subject to enforcement of a money judgment through some other procedure. A partner's interest in partnership or limited liability company property is not subject to an execution levy by seizure or garnishment. (CCP 699.720)

A money judgment can be enforced against a debtor partner's interest in a partnership, but not by writ of execution. Generally, other enforcement procedures must be utilized. A special enforcement procedure enables the creditor to reach a debtor's partnership interests by obtaining a charging order. If a money judgment is rendered against a partner but not against the partnership, the judgment debtor's interest in the partnership may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to CORP 15907.3, 16504, or 17705.03. (CCP 708.310)

A lien on a judgment debtor's interest in a partnership or limited liability company is created by service of a notice of motion for a charging order on the judgment debtor and on all partners or the partnership, or all members of the limited liability company. If a charging order is issued, the lien created pursuant to subdivision (a) continues under the terms of the order. If issuance of the charging order is denied, the lien is extinguished. (CCP 708.320)

• • 6-14/340.00 Pending Action

A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien by filing a notice of lien and an abstract or certified copy of the judgment creditor's money judgment in the pending action or special proceeding. The judgment creditor shall serve personally, or by mail, a copy of the notice of lien on all parties who have made an appearance in the action or special proceeding. (CCP 708.410)

The notice of lien shall contain (CCP 708.420):

- a statement that a lien has been created
- the court and the cause and number of the pending action
- the name and last known address of the judgment debtor and judgment creditor
- the title of the court and case number where the judgment was entered
- judgment entry date any subsequent renewals
- the amount required to satisfy the judgment at the time the notice of lien is filed
- A statement that the lien attaches to any cause of action of the judgment debtor that is the subject of the action or proceeding and to the judgment debtor's rights to money or property under any judgment subsequently procured in the action or proceeding.
- A statement that no compromise, dismissal, settlement, or satisfaction of the pending action or proceeding or any of the judgment debtor's rights to money or property under any judgment procured therein may be entered into by or on behalf of the judgment debtor, and that the judgment debtor may not enforce the judgment debtor's rights to money or property under any judgment procured in the action or proceeding by a writ or otherwise, unless:
- The prior approval by order of the court in which the action or proceeding is pending has been obtained, or
- The written consent of the judgment creditor has been obtained or the judgment creditor has released the lien, or
- The money judgment of the judgment creditor has been satisfied.
- A statement that the judgment debtor may claim an exemption for all or any portion of the money or property within 30 days after the judgment debtor has notice of the creation of the lien and
- a statement that, if the exemption is not claimed within the time allowed, the exemption is waived.

Other codified references for regarding liens in pending actions: (CCP 708.410 – 708.480)

• 6-14/400.00 Assignment Order

An Assignment Order (or Order for Assignment) is a court order after noticed motion assigning a judgment debtor, or debtor of a debtor, certain rights to the judgment creditor. An Assignment Order is not a levy. The order requires payments that the judgment debtor would usually get, like rent from tenants, wages from the federal government, sales commissions, royalties, a business's accounts receivable, or installment payments on promissory notes or judgments. The payments are made directly to the judgment debtor, not the Sheriff's Department. A Writ of Execution for Money Judgment is not required.
If the Sheriff's Department is requested to serve the order, written and signed instructions are required as in any other service. A service fee of $40 pursuant to CCP 26720.9.

Assignment Order references: CCP 708.510 – 708.560

• 6-14/500.00 Money Owed by Public Entity

Unless authorized by statute, a public entity is not subject to garnishment. (Irilarry v. City of San Diego, 199 CA 1041, 186 CA 535) This exemption cannot be waived by their officers or agents. (Vaughn v. Condon, 52 CA 713) City and county housing authorities come under this exemption. If money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file an abstract of the money judgment or a certified copy of the money judgment, together with an affidavit that states that the judgment creditor desires the relief provided by the article and states the exact amount then required to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor. If the public entity owes money to a judgment debtor, the public entity can be served with an Earnings Withholding Order in accordance with the Wage Garnishment laws, CCP 706.010 – 706.154, or notice of lien, CCP 708.410 – 708.480. (CCP 708.720)

As used in this article (CCP 708.710):

a. “Local public entity” means any public entity other than the state.
b. “Public entity” means the state, a county, city, district, public authority, public agency, and any other political subdivision in the state.
c. “State” means the State of California.
d. “State agency” means a state office, officer, department, division, bureau, board, commission or agency claims against which are paid by warrants drawn by the Controller.

• • 6-14/500.10 Filing Abstract or Certified Judgment with Public Entity

If money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file an abstract of the money judgment or a certified copy of the money judgment, together with an affidavit that states that the judgment creditor desires the relief provided by this article and states the exact amount then required to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor. (CCP 708.730)

• • 6-14/500.20 Filing Abstract or Certified Judgment with State Agency

Except where the judgment is for support and the money owed is for lottery winnings, or tax refund, penalty, interest, and the support obligation is not being enforced pursuant to the Family Code, if money is owing and unpaid to the judgment debtor by a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the state agency owing the money to the judgment debtor prior to the time the state agency presents the claim of the judgment debtor to the Controller. (CCP 708.740)

• • 6-14/500.30 Payment of Debt by Public Entity Other Than State Agency

If money is owing and unpaid to the judgment debtor by a public entity other than a state agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the

auditor of the public entity or, if there is no auditor, with the official whose duty corresponds to that of auditor. (CCP 708.750)

• • 6-14/500.40 Lottery Prize

If money is owing and unpaid to the judgment debtor by the state lottery agency, the judgment creditor shall file the abstract or certified copy of the judgment and the affidavit with the state lottery agency owing the money to the judgment debtor prior to the time the state agency presents the claim of the judgment debtor to the Controller. This will create a lien on lottery prizes to be paid in annual installments and shall continue in force and effect until the judgment is paid or expires, whichever occurs first, unless renewed. (CCP 708.755)

• • 6-14/500.50 Debtor is Public Works Contractor

If the judgment debtor named in lien is a contractor upon a public work contract, after deducting moneys due to persons described in CC 9100, upon the completion of the contract, the public work agency may deposit an amount with the court to satisfy the lien. (CCP 708.760)

• • 6-14/500.60 Franchise Issued by Public Entity

A “franchise” means a franchise granted by a public entity and all the rights and privileges thereof, other than the franchise of being a corporation. (CCP 708.910) The court may order a franchise to satisfaction a money judgment upon application by the judgment creditor made on noticed motion. The notice of motion shall be served on the judgment debtor and the public entity that granted the franchise. Service shall be made personally or by mail. (CCP 708.920)

• 6-14/600.00 Trust

The judgment debtor’s interest as a beneficiary of a trust is subject to enforcement of a money judgment only upon petition by a judgment creditor to the probate court having jurisdiction over administration of the trust, including but not limited to imposition of a lien on or sale of the judgment debtor’s interest, collection of trust income, and liquidation and transfer of trust property by the trustee. (CCP 709.010) A “trust” has the meaning provided in PROB 82.

• 6-14/700.00 Nonvested Property

The judgment creditor may apply to the court on noticed motion for an order applying to the satisfaction of a money judgment a contingent remainder, executory interest, or other interest of the judgment debtor in property that is not vested in the judgment debtor. The interest of the judgment debtor may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper to protect the interests of both the judgment debtor and judgment creditor, including but not limited to the imposition of a lien on or the sale of the judgment debtor's interest. (CCP 709.020)

• 6-14/800.00 Guardianship or Conservatorship Property

Property in a guardianship or conservatorship estate is not subject to enforcement of a money judgment by a procedure provided in this division, but the judgment creditor may apply to the court in which the guardianship or conservatorship proceeding is pending under Division 4 (commencing with Section 1400) of the Probate Code for an order requiring payment of the judgment. (CCP 709.030, PROB 1400 et seq)