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References

CC – Civil Code

CCP – Code of Civil Procedure

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• 6-17/100.00 Innkeeperâ€™s Lien

An Innkeeper’s Lien is the right to take and hold or sell the property of a debtor (guest) as security or payment for a debt. Innkeeper's lien is a possessory or statutory lien allowing an innkeeper to hold, as security for payment, personal property that a guest has brought into the hotel.

The extent of innkeeper’s liens against baggage and other property of guests or renters, and the procedures for enforcement of such liens, are set forth in CC 1859 et seq.

CC 1861 sets forth the lien and procedures for enforcement in the case of a keeper of a hotel, motel, inn, boardinghouse, or a lodging house. The enforcement procedures in CC 1861 are enforced by the levying officer. It is to the lien created by CC 1861 that the provisions of this chapter of the manual apply.

The procedures for enforcement of innkeeper’s liens are not identical but closely parallel those set forth in the Code of Civil Procedure for claim and delivery. As in claim and delivery, the enforcement of an innkeeper’s lien is a provisional remedy that cannot be employed independently, but only under an action brought to recover charges or monies due. An Innkeepers covers the proper charges due from such guests for their accommodation, board and lodging and room rent, and such extras as are furnished at their request, and for all money paid for or advanced to such guests and for the costs of enforcing such lien. The lien may be enforced only after final judgment, however, during the pendency of the proceeding, the plaintiff may take possession of the baggage and property pursuant to a writ of possession. Any property which is exempt from enforcement of a money judgment is not subject to the lien. (CC 1861)

A “hotel,” “motel” “inn,” “boardinghouse,” or “lodging house keeper” means any person, corporation, partnership, unincorporated association, public entity, or agent of any of the aforementioned, who offers and accepts payment for rooms, sleeping accommodations, or board and lodging and retains the right of access to, and control of, the dwelling unit. (CC 1861.1) All references in this chapter to “innkeeper” shall include any such person or entity.

As hereinafter used in this chapter, the term “guest(s),” shall include “guests,” “boarders,” “tenants” and ”lodgers”; and the term “hotel,” shall include “hotel,” “motel,” “inn,” “boardinghouse,” and ”lodging house”.

• 6-17/110.00 Issuance of Writ of Possession

The plaintiff may apply for a writ of possession at the time the complaint is filed or at any time thereafter prior to judgment. (CC 1861.5) A writ shall not be issued except after a hearing on a noticed motion. A writ may be issued ex parte if probable cause exists (CC 1861.6):

(1) The property is not necessary for the support of the defendant or his family;

(2) There is an immediate danger that the property will become unavailable to levy, by reason of being transferred, concealed, or removed from the state, or the premises of the motel, hotel, inn, boardinghouse, or lodginghouse, or will become substantially impaired in value by acts of destruction or by failure to take care of the property in a reasonable manner; and

(3) The ex parte issuance of a writ of possession is necessary to protect the property.

(4) The plaintiff establishes the probable validity of the plaintiff's claim.

If the plaintiff establishes at the hearing the probable validity of the claim and that the described property is located on the premises of the hotel, a writ of possession shall issue if the plaintiff has provided the required undertaking. (CC 1861.10) The undertaking shall be in an amount not less than twice the value of the property. (CC 1861.21)

• 6-17/120.00 Summons and Complaint

In the case of a hearing on noticed motion, at least 16 court days prior to the hearing the defendant must be served with a copy of the summons and complaint, a notice of application and hearing, and a copy of the application and any affidavit filed in support thereof. (CC 1861.7, CCP 1005)

• 6-17/130.00 Temporary Restraining Order

At or after the time the plaintiff files an application for a writ of possession, the plaintiff may apply for a temporary restraining order by setting forth in the application a statement of grounds justifying the issuance of such order. (CC 1861.16) Service fees and instructions are applicable.

• 6-17/140.00 Contents of Writ of Possession

The writ of possession shall be directed to the levying officer within whose jurisdiction the property is located and shall include all the following: (CC 1861.12, CCP 153)

1. The seal of the court.
2. Generally describe the property to be seized.
3. Specify the premises that may be entered to take possession of the property.
4. A direction to the levying officer to seize, retain, and release or sell the property as required by law.
5. Inform the defendant of the right to object to the plaintiff's undertaking, a copy of which shall be attached to the writ, or to obtain redelivery of the property by filing an undertaking with the court.

• 6-17/200.00 Seizure of Property

• • 6-17/210.00 Method of Seizure

The levying officer shall enter the premises described in the writ and seize the property generally described in the writ as identified by the plaintiff. The levying officer's entry is through the permission of the plaintiff, who, by definition, retains the right of access to, and control of, the dwelling unit.

• • 6-17/220.00 Service of Writ of Possession

• • 6-17/230.00 After Hearing Writ of Possession

At the time of levy, the levying officer shall deliver to the person in possession of the property a copy of the writ of possession, with a copy of the plaintiff's undertaking attached. (CC 1861.18)

If no one is in possession of the property at the time of levy, the levying officer shall subsequently serve the writ and attached undertaking on the defendant.

If service on the defendant is required, it shall be by personal service, or:

If the defendant has not appeared in the action, in the manner provided for the service of summons and complaint.

If the defendant has appeared in the action, by leaving with a person at least 18 years of age at the defendant's residence between the hours of 8 a.m. and 6 p.m. If at the time of attempted service between said hours no such person can be found, service may be made by first class mail at the defendant's office address as last given on any document filed in the cause by the defendant and served on the plaintiff; otherwise, at the defendant's residence address. If the defendant's residence address is unknown, then service is effected by delivery to the clerk of the court. (CCP 1011, 1013)

• • 6-17/240.00 Ex Parte Writ of Possession

The following listed documents must be delivered both to the person in possession of the property at the time of the levy and to the defendant subsequent to the levy, unless they be one and the same, in which case only one service is required. (CC 1861.6)

A copy of the summons and complaint

A copy of the application and any affidavit in support thereof

A notice that informs the defendant of the rights under CC 1861.8

A copy of the writ of possession with a copy of the plaintiff's undertaking attached

The service(s) shall be made in the manner provided for the service of a summons and complaint.

• • 6-17/250.00 Writ Return

The levying officer shall return the writ of possession, with his proceedings thereon, to the court in which the action is pending, within 30 days after a levy, but in no event more than 60 days after the writ is issued. (CC 1861.20)

• 6-17/300.00 Objection to Undertaking

The defendant may object to the plaintiff's undertaking by filing a notice of objection to undertaking with the court and mailing a copy to the levying officer within 10 days after levy.

The plaintiff may object to an undertaking filed by the defendant for redelivery of the property by filing a notice of objection to undertaking with the court and mailing a copy to the levying officer within 10 days after the defendant filed the undertaking for redelivery with the court.

(CC 1861.23)

• 6-17/400.00 Motion To Quash Ex Parte Writ

A defendant whose property has been taken pursuant to a writ issued ex parte may apply for an order that the writ be quashed and any property levied on pursuant to the writ be released. The application shall be made by noticed motion. (CC 1861.6)

• 6-17/500.00 Third Party Claim

Where the property taken is claimed by a third person, the general rules and proceedings for third party claims apply. (CC 1861.25) (See CCP 720.010 et seq)

• 6-17/600.00 Disposition of Property

Property seized must be kept in a secure place by the levying officer until disposed of. (CC 1861.19)

• • 6-17/610.00 Delivery to the Plaintiff

Except as required by court order, if notice of the filing of an undertaking for redelivery or notice of objection to the undertaking is not received by the levying officer within 10 days after levy of the writ of possession, the levying officer shall deliver the property to plaintiff, upon receiving the fees for taking, and necessary expenses for keeping, the property. (CC 1861.19(1))

• • 6-17/620.00 Redelivery to the Defendant

Except as required by court order, if notice of the filing of an undertaking for redelivery is received by the levying officer within 10 days after levy of the writ of possession, and no objection is made to the defendant's undertaking, the levying officer shall redeliver the property to defendant upon expiration of the time to object, upon receiving the fees for taking and necessary expenses for keeping the property not already paid or advanced by the plaintiff. (CC 1861.19(2))

Since the plaintiff's objection must be filed with the court within 10 days of the date the defendant filed the undertaking with the court, and a copy of the objection is only required to be mailed to the levying officer within that time, the levying officer should allow for an additional time to receive a notice of objection that may have been timely filed and mailed. As a consequence, absent receipt of the notice of objection, the property should not be redelivered until 15 days have elapsed from the defendant's filing of an undertaking for redelivery, unless the officer has independent knowledge that the notice of objection was in fact not filed within the 10 days, in which case the property should be redelivered at the expiration of the 10 days.

• 6-17/700.00 Perishable Property Sale

Perishable property may only be sold pursuant to an order of the court, in which case the proceeds of the sale shall be deposited in the court to abide the judgment in the action. (CC 1861.19(3)(b))

• 6-17/800.00 Sale of Seized Items After Judgment

Unless the judgment is paid within 30 days from the date it becomes final, the plaintiff may sell the baggage and property at public auction. The sale is conducted by the plaintiff and not the levying officer. (CC 1861.24)