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References

CCP – Code of Civil Procedure

COMM – Commercial Code

FIN – Financial Code

HS – Health and Safety

VEH – Vehicle Code

WIC – Welfare and Institutions Code

Updated December 15, 2020

Edited December 15, 2020

• 6-19/100.00 Writ of Attachment

The court may issue a writ of attachment directing the levying officer to levy on property of the defendant and to hold it as security for the payment of any judgment that may be recovered in the lawsuit.

The original statute authorizing writs of attachment was declared unconstitutional. (Randone v. Appellate Department, 5 CA 3d 536) The California Supreme Court held that prejudgment attachment of property without prior notice to the defendant or hearing violated due process. The present Attachment Law was revised to afford defendants due process under the 14th Amendment of the U.S. Constitution. Attachment proceedings are ancillary to and independent of the main lawsuit.

A writ of attachment was unknown at common law and is provided for by statute. (Anaheim National Bank v. Kraemer, 120 CA APP 63) In as much as attachment procedures are purely the creation of the Legislature, the statute is subject to strict construction. (Commercial & Farmers National Bank v. Hetrick, 64 CA 3d 158) Unless specifically provided for by the Attachment Law, no attachment procedure may be ordered by the court. (Nakasone v. Randall 129 CA 3d 757)

A writ of attachment may be issued ex parte (without notice to the defendant) or following a noticed hearing. The court must find that the claim is one upon which an attachment may be issued, the claim is probably valid, and the property sought to be levied is not exempt from attachment. Additionally, if the writ is issued ex parte, the court must find that great or irreparable injury would result to the plaintiff if issuance was delayed until the matter could be heard on notice.

• 6-19/110.00 Jurisdiction of Court

California's trial courts consisted of superior and municipal courts, each with its own jurisdiction and number of judges. In June 1998, California voters approved Proposition 220, permitting the judges in each county to merge their superior and municipal courts into a "unified," or single, superior court. As of February 2001, all 58 counties have unified their trial courts.

The writ of attachment is not found in the small claims court. The small claims court is generally presided over by a justice of the peace or judge pro temp and is a summary method of expediting causes where the amount involved is less than $5,000. It is an abbreviated procedure heard informally without the presence of attorneys on either side and without formal pleadings.
Writs of attachment and garnishment are denied the plaintiff. (Superior Wheeler C. Corp. v. Superior Count, et al, 203 Cal. 384)

• 6-19/120.00 Definitions

• • 6-19/120.01 Interchangeable Terms

- “Amount required to satisfy the judgment” shall be deemed references to the amount required to satisfy the amount to be secured by the attachment.
- “Execution lien” or “lien” shall be deemed references to the attachment lien.
- “Judgment creditor” shall be deemed references to the plaintiff.
- “Judgment debtor” shall be deemed references to the defendant.
- “Levy” shall be deemed references to levy of attachment.
- “Notice of levy” shall be deemed references to notice of attachment.
- “Release” of property shall be deemed references to release of property pursuant to this title.
- “Satisfaction or discharge of the judgment” shall be deemed references to the satisfaction or termination of the attachment.
- “Writ” or “writ of execution” shall be deemed references to a writ of attachment.
- “Levy” shall be deemed references to levy of attachment.
- “Notice of the levy” shall be deemed references to notice of attachment.

(CCP 488.600)

• • 6-19/120.02 Account Debtor

"Account debtor" means the person who is obligated on an account, chattel paper or general intangible. (CCP 481.020, COMM 9102(a)(3))

• • 6-19/120.03 Account Receivable

"Account receivable" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. (CCP 481.030, COMM 9102(a)(2))

• • 6-19/120.04 Chattel Paper

"Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper. (CCP 481.040, 680.140;COMM 9102(a)(11))

• • 6-19/120.05 Complaint

"Complaint" includes a cross-complaint. (CCP 481.060)

• • 6-19/120.06 Defendant

"Defendant" includes a cross-defendant. (CCP 481.070)

• • 6-19/120.07 Deposit Account

"Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit. (CCP 481.080, COMM 9102(a)(29))

• • 6-19/120.08 Document of Title

"Document of title" includes a bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, or compress receipt, and any other document that, in the regular course of business or financing, is treated as adequately evidencing that the person entitled under the document has the right to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document shall purport to be issued by a bailee and purport to cover goods in the bailee's possession that either are identified as or are fungible portions of an identified mass. Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. A document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person; or where

recognized in overseas trade, if it runs to a named person or assigns. (COMM 1201(b)(16), 7104, 7201(b), 9102(a)(30), CCP 481.090)

• • 6-19/120.09 Equipment

"Equipment" means tangible personal property in the possession of the defendant and used or bought for use primarily in the defendant's trade, business, or profession if it is not included in the definitions of inventory or farm products. (CCP 481.100)

• • 6-19/120.10 Farm Products

"Farm products" means crops or livestock or supplies used or produced in farming operations or products of crops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, milk, and eggs), while in the possession of a defendant engaged in raising, fattening, grazing, or other fanning operations. If tangible personal property is a farm product, it is neither equipment nor inventory. (CCP 481.110)

• • 6-19/120.11 Financial Institution

"Financial institution" means a state or national bank, state or federal savings and loan association or credit union, or like organization, and includes a corporation engaged in a safe deposit business. (CCP 481.113)

• • 6-19/120.12 General Intangible

"General intangibles" consist of a right to payment and means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. (COMM 9102(a)(42), CCP 481.115)

• • 6-19/120.13 Instrument

"Instrument" means a negotiable instrument or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment. The term does not include investment property. (COMM 3104, 9102(a)(47), CCP 481.117)

• • 6-19/120.14 Inventory

"Inventory" means tangible personal property in the possession of a defendant that (a) is held by the defendant for sale or lease or to be furnished under contracts of service or (b) is raw materials, work in process, or materials used or consumed in his trade, business, or profession. Inventory of a person is not to be classified as his equipment. (CCP 481.120)

• • 6-19/120.15 Levying Officer

"Levying officer" means the sheriff or marshal who is directed to execute a writ or order issued under this title. (CCP 481.140)

• • 6-19/120.16 Person

"Person" includes a natural person, a corporation, a partnership or other unincorporated association, a limited liability company, and a public entity. (CCP 481.170)

• • 6-19/120.17 Personal Property

"Personal property" includes both tangible and intangible personal property. (CCP 481.175)

• • 6-19/120.18 Plaintiff

"Plaintiff" means a person who files a complaint or cross-complaint. (CCP 481.180)

• • 6-19/120.19 Probable validity

A claim has "probable validity" where it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim. (CCP 481.190)

• • 6-19/120.20 Property

"Property" includes real and personal property and any interest therein. (CCP 481.195)

• • 6-19/120.21 Public Entity

"Public entity" includes the state, the Regents of the University of California, a county, a city, district, public authority, public agency, and any other political subdivision or public corporation in the state. (CCP 481.200)

• • 6-19/120.22 Real Property

"Real property" includes any right in real property, including, but not limited to, a leasehold interest in real property. The term "real property" includes land and permanent buildings. Things which are affixed to land, or incidental or appurtenant thereto, are generally considered as part of the real estate. Land also embraces all titles, legal or equitable, perfect or imperfect, including such rights as lie in contract whether executory or executed. (CCP 17(B),481.203; CC 14, 658, 659, 660, 662)

• • 6-19/120.23 Secured party

"Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. If a security interest is in favor of a trustee, indenture trustee, agent, collateral agent, or other representative, the representative is the secured party. (CCP 481.207, COMM 9102(a)(72))

• • 6-19/120.24 Security

"Security", except as otherwise provided in COMM 8103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer that is all of the following:

a. It is represented by a security certificate in bearer or registered form, or the transfer of it may be registered upon books maintained for that purpose by or on behalf of the issuer.

b. It is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

c. It is either of the following:

(1) It is, or is of a type, dealt in or traded on securities exchanges or securities markets.

(2) It is a medium for investment and by its terms expressly provides that it is a security governed by this division. (COMM 8102, CCP 481.210)

• • 6-19/120.25 Security Agreement

"Security agreement" means an agreement which creates or provides for a security interest.

(COMM 9102(a)(74); CCP 481.220)

• • 6-19/120.26 Security Interest

"Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to COMM Division 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under COMM 2401. (COMM 1201(35); CCP 481.223)

• 6-19/130.00 Additional Writs of Attachment

Several writs in the same form may be issued simultaneously or from time to time upon the same undertaking, whether or not any writ previously issued has been returned. After the return of the writ of attachment, or upon the filing by the plaintiff of an affidavit setting forth the loss of the writ of attachment, the clerk, upon demand of the plaintiff at any time before judgment, may issue an alias writ which shall be in the same form as the original without requirement of a new undertaking. The date of issuance of a writ of attachment shall be deemed to be the date the writ is first issued. (CCP 482.090)

• 6-19/140.00 Actions in Which Attachment Authorized

A writ of attachment may be issued for a claim based on a contract where the amount exceeds $500, excluding costs, interest and attorney fees. If the defendant is a natural person, the claim must arise from the defendant's trade or business. A writ of attachment may be issued against certain defendants residing outside the state. (CCP 483.010, 492.010) A writ of attachment may also be issued in an elder abuse case. (WIC 15657.01)

• 6-19/150.00 Undertaking

An undertaking of $10,000, unless increased by the court, is required before a writ of attachment is issued to pay the defendant for any wrongful attachment. (CCP 489.210, 489.220) A writ of attachment issued without the mandated bond is void. (Vershbow v. Reiner, 231 CA 3rd 879)

• 6-19/160.00 Noticed Hearing Procedure

• • 6-19/160.10 Service on Defendant

The defendant is usually given the opportunity to appear at a hearing to determine whether the court should issue a writ of attachment. 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 of any affidavit in support of the application at least 16 court days before the hearing. (CCP 484.040, 1005)

A defendant shall be served all of the following:

Summons and Complaint

Notice of Application and Hearing

Application for Attachment and any affidavits in support of the application

• • 6-19/160.20 Application for Writ

The application shall be executed under oath and shall include statement why the attachment is sought, the amount to be attached, a statement the attachment is not for another purpose, a statement the property is not under bankruptcy protections, a description of the property to be attached. (CCP 484.020)

• • 6-19/160.30 Affidavit in Support of Application

The application shall be supported by an affidavit showing that the plaintiff on the facts presented would be entitled to a judgment on the claim upon which the attachment is based. (CCP 484.030)

• • 6-19/160.40 Notice of Application and Hearing

The notice of application and hearing shall inform the defendant of the hearing place, date, and time, and all other requirements stated in CCP 484.050.

• • 6-19/160.50 Opposition to Issuance of Writ

The defendant may oppose the issuance of the writ of attachment and/or claim an exemption by filing and serving a notice of opposition no later than five court days before the right to attach hearing. (CCP 484.060)

• • 6-19/160.60 Claim of Exemption

If the defendant claims that the personal property described in the plaintiffs application, or a portion of such property, is exempt from attachment, the defendant shall claim the exemption. (CCP 484.070)

The claim of exemption shall:

Describe the property claimed to be exempt.

List the statute section(s) supporting the claim.

Include an affidavit and points and authorities supporting any legal issues.

The claim of exemption shall be filed (with the court) and served on the plaintiff not less than five court days before the date set for the hearing. If the plaintiff desires to oppose the claim of exemption, the plaintiff shall file (with the court) and serve on the defendant, not less than two days before the date set for the hearing, a notice of opposition and an affidavit with points and authorities in support thereof.

• • 6-19/160.70 Right to Attach Order

At the hearing, the court shall consider the showing made by the parties appearing and shall issue a right to attach order, which shall state the amount to be secured by the attachment determined by the court. (CCP 484.090)

• 6-19/170.00 Ex Parte Hearing Procedure

The right to due process of law ordinarily entitles a defendant to a noticed hearing and the opportunity to

oppose the issuance of a writ of attachment. However, a writ may be issued ex parte (without notice to the defendant) if the plaintiff will suffer great or irreparable injury or if the defendant resides outside the state.

• • 6-19/170.10 Grounds for Ex Parte Hearing

Except as otherwise provided by statute, no right to attach order or writ of attachment may be issued pursuant to this chapter unless it appears from facts shown by affidavit that great or irreparable injury would result to the plaintiff if issuance of the order were delayed until the matter could be heard on notice. (CCP 485.010)

• • 6-19/170.20 Issuance of Right to Attach Order and Writ of Attachment

Upon the filing of the complaint or at any time thereafter, the plaintiff may apply pursuant to this article for a right to attach order and a writ of attachment by filing an application for the order and writ with the court in which the action is brought. (CCP 485.210)

The court shall examine the application and supporting affidavit and, except as provided in CCP 486.030, shall issue a right to attach order, which shall state the amount to be secured by the attachment, and order a writ of attachment to be issued upon the filing of an undertaking. (CCP 485.220) See 6-19/150.00 Undertaking

• 6-19/180.00 Temporary Protective Order

Upon application of the plaintiff or at the discretion of the court, the court may issue a temporary protective order restricting the transfer of property or disposition of proceeds described in the order.

• • 6-19/180.10 Grounds for Issuing Temporary Protective Order

The court may in its discretion if it determines that the requirements of the right to attach order and writ of attachment are met and would be in the interest of justice and equity to the parties instead issue a temporary protective order. (CCP 486.030)

• • 6-19/180.20 Application for Temporary Protective Order

At the time of applying for a right to attach order, the plaintiff may apply for a temporary protective order by filing an application for the order stating what relief is requested supported by an affidavit showing that the plaintiff would suffer great or irreparable injury if the temporary protective order were not issued. (CCP 486.010)

• • 6-19/180.30 Temporary Protective Order

The temporary protective order issued under this chapter shall contain such provisions as the court determines would be in the interest of justice and equity to the parties, taking into account the effects on both the defendant and the plaintiff under the circumstances of the particular case. (CCP 486.040)

• • 6-19/180.40 Service on Defendant

The order must be personally served on the defendant. A defendant shall be served all of the following (CCP 486.080):

- Summons and Complaint
- Notice of Application and Hearing
- Application for Attachment and any affidavits in support of the application
- Temporary Protective Order

• • 6-19/180.50 Effect of Temporary Protective Order

The service of the order creates a lien on property of the defendant as described in the order. The lien continues notwithstanding transfer or encumbrance. The lien terminates upon the expiration of the temporary protective order unless levied on under the writ of attachment. (CCP 486.110) The temporary protective order may prohibit a transfer by the defendant of any of the defendant's property in this state subject to the levy of the writ of attachment. (CCP 486.050)

• • 6-19/180.60 Expiration of Temporary Protective Order

The temporary protective order terminates forty days after issuance unless an earlier date is specified in the order or when a levy of attachment is made upon the property, whichever is earliest. (CCP 486.090)

• • 6-19/181.00 Order Directing Transfer

If a writ of attachment is issued, the court may issue an order directing the defendant to transfer to the levying officer possession of property or documentary evidence of title to property sought to be attached. The order shall be personally served on the defendant and contain a notice that failure to comply with the order may subject the defendant to arrest and punishment for contempt of court. The order shall be served at the time of levy or, in the case of documentary evidence of title, may be served after levy on the property or debt. The

order is not issued in lieu of a writ, but in addition thereto. (CCP 482.080) The levying officer must have a writ in his possession before taking custody of the property.

• • 6-19/182.00 Fee Deposit

Except as otherwise provided by law, the levying officer is not liable for failure to take or hold property unless the plaintiff deposits a sum of money with the levying officer sufficient to pay the costs.

As a prerequisite to the taking of property into custody by the levying officer, whether by keeper or otherwise, the plaintiff shall deposit with the levying officer a sum of money sufficient to pay the costs of taking the property and keeping it safely for a period not to exceed 15 days.

After a levy, if continuation of the custody of the property is required, the levying officer shall, from time to time, demand orally or in writing that the plaintiff deposit additional amounts to cover estimated costs for periods not to exceed 30 days each. The plaintiff must be given at least three business days after receipt of the demand to comply. If the plaintiff does not comply with the demand within the time allowed, the levying officer shall release the property. If the demand is a written demand and is served by mail, appropriate mailing time would have to be added to the time to comply. (CCP 488.050)

• • 6-19/183.00 Instructions

• • • 6-19/183.10 Contents

The plaintiff's written instructions must adequately describe the property and, if the property is a dwelling, state whether it is real or personal property. The sheriff may rely on the instructions unless the sheriff has actual knowledge that the information is incorrect. In the case of an ex parte writ where a copy of the summons and complaint has not previously been served on the defendant, the plaintiff or his attorney of record shall instruct the officer to make such service at the same time he serves the defendant with a copy of the writ and notice of attachment. It is the duty of the attorney to instruct the levying officer to make the service, rather than the duty of the levying officer to refuse to make the levy absent instructions to serve the summons and complaint. Consequently, if an ex parte writ is received, the requirement should be brought to the attention of the plaintiff's attorney. If the attorney does not issue instructions for the service, that fact should be noted in the file, but the levy should be performed. (CCP 488.020, 488.030, 488.040)

The defendant must be served personally, in the manner of a summons, unless the defendant has "appeared in the action", which is not the same as having appeared at a hearing. If the defendant has an attorney of record, the process must be served on the defendant's attorney, not the defendant. In order to determine whom to serve (the defendant or the attorney) and how to serve (personally or by mail), the plaintiff's

instructions must include that information.

• • • 6-19/183.20 Attorney of Record

Instructions to the levying officer may be taken only from the attorney of record. The attorney shall have authority to receive money claimed by a client in an action or proceeding during the pendency thereof, or after judgment, unless a revocation of the attorney's authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. An attorney in an action or special proceeding may be changed at any time before or after judgment or final determination either upon the consent of both client and attorney filed with the clerk, or entered upon the minutes; or upon the order of the court, upon the application of either client or attorney, after notice from one to the other. The former attorney must be recognized as the exclusive agent for the client until such time as written notice of the change and of the substitution of a new attorney or of the appearance of the party in person is given to the adverse party. (CCP 283, 284, 285)

• • 6-19/184.00 Contents of Writ of Attachment

A writ of attachment must be directed to the levying officer in the county where the levy is to be made. (CCP 488.020) The writ of attachment shall include the following information (CCP 488.010):

(a) The date of issuance of the writ.

(b) The title of the court that issued the writ and the cause and number of the action.

(c) The name and address of the plaintiff and the name and last known address of the defendant.

(d) The amount to be secured by the attachment.

(e) A description of the property to be levied upon to satisfy the attachment.

• • 6-19/185.00 Amount to Satisfy

The levying officer shall levy on the property described in the writ or so much thereof as is clearly sufficient to satisfy the amount to be secured by the attachment. The officer is not liable for a determination made in good faith under this provision. (CCP 488.020)

If cash is attached in the amount of the writ plus the officer's costs, any other property levied upon should be released and no further levies should be executed as the cash amount would be clearly sufficient to satisfy

the amount to be secured.

If property other than cash or a combination of cash and other property has been levied upon where the cash amount alone is insufficient to satisfy the amount of the writ and the levying officer's costs, the levying officer should not attempt to determine whether sufficient property has been levied. The defendant may apply to the court for an order to release property to the extent it exceeds the amount necessary to secure the attachment. (CCP 488.720)

• • 6-19/186.00 Property Subject to Levy

The type of property to be levied upon and the type of defendant determine whether the attachment levy can be made and the method of levy. If the defendant is an artificial person (corporation, partnership, unincorporated association or limited liability company) all property for which there is a method of levy is subject to levy. If the defendant is a natural person, only certain property is subject to levy. (CCP 487.010, 488.475, 492.040, 695.010)

ARTIFICIAL PERSON DEFENDANT	NATURAL PERSON DEFENDANT
Account Receivable	Account Receivable with at Least $150 balance
Chattel Papers	Chattel Papers with at least $150 balance
Deposit Accounts	Community Property
Dwelling, Personal Property used as a	Deposit Account exceeding $1,000
Equipment of a Going Business	Equipment
Estate of Decedent	Farm Products
Farm Products	Final Money Judgment
Final Money Judgment	General Intangible with at least $150 balance
General Intangible	Instrument
Goods held by Bailee without negotiable	Inventory
Document of Title	Minerals, Oil, Gas to be extracted

Growing Crops

Instruments

Inventory of a going business

Minerals, Oil, Gas to be extracted unexpired term of less than one year

Negotiable Document of Title

Personal Property in Sheriff's custody

Pending Action

Real Property

Safe Deposit Box Contents

Securities

Tangible Personal Property in Third-Party's

Possession

Tangible Personal Property in Defendant's

Possession

Timber to be cut

Vehicle or Vessel

Money in place other than Business over $1,000

Money on Promise of Business

Negotiable Document of Title

Real Property, except leasehold estate within

Securities

• • 6-19/187.00 Pending Action or Proceeding

A levy upon property that is the subject of an action or special proceeding pending at the time of the levy is not effective unless the property levied upon is one of the following (CCP 488.475):

- Real property
- Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead
- Tangible personal property in the possession or under the control of the defendant or in the custody of a levying officer

- The interest of a defendant in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession.

• • 6-19/188.00 Service of Writ of Attachment

• • • 6-19/188.10 Service on Other than Defendant

All of the following shall be provided at the time of service:

Where the writ was issued after hearing:

- Writ of Attachment (AT-135)
- Right to Attach Order and Order for Issuance of Writ of Attachment After Hearing (AT-120)
- Notice of Attachment (AT-165)

Where the writ was issued ex parte:

- Writ of Attachment (AT-135)
- *Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (Resident) (AT-125), or
- *Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (NonResident) (AT-130)
- Notice of Attachment (AT-165)

Service is made in the same manner as a summons. (CCP 684.110)

*Resident/nonresident refers to the court finding that the defendant is or is not a resident of California.

• • • 6-19/188.20 Service on the Defendant

At the time of levy or promptly thereafter (CCP 488.305), the defendant must be served personally, in the manner of a summons, unless the defendant has "appeared in the action", which is not the same as having appeared at a hearing. If the defendant has an attorney of record, the process must be served on the defendant's attorney, not the defendant. In order to determine whom to serve (the defendant or the attorney) and how to serve (personally or by mail), the plaintiff's instructions must include that information.

In addition to the documents listed in 6-19/188.10, a summons and complaint must also be served on the defendant if he has not previously been served. (CCP 488.020(c)) It is the duty of the attorney to instruct the levying officer to make the service, rather than the duty of the levying officer to refuse to make the levy absent instructions to serve the summons and complaint. Consequently, if an ex parte writ is received, the requirement should be brought to the attention of the plaintiff's attorney. If the attorney does not issue instructions for the service, that fact should be noted in the file, but the levy should be performed. (CCP 488.020, 488.030, 488.040)

• • 6-19/189.00 Duties After Levy

Within 10 days after service, the third person shall mail or deliver a memorandum to the levying officer whether or not the levy is effective. The memorandum shall be under oath and include:

(1) A description of any property of the defendant sought to be attached that is not delivered to the levying officer and the reason for not delivering the property.

(2) A statement of the amount and terms of any obligation to the defendant sought to be attached that is due and payable and is not paid to the levying officer and the reason for not paying the obligation.

(3) A statement of the amount and terms of any obligation to the defendant sought to be attached that is not due and payable at the time of levy.

(4) A description of claims and rights of other persons to the attached property or obligation that are known to the third person and the names and addresses of those other persons.

(5) A statement that the garnishee holds neither any property nor any obligations in favor of the judgment debtor.

A memorandum is not required if the third person delivered all of the property sought to be attached and has paid to the levying officer the amount due at the time of levy on any obligation to the defendant that was attached and there is no additional amount that thereafter will become payable on the obligation levied upon. If a garnishee’s memorandum is received from the third person, the levying officer shall promptly mail or deliver a copy of the memorandum to the plaintiff. (CCP 488.610)

• 6-19/190.00 Property Exempt from Levy

Property exempted from an attachment levy includes: property exempt from the enforcement of a money judgment; property of a natural person defendant needed for support; earnings; property not delineated as subject to attachment levy; and business licenses. (CCP 487.020, 695.060, 699.720)

ARTIFICIAL PERSON DEFENDANT **NATURAL PERSON DEFENDANT**

Alcoholic Beverage License	Alcoholic Beverage License
Business License	Business License
Contingent Remainder	Cause of Action in Pending Case
Interest of Partner in Partnership or LLC	Contingent Remainder
Cause of Action in Pending Case	Earnings
Public Agency Debt	Estate of Guardianship or Conservatorship
Estate of Guardianship or Conservatorship	Public Agency Franchise
Public Agency Franchise	Interest of Partner in Partnership or LLC
Judgment prior to expiration of appeal	Judgment prior to expiration of appeal
Life Insurance Loan Value	Life Insurance Loan Value
Property not listed as subject to levy	Property not listed as subject to levy
Trust Beneficiary Interest	Property Necessary for Support of defendant or Defendant's Family
	Trust Beneficiary Interest

• 6-19/191.00 Claim of Exemption

The defendant may file a claim of exemption with the levying officer or the court if the levy is made upon personal property. The claim must be filed within 30 days after the defendant was served with the notice of attachment by the sheriff. If the levy is on real property, the claim may be filed any time before entry of judgment in the lawsuit. (CCP 485.610, 482.100, 703.510)

• 6-19/200.00 Methods of Levy

In general, there are four methods of levy: seizure, garnishment, recording and filing a lien. Levying on property in the custody of the levying officer is a distinct form of levy. (CCP 488.300 – 488.485) The appropriate method of levy is determined by the type of property levied upon and who has possession of the property. The plaintiff's instructions should specify the type of property if not readily apparent to the sheriff, e.g., security, instrument, negotiable document of title, certificated or uncertificated security, vehicle used as equipment or inventory.

The following chart is a guide to determine the proper method of levy.

METHODS OF LEVY BY TYPE OF PROPERTY

PROPERTY	SEIZURE	RECORDING	GARNISHMENT	
Account Receivable			Serve account debtor	
Chattel Paper	Defendant's possession		Serve third-party in possession	
Commercial Coach				
Deposit Account/Safe-Deposit Box in the name of defendant			Serve financial institution	
Deposit Account/Safe-Deposit Box in the name of defendant and third-party			Serve financial institution and third-party	
Deposit Account/Safe-Deposit Box in the name of spouse (spousal affidavit required)			Serve financial institution and spouse	

Deposit Account/Safe-Deposit Box in the name of fictitious business name (cannot levy if third-party is not spouse of debtor)			Serve financial institution and any spouse	
Deposit Account/Safe-Deposit Box in the name of third-party (requires court order)			Serve financial institution and third-party	
Deposit Account/Safe-Deposit Box in the name of an alias (requires Affidavit of Identity)			Serve financial institution	
Dwelling - Personal Property	Install Keeper		Serve occupant	
Estate of Decedent			Serve personal representative of decedent; serve defendant after property is delivered to Sheriff	
Farm Products	Install Keeper for 2 or 10 days			

Final Money Judgment			File with clerk of the court; serve debtor of final money judgment	
General Intangible			Serve account debtor	
Goods held by Bailee with negotiable document of title			Serve third-party in possession of negotiable document of title	
Instrument	Defendant's possession		Serve third-party in possession	
Inventory of going business	Install Keeper for 2 or 10 days			
Mobilehome				

METHODS OF LEVY BY TYPE OF PROPERTY

PROPERTY	SEIZURE	RECORDING	GARNISHMENT	
Negotiable Document of Title	Defendant's possession		Serve third-party in possession	

Property in Levying Officer's Custody				
Real Property		Record with County recorder; serve third-party; serve occupant		
Security (certificated)	Defendant's possession		Serve issuer or secured party	
Security Entitlement			Serve securities intermediary or secured party	
Security (uncertificated)			Serve issuer or secured party	
Tangible Personal Property	Defendant's possession		Serve third-party in possession	
Vehicle used as Inventory	Defendant's possession			
Vehicle used as Equipment				
Vessel not registered with DMV	Defendant's possession			

Vessel as Equipment (registered with DMV)				
Vessel as Inventory (registered with DMV)				

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Deposit Account/Safe-Deposit Box in the name of spouse (spousal affidavit required)			Serve financial institution and spouse	
Deposit Account/Safe-Deposit Box in the name of fictitious business name (cannot levy if third-party is not spouse of debtor)			Serve financial institution and any spouse	

Deposit Account/Safe-Deposit Box in the name of third-party (requires court order)			Serve financial institution and third-party	
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Mobilehome				

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Property in Levying Officer's Custody				

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Security (uncertificated)			Serve issuer or secured party	
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Vehicle used as Inventory	Defendant's possession			
Vehicle used as Equipment				
Vessel not registered with DMV	Defendant's possession			

Vessel as Equipment (registered with DMV)				
Vessel as Inventory (registered with DMV)				

• 6-19/210.00 Seizure Levies in General

Unless another method of levy is provided, to attach tangible property in the possession of the defendant the sheriff shall take it into custody. The sheriff can only seize property from the possession or control of the defendant. Seizure from the possession of a third party requires a writ of mandate.

The levying officer is not liable for damage to levied property unless the officer is negligent. The plaintiff must deposit costs for taking property into custody prior to levy. If additional fees are required to maintain the levy, the plaintiff must be given three business days notice. If the fees are not received timely, the levying officer shall release the property. (See 6-19/182.00 Fee Deposit)

If a keeper is installed at a going business, only cash proceeds and inventory (not the equipment) are under levy. The keeper must remain installed for two days, if the business is an artificial person defendant, or ten days, if the defendant is a natural person and the writ was issued ex parte. If the defendant objects to the keeper, the property must be taken into the exclusive custody of the levying officer. The property must be removed to safekeeping at the expiration of the keeper installation period. The keeper may remain beyond the maximum time period if both parties agree. A keeper may be installed to levy on cash proceeds only. In the case of a cash only keeper installation, the above time limits and the right to object to the keeper are inapplicable. The levying officer acquires a possessory lien on levied property. The levying officer takes property into custody by: (1) removing the property to a place of safekeeping, (2) installing a keeper, or (3) otherwise obtaining possession and control of the property.

• • 6-19/210.10 Taking Property Into Custody

When the method requires or otherwise directed to take property into custody, the levying officer may do so by removing the property to a safe place, installing a keeper, or otherwise obtaining possession or control of the property. (CCP 488.090)

• • 6-19/210.20 Possession of Third Party

Where the property is in the defendant's possession, and the defendant is present, the property should normally be seized, even though a third party is present and claiming title or right to possession. In this case, the officer is taking the property from the defendant, and the third party has the right to file a third party claim. It is not the officer's duty to decide the case in field. There may be situations where the levying deputy is convinced that the property is in the actual possession of a third party and not in the possession of the defendant, even though the defendant is physically present. In such a case, the deputy should not seize the property. Several California decisions, while not directly on point, indicate that the protection given an officer by requiring a third party claim does not apply when the officer or any other party goes out and takes possession of property not found in the possession of the defendant. (Henrique v. Bank of Cottonwood, 97 CA 725) An officer has no authority to seize property in the hands of a third person; a garnishment is the only lawful method.

If plaintiff's attorney demands a levy of property in the possession of a third person be made by seizing the property, the officer should refuse such demand and direct the attorney to secure a writ of mandate or other court order directing the officer to seize the property from the third person's possession.

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If plaintiff's attorney demands a levy of property in the possession of a third person be made by seizing the property, the officer should refuse such demand and direct the attorney to secure a writ of mandate or other court order directing the officer to seize the property from the third person's possession.

• • 6-19/210.30 Joint Tenancy

In levying on the defendant's interest in personal property held in tenancy in common or joint tenancy by the defendant and another, the levying officer shall seize the whole, if the property be in the defendant's possession. The officer has no authority to partition the property; however, the officer may sell only the defendant's interest in the whole of the property. (Fonda v. Fidelity& Deposit Company, 40 CA APP 2nd 830- refers to Veach v. Adams, 51 CA 609 (1877); Conolley v. Power, 70 CA 70 (1924))

• • 6-19/210.40 Liability of Levying Officer

The levying officer is not liable for neglect or misconduct if is directed by written and signed instructions from an attorney of record unless he has actual knowledge the information is incorrect or negligent in the care or handling of the property. (CCP 262, 488.140)

• • 6-19/210.50 Inventory of Property

In an attachment levy, CCP 488.130 requires the levying officer to make a full inventory of property attached and return the inventory with the writ. If a keeper is installed, the keeper shall immediately commence to take an inventory of all personal property subject to the levy. The inventory should be in detail as to such items as fixtures, furniture, equipment, and machinery, and may be general as to items such as stock in trade, supplies and manufactured products. If property is to be moved to storage or sold, a detailed inventory will be required of all items included. The inventory should be taken in triplicate, one copy for the plaintiff, one copy for the levying officer's file, and the original to be returned to court with the writ.

• • 6-19/210.60 Lien of Levying Officer

The levying officer has a special lien, dependent upon possession, on personal property levied upon in the amount of the levying officer's costs for which an advance has not been made. (CCP 488.100)

• • 6-19/210.70 Private Place

If the personal property sought to be seized is located in a private place of the defendant, the levying officer making the levy shall demand delivery of the property by the defendant and shall advise such

person of potential liability for additional costs and attorney's fees that may be incurred in further proceedings to obtain delivery of the property. If the defendant does not deliver the property, the levying officer shall promptly notify the plaintiff of the failure to obtain custody of the property and shall make no further attempt to obtain custody of the property until a court order is delivered to the officer which states that there is probable cause to believe that the specific property sought to be levied upon is in a specific location described in the order. Upon receipt of the court order, the levying officer making the levy shall go to the location, announce the officer's identity, purpose, and authority pursuant to the order, and demand delivery of the property. If the property is not voluntarily delivered, the levying officer may cause the building or enclosure where the property is believed to be located to be broken open in such manner as the levying officer reasonably believes will cause the least damage, but if the officer reasonably believes that entry and seizure of the property will involve a substantial risk of serious injury to anyone, the officer shall not enter the location and shall promptly make a return to the court stating the reasons for believing that the risk exists. In such a case, the court shall make such orders as may be appropriate. (CCP 488.070, 699.030)

The provisions requiring a court order based on probable cause prior to levying on property in a private place should be complied with prior to levying on personal property physically on the person or held in the hands of a defendant.

Unless consent is freely, voluntarily and knowledgeably given, the levying officer is not authorized to enter any private place to seize property unless in possession of a writ or other order of court directing the officer to enter that specific private place.

Fourth Amendment protections against unreasonable searches and seizures extend to civil as well as criminal matters. Intrusions into private places in execution of process are searches and seizures within meaning of Fourth Amendment, and a search is unreasonable unless supported by a warrant (order) issued by a magistrate upon a showing of probable cause. Where government officials rely on consent to justify the lawfulness of a search, the burden is on them to show by clear and positive evidence that consent was freely, voluntarily and knowledgeably given. The occupant of the premises is confronted not only by the intimidating presence of an officer of law, but also by the existence of legal process which appears to justify the intrusion. In such a situation, acquiescence in the intrusion generally cannot operate as a voluntary waiver of Fourth Amendment rights. Although it is established that one may waive the Fourth Amendment right to be free from unreasonable searches and seizures, the courts indulge every reasonable presumption against waiver of fundamental constitutional rights. Invitations to enter one's house, extended to armed officers of the law who demand entrance, are usually to be considered as invitations secured by force. (Blair v. Pitchess, 5 Cal.3d 258)

The preceding paragraphs set forth objective standards to be followed by the levying officer in executing the officer's ministerial duties. These objective standards, however, are based upon the levying officer having knowledge of whether the property is located in a "private place," as such term is used in connection with the Fourth Amendment proscription against unreasonable searches and seizures. In this context the law, through the doctrine of stare decisis or case law, is continually changing. The situation is exacerbated by the fact that, although the courts look to objective factors to decide if the defendant exhibited an expectation of privacy in order to make a specific location a "private place," it is the defendant's subjective intent as demonstrated by these objective factors that are controlling. The following cases offer some insight into the uncertainty of what may or may not be found to be a "private place." In each and every case some independent judgment will be required

based on the specific facts and circumstances. Each levy situation should be approached from the standpoint that if it is unclear whether the location is a "private place," the actions to be taken should be consistent with those that would be authorized if the location were a "private place."

Homes, offices and hotel rooms fall within the category of maximum protection from unreasonable searches. Certain places carry with them expectation of privacy which, although considerable, is less intense and insistent than in the case of homes, offices and hotel rooms; such places may be searched upon probable cause alone under circumstances of less demanding urgency, and include automobiles, and trunks consigned to common carrier. Some sites are regarded as so public in nature that searches are justifiable without any particular showing of cause or exigency, and include places which might be classified as open fields and places in which the defendant has not exhibited a subjective expectation of privacy or where such an expectation would be unreasonable. (People v. Dumas, 9 CA 3d 871)

A resident of a house may justifiably rely upon privacy of surrounding areas as protection from peering of officers, unless the resident is exposed to that intrusion by existence of public pathways or other invitations to the public to enter upon the property. (Lorenzana v. Superior Court, 9 CA 3d 626)

A fenced front yard does not necessarily show an expectation of privacy. The determining factor in considering whether an individual's yard is protected by the Fourth Amendment is what reasonable expectation of privacy was exhibited, not what the defendant subjectively claimed. There is no reasonable expectation of privacy in a front yard of a residence in the absence of a locked gate, high solid fence blocking the front yard from view, a written notice to keep out or beware of a dog, or perhaps a doorbell at the front gate. (People v. Mendoza, Super., 122 CA 3d Supp. 12)

In People v. Moreno (204 CA Rptr. 17), the court held that an attached garage, whether or not it has a common entry, is considered an integral part of the house and is simply one room of several which together compose the dwelling. Consequently, attached garages may not be entered to make a levy or for any other purpose unless the deputy has first obtained the occupant's consent or is in possession of a court order authorizing entry into the specified garage.

• 6-19/220.00 Seizure of Specific Types of Property

The following types of property in the possession of the defendant are su

WRIT OF ATTACHMENT BY TYPE OF SEIZURE

PROPERTY	**TYPE OF SEIZU**
Chattel Paper	Take the Chatt

Personal Property used as a Dwelling	Place a keeper
Farm Products	Install a keep
Instruments	Take the prope
Inventory of a Going Business	Install a keep
Mobilehome	The plaintiff
Negotiable Documents of Title	Take the prope
Securities	Take the prope

• • 6-19/220.10 Chattel Paper

To levy upon chattel paper, the levying officer shall take the chattel paper into custody if it is in the possession of the defendant or, if it is in possession of a third person, personally serve a copy of the writ and a notice of attachment on the third person.

If the levying officer obtains custody of the chattel paper or if pursuant to a security agreement the defendant has liberty to collect or compromise the chattel paper or to accept the return of goods or make repossessions, the levying officer shall, if instructed by the plaintiff, serve a copy of the writ and a notice of attachment on the account debtor either personally or by mail. (CCP 488.435, 700.100)

• • 6-19/220.20 Dwelling

To levy upon personal property used as a dwelling, the levying officer shall serve a copy of the writ and a notice of attachment on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ and the notice with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found at the property when service is attempted who is a member of the occupant's family or household. If unable to serve such an occupant at the time service is attempted, the levying officer shall make the levy by posting the copy of the writ and the notice in a conspicuous place on the property. (CCP 488.415, 700.080)

House trailers and mobilehomes are classified as personal property capable of manual delivery when their wheels have not been removed, and they have not been so connected with the ground so as to become a fixture of the realty.

• • • 6-19/220.21 Placing a Keeper

If the plaintiff desires greater security for the levy, a keeper shall be placed in charge of the property for whatever period requested by the plaintiff.

• • • 6-19/220.22 Removal of Occupants

After levy, the plaintiff may, by noticed motion, apply for a court order for the levying officer to remove the occupants. The notice of motion shall be served either personally or by mail on an occupant, any legal owner and junior lienholder previously required to be served notice by the levying officer and, if the defendant is not the occupant, on the defendant. The occupants may be removed by the levying officer only pursuant to a court order.

• • • 6-19/220.23 Legal Owner Notification

If a vehicle or vessel is levied upon and a certificate of ownership has been issued by the Department of Motor Vehicles for such vehicle or vessel and the certificate of ownership is still in effect, or if a manufactured home, mobilehome, or commercial coach is levied upon and a permanent title record has been established by the Department of Housing and Community Development for such manufactured home, mobilehome, or commercial coach, the levying officer shall determine from the appropriate department the name and address of the legal owner and each junior lienholder of the property levied upon. If the legal owner or junior lienholder is not the judgment debtor and is not in possession of the vehicle, vessel, manufactured home, mobilehome, or commercial coach, the levying officer shall at the time of levy or promptly thereafter serve a copy of the writ and a notice of attachment on the legal owner and any junior lienholder either personally or by mail. (CCP 488.425, 700.090)

If the levy was made by serving a garnishment, a copy of the original notice of attachment which was served on the garnishee shall suffice as the notice required to be served to any other person. (CCP 488.065, 699.545)

House trailers and undocumented vessels are required to be registered with the Department of Motor Vehicles. (VEH 630, 635, 4000, 5350 and 9840, et seq)

Manufactured homes, mobilehomes, and commercial coaches sold or used within this state are subject to registration with the Department of Housing and Community Development. (HS 18075) Mobilehomes which are subject to local property taxation pursuant to Revenue and Taxation Code 5800 et seq., are excepted from the annual registration generally required for mobile homes and commercial coaches, and are subject to registration only at the time of sale, resale or transfer of title. (HS 18075.5)

• • 6-19/220.30 Instruments

To levy upon an instrument, the levying officer shall take the instrument into custody if it is in possession of the defendant or, if it is in possession of a third person, personally serve a copy of the writ and a notice of attachment on the third person.

If the levying officer obtains custody of the instrument, the levying officer shall, if instructed by the plaintiff, serve a copy of the writ and a notice of attachment on the obligor either personally or by mail. (CCP 488.440, 700.110)

• • 6-19/220.40 Inventory and Farm Products

Under a writ of attachment, farm products or inventory of a going business may be attached by the levying officer either by seizure or the filing of a lien. This section does not apply to growing crops, timber to be cut, or minerals or the like.

• • • 6-19/220.41 Keeper

To attach farm products or inventory of a going business in the possession or under the control of the defendant, the levying officer may place a keeper in charge of the property. During the keeper period, the business may continue to operate in the ordinary course of business provided that all sales are final and are for cash or its equivalent. For this purpose a check is the equivalent of cash, and the levying officer is not liable for accepting payment in the form of a cash equivalent. Unless the levying officer is otherwise instructed by the plaintiff, the keeper shall take custody of all proceeds from sales. The keeper shall remain in charge of the business for (CCP 488.395):

- 10 days if the defendant is a natural person and the writ has been issued ex parte, or
- two (2) days in all other cases.

• • • 6-19/220.42 Cash Only Keeper

A keeper may be installed to collect cash or cash proceeds only. The time limitations are inapplicable and the defendant cannot object to a cash only keeper installation. (CCP 488.395(e), 700.070(c))

• • • 6-19/220.43 Taking Property Into Custody

Unless some other disposition is agreed upon by the plaintiff and defendant, the levying officer shall take the farm products or inventory into exclusive custody at the earlier of the following times:

- At the time the defendant objects to placement of a keeper in charge of the business.
- At the conclusion of the applicable period prescribed (see 6-19/220.41).

If the plaintiff and defendant agree that it would be in the best interest of both parties to allow the business to operate beyond the applicable time period, and they jointly notify the Sheriff in writing, the business may continue to operate. Sheriff's Department personnel shall not arbitrarily extend the time the business may continue to operate beyond the applicable two or ten-day period. Sheriff's Department personnel shall not solicit such information from the plaintiff and defendant.

• • • 6-19/220.44 Lien with Secretary of State

See 6-19/310.20 Inventory and Farm Products

• • 6-19/220.50 Negotiable Document of Title

To levy upon a negotiable document of title, the levying officer shall take the negotiable document of title into custody if it is in the possession of the defendant or, if it is in the possession of a third person, personally serve a copy of the writ and a notice of attachment on the third person.

(CCP 488.445, 700.120)

• • 6-19/220.60 Securities

To levy on a certificated security in the possession of the defendant, the levying officer shall take the security into custody. (CCP 488.450; COMM 8112)

• • 6-19/220.70 Tangible Property in Defendant's Possession

Unless another method of attachment is provided by this article, to attach tangible personal

property in the possession or under the control of the defendant, the levying officer shall take the property into custody. (CCP 488.335)

• • 6-19/220.80 United States Savings Bond

A United States Savings Bond is not listed as property which cannot be levied upon. (CCP 487.020, 699.720) United States Savings Bonds may be seized if the debtor is an owner or co-owner of the Bond(s). However, the method of levy, however, is based on federal law and regulations rather than state law. (31 Code of Federal Regulations 315.21) The value of the Bond(s) cannot be redeemed with the United States Government because it only recognizes a money judgment, not an attachment. The Bond(s) must remain in the levying officer's custody via storage until a final judgment is rendered and a Writ of Execution received. Once a Writ of Execution is received, the levying officer may transfer the attachment to execution, retrieve the Bond(s) from storage, and follow the procedures set forth in 6-20/520.60.

• 6-19/230.00 Garnishment Levies in General

In general, property of the defendant in the possession or control of a third party may be levied by garnishment. The levy is made by serving a garnishment consisting of a notice of attachment, order for issuance of the writ, memorandum of garnishee and writ of attachment on the garnishee (third party in possession). The garnishee must complete the memorandum of garnishment and return it to the levying officer within 15 days after service. Certain types of property have distinctive garnishment procedures.

• • 6-19/230.10 Contingent Interest

To be subject to levy by garnishment a debt or credit must actually exist as an attaching creditor can acquire no greater right in attached property than the debtor has at the time of levy. A debt which is uncertain and contingent in the sense that it may never come due and payable is not subject to garnishment. If the uncertainty, however, only involves the amount of the debt and not the liability itself, the debt is subject to garnishment even though defenses to the debt might diminish or defeat it.

As a consequence, contingent interests, such as future rental payments and funds in escrow when further conditions of escrow must be performed before the escrow will close, are not subject to garnishment. (First Central Coast bank v. Cuesta Title Guarantee Company, 143 CA 3rd 12)

• • 6-19/230.20 Delivering Property to Levying Officer

Unless otherwise provided by statute or the third person has good cause for failure or refusal to do so, the third person shall at the time of levy or promptly thereafter deliver to the levying officer any of the property levied upon that is in the possession or under the control of the third person at the time of levy unless the third person claims the right to possession of the property. A third person who is required to deliver property or make payments to the levying officer and who, without good cause, fails or refuses to do so, is liable to the plaintiff for the value of the defendant's interest in the property, or the amount of the payments required to be made up to the amount required to satisfy the levy.

(CCP 488.600)

• • 6-19/230.30 Security Interest

Except as otherwise ordered by the court, if property levied upon is subject to a security interest which attached prior to the levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless the property is in the custody of the levying officer. If the attachment lien has priority over the security interest, the secured party is liable to the plaintiff for any proceeds received by the secured party from the property to the extent of the attachment lien. After the security interest is satisfied, the secured party shall, to the extent the defendant would have been entitled, deliver any excess property and pay any excess payments or proceeds of property remaining in the secured party's possession to the levying officer for the purposes of the levy, unless otherwise ordered by the court or directed by the levying officer. (CCP 488.600)

• • 6-19/230.40 Account Debtor

After service of a copy of the writ and notice of attachment on an account debtor obligated on an account receivable, chattel paper, or general intangible, the account debtor shall, unless otherwise directed by court order or the levying officer: (CCP 488.600, 701.050)

If the account debtor has been making payments to the defendant or is required to make payments to the defendant, make payments to the levying officer as they become due.

If the account debtor has been making payments to a third person or is required to make payments to a third person, continue to make payments to the third person notwithstanding the levy until the account debtor receives notice that the obligation to the third person is satisfied or is otherwise directed by court order or by the third person; thereafter the payments shall be made to the levying officer as they become due.

If pursuant to a security agreement, the defendant has liberty to accept the return of goods or make repossessions, deliver to the levying officer the property returnable to the defendant unless otherwise

directed by court order or by the levying officer. If the levying officer obtains custody of an instrument levied upon and serves the obligor under the instrument a copy of the writ and a notice of attachment or levy, as applicable, to the obligor shall make payments to the levying officer as they become due.

• • 6-19/230.50 Memorandum of Garnishee

At the time of service of a copy of the writ of attachment and a notice of attachment on a third person, the levying officer shall request the third person to give the levying officer a garnishee's memorandum containing the information required by this section. Within 10 days after the request is made, the third person shall mail or deliver the garnishee's memorandum to the levying officer whether or not the levy is effective. (CCP 488.610)

• 6-19/240.00 Garnishment Levies on Specific Types of Property

• • 6-19/240.10 Account Receivable

Unless another method of levy is provided, to levy upon an account receivable or general intangible, the levying officer shall personally serve a copy of the writ and a notice of attachment on the account debtor.

If a levy is made by serving the account debtor and payments on the account receivable or general intangible are made to a person other than the defendant (whether pursuant to a security agreement, assignment for collection, or otherwise) and if instructed by the plaintiff, the levying officer shall personally serve a copy of the writ and a notice of attachment on such third person. Such service is a levy on any amounts owed to the defendant by such third person. (CCP 488.470)

• • 6-19/240.20 Decedent's Estate

To levy upon the interest of the defendant in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession, the levying officer shall personally serve a copy of the writ and a notice of attachment on the personal representative of the decedent.

The personal representative shall report the levy to the court in which the estate is being administered when any petition for distribution is filed. If a decree orders distribution to the defendant, the court making the decree shall order the property levied upon to be delivered to the levying officer. The property may not be delivered to the levying officer until the decree has become final. To the extent

the property delivered to the levying officer is not necessary to satisfy the attachment, it shall be released to the defendant.

Promptly after the property is delivered to the levying officer, the levying officer shall serve the defendant personally or by mail a notice describing the property. The defendant may file a claim of exemption within 10 days of such service, plus mailing time if service is by mail. (CCP 488.485)

• • 6-19/240.30 Deposit Account/Safe Deposit Box

If the service is on a financial institution, a title insurer or underwritten title company, industrial loan company or savings and loan company, service shall be made at the office or branch that has actual possession of the property levied upon or at which a deposit account levied upon is carried and shall be made upon the officer, manager, or other person in charge of the office or branch at the time of service. (CCP 488.455, 488.460; FIN 6663) If served at a centralized location designated by the financial institution, other than a savings and loan association, the garnishment attaches all accounts at any location.

The word "officer" has been held to mean any other representative of the banking corporation whose duties, functions, and responsibilities are such that service upon him would reasonably inform the bank of such service. (Walters v. Bank of America, 9 CA 2d 46, 53)

A spousal affidavit, fictitious business name statement, and court order to levy on third party account are used exclusively to garnish deposit accounts/safe-deposit boxes.

See 6-05/800.29 (fees) and 6-20/560.31 for additional requirements regarding Open Safe Deposit Box.

• • 6-19/240.40 Final Money Judgment

To attach a final money judgment, the levying officer shall file a copy of the writ of attachment and a notice of attachment with the clerk of the court that entered the final money judgment. The court clerk shall endorse upon the judgment a statement of the existence of the attachment lien and the time it was created. If an abstract of the judgment is issued, it shall include a statement of the attachment lien in favor of the plaintiff. The levying officer shall serve a copy of the writ and Notice of Attachment at the same time or shortly thereafter. (CCP 488.480)

• • 6-19/240.50 General Intangible

Unless another method of attachment is provided by this article, to attach an account receivable or general intangible, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment on the account debtor. If the intangible is payable to a third-party, serve the writ and notice of attachment on the third-party. (CCP 488.470)

• • 6-19/240.60 Goods Held by Bailee

To levy upon goods in the possession of a bailee, other than one who has issued a negotiable document of title therefore, the levying officer shall personally serve a copy of the writ and notice of attachment on the bailee. (CCP 488.365, 700.060(a))

If the goods are subject to a security interest, and the plaintiff instructs the levying officer to serve the secured party, the levying officer shall serve a copy of the writ and notice of attachment on the secured party either personally or by mail. (CCP 488.365, 700.060(b))

• • 6-19/240.70 Negotiable Document of Title

To levy upon a negotiable document of title, the levying officer shall take the negotiable document of title into custody if it is in the possession of the defendant or, if it is in the possession of a third person, personally serve a copy of the writ and a notice of attachment on the third person.

(CCP 488.445, 700.120)

• • 6-19/240.80 Securities

To attach a security, the levying officer shall comply with COMM 8112. (CCP 488.450)

• • • 6-19/240.81 Certificated Security

The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the levy. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer. (COMM 8112(a))

• • • 6-19/240.82 Uncertificated Security

The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States. (COMM 8112(b))

• • • 6-19/240.83 Security in Possession of Secured Party

The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party. (COMM 8112(d)) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. If a security interest is in favor of a trustee, indenture trustee, agent, collateral agent, or other representative, the representative is the secured party. "Security agreement" means an agreement which creates or provides for a security interest.

• • • 6-19/240.84 Security Entitlement

"Security entitlement" means the owner holds a security indirectly through a securities intermediary. "Securities intermediary" means either a clearing corporation or a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained. (COMM 8112(e)) Garnishments of shares or investment certificates of any savings and loan association

Must be served at the office at which the shares or certificates were issued if such branch is still being maintained and, if not, at the principal office of the association.

• 6-19/250.00 Tangible Property in Possession of Third Party

Unless another method of attachment is provided by this article, to attach tangible personal property in the possession or under the control of a third person, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the third person. (CCP 488.345, 700.040)

• 6-19/300 Lien Levies in General

To attach equipment of a going business, vehicle, vessel, mobilehome or commercial coach, the sheriff shall file a lien with the Secretary of State, Department of Motor Vehicles or the Department of Housing Development. As an alternative to seizure, farm products or inventory of a going business also may be levied upon by filing a lien.

• 6-19/310.00 Lien Levies On Specific Types of Property

• • 6-19/310.10 Equipment of Going Business

• • 6-19/310.11 Equipment Other Than Vehicle or Vessel

To attach equipment of a going business in the possession or under the control of the defendant, the levying officer shall file the statutory $20 fee (check payable to the Office of the Secretary of State) and shall file with the Office of Secretary of State an original and a copy of a notice of attachment in the form prescribed by the Secretary of State. A copy of the writ is not filed with the notice. The original notice will be retained by the Secretary of State, and the copy will be returned to the levying officer with the filing date, time and number stamped thereon. The notice shall contain all of the following: (CCP 488.375)

- The name and mailing address of the plaintiff.
- The name and last known mailing address of the defendant.
- The title of the court where the action is pending and the cause and number of the action.
- A description of the specific property attached.
- A statement that the plaintiff has acquired an attachment lien on the specified property of the defendant.

Information regarding an attachment lien is available from the Secretary of State for a fee; however, this is not done through the levying officer.

• • 6-19/310.12 Equipment That Is a Vehicle or Vessel

To attach a vehicle or vessel for which a certificate of ownership has been issued by the Department of Motor Vehicles, or a mobilehome or commercial coach for which a certificate of title has been issued by the Department of Housing and Community Development, which is equipment of a going business in the possession or under the control of the defendant, the levying officer shall tender a $15 filing fee to the appropriate department and shall file with the appropriate department a notice of attachment, in the form prescribed by such department, which shall contain the following: (CCP 488.385)

- The name and mailing address of the plaintiff.
- The name and last known mailing address of the defendant.
- The title of the court where the action is pending and the cause and number of the action.
- A description of the specific property attached.
- A statement that the plaintiff has acquired an attachment lien on the specific property of the defendant.

• • 6-19/310.20 Inventory and Farm Products

An alternative method of attaching farm products or inventory of a going business in the possession or under the control of the defendant, the plaintiff may instruct the levying officer to file a lien with the Secretary of State. This section does not apply to growing crops, timber to be cut, or minerals or the like. The levying officer shall file the statutory $20 fee (check payable to the Office of the Secretary of State) and shall file with the Office of Secretary of State an original and a copy of a notice of attachment in the form prescribed by the Secretary of State. A copy of the writ is not filed with the notice. The original notice will be retained by the Secretary of State, and the copy will be returned to the levying officer with the filing date, time and number stamped thereon.

The notice of attachment shall be in the form prescribed by the Secretary of State and shall contain all of the following: (CCP 488.405)

- The name and mailing address of the plaintiff.
- The name and last known mailing address of the defendant.
- The title of the court where the action is pending and the cause and number of the action.
- A description of the farm products and inventory attached.
- A statement that the plaintiff has acquired an attachment lien on the described property and on identifiable cash proceeds and, if permitted by the writ of attachment or court order, on after-acquired property.

• 6-19/400.00 Recording Levies in General

To attach real property, growing crops, timber or minerals, the sheriff shall record a copy of the writ of attachment, notice of attachment and order for issuance of the writ with the county recorder in which the property is located. At the time of levy or promptly thereafter, the sheriff shall serve a copy of the writ, notice of attachment and order for issuance on (1) any third person standing on the recorder's

records; (2) any secured party with a filed financing agreement; and, (3) any occupant of the property.

• 6-19/410.00 Recording Levies on Specific Types of Property

• • 6-19/410.10 Real Property

A trust created for the sole purpose of selling the real property and paying the proceeds from such sale to the beneficiary gives the beneficiary no interest in the real property, but only the right to receive money from the trustee. However, the trustee of such a trust may be garnisheed. (Houghton v. Pacific Southwest Trust, 111 CA 509) Any interest in land, legal or equitable, is subject to attachment or execution, levy and sale. (Lynch v. Cunningham, 131 CA 164) The holder of a mortgage has only a lien on the mortgaged premises therefore, a mortgage creates no attachable interest in such realty that could be levied upon by creditors of the mortgage holder. (McGurren v. Garrity, 68 CA 566 (1886))

• • 6-19/410.20 Levy by Recording

To levy upon real property, or any interest therein including but not limited to a leasehold interest, the levying officer shall record with the recorder of the county where the real property is located a copy of the writ and a notice of attachment or notice of levy that describes the property levied upon and states that the defendant's interest in the described property has been levied upon. If the defendant's interest in the real property stands upon the records of the county in the name of a person other than the defendant debtor, the notice of attachment or notice of levy shall identify the third person. (CCP 488.315, 700.015(a))

Only one recording is made under an instruction to levy on real property regardless of the number of lots or parcels involved. The complete descriptions should be shown on the notice of levy.

• • 6-19/410.30 Notification to Record Owner

At the time of levy or promptly thereafter, the levying officer shall, either personally or by mail, serve a copy of the writ and a notice of attachment on any third person in whose name the defendant's interest in the real property stands upon the records of the county. If service on the third person is by mail, it shall be sent to the person at the address for such person, if any, shown by the records of the office of the tax assessor of the county where the real property is located or, if no address is so shown, to the person at the address used by the county recorder for the return of the instrument creating the interest of the third person in the property. (CCP 488.315, 700.015(b))

• • 6-19/410.40 Notification to Occupant

At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of attachment on one occupant of the real property. Service on the occupant shall be made by leaving the copy of the writ and notice with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If unable to serve such an occupant at the time service is attempted, the levying officer shall post the copy of the writ and notice in a conspicuous place on the real property. If the real property described in the notice consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made as to each continuous, unbroken tract. (CCP 488.315, 700.015(c))

The number of services or postings required, where several lots or tracts are attached, depends upon the number of continuous, unbroken parcels. Remember that a street would break the continuity, and an alley between lots would probably do likewise.

• 6-19/420.00 Growing crops

To levy upon growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, the levying officer shall record with the recorder of the county where such crops, timber, or minerals or the like are located a copy of the writ and a notice of attachment that describes the property levied upon and states that the defendant's interest in the described property has been levied upon and describes the real property where the crops, timber, or minerals or the like are located. If the defendant's/judgment debtor's interest in the crops, timber, minerals or the like, or if the real property where the crops, timber, or minerals or the like are located, stands upon the records of the county in the name of a person other than the defendant, the notice of attachment shall identify the third person.

At the time of levy or promptly thereafter, the levying officer shall, either personally or by mail, serve a copy of the writ and notice of attachment on any third person in whose name the defendant's / judgment debtor's interest in the crops, timber, minerals or the like stands upon the records of the county and any third person in whose name the real property stands upon the records of the county. If service on the third person is by mail, it shall be sent to the person at the address for such person, if any, shown by the records of the office of the tax assessor of the county where the real property is located or, if no address is so shown, to the person at the address used by the county recorder for the return of the instrument creating the interest of the third person in the property.

At the time of levy or promptly thereafter, the levying officer shall, either personally or by mail, serve a copy of the writ and notice of attachment on any secured party who has filed a financing statement

with respect to the crops, timber, or minerals or the like or the accounts receivable, prior to the date of levy on the property.

At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of attachment on one occupant of the real property where the crops, timber, or minerals or the like are located. Service on the occupant shall be made by leaving the copy of the writ and notice with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If unable to serve such an occupant at the time service is attempted, the levying officer shall post the copy of the writ and notice in a conspicuous place on the real property. If the real property described in the notice consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made as to each continuous, unbroken tract. (CCP 488.325, 700.020)

• 6-19/500.00 Property in the Custody of Levying Officer

To levy upon personal property that is already in the custody of a levying officer, if the writ is directed to the levying officer having custody of the property, the plaintiff shall deliver the writ to the levying officer. If the writ is directed to a levying officer other than the levying officer having custody of the property, the levying officer to whom the writ is directed shall either personally or by mail serve a copy of the writ and a notice of attachment on the levying officer having custody. The levying officer having custody of the property shall comply with the writs in the order received and is not subject to the duties and liabilities of third persons after levy as set forth in CCP 488.600. (CCP 488.355, 700.050)

In most counties, only the Sheriff serves as the levying officer. However, the California Highway Patrol can act as a levying officer under state warrants of collection. The Los Angeles County Child Support Services may also act as a levying officer.

• 6-19/510.00 Service of Attachment Process on Defendant

In addition to serving process on any third party in possession of property of the defendant, attachment process (writ of attachment, order for issuance and notice of attachment) must be served on the defendant at the time of levy or promptly thereafter. (CCP 488.305) In the case of a levy on the estate of a decedent, the attachment process is not served on the defendant until an order from the Probate court is received. (CCP 488.485(c))

Service on the defendant shall be personal, in the manner of service of summons, or, if the defendant has appeared in the action, by mail. Any service required to be made on the defendant shall be made personally if the defendant has not appeared in the action. Except for service of a subpoena or

other process to require the attendance of the defendant or service of a paper to bring the defendant into contempt, if the defendant has an attorney of record in the action, service shall be made on the attorney, rather than on the defendant. Failure to serve the defendant does not invalidate the levy.

• 6-19/520.00 Levy Lien

An attachment levy creates a levy lien which expires three years from the date of issuance of the writ of attachment. (CCP 488.500) The lien period may be extended in one year increments for a total of not more than eight years after issuance of the writ. (CCP 488.510)

The time limitation for a levy under a writ of attachment does not apply where the attachment levy is against the interest of a defendant in personal property in the estate of a decedent. (Estate of Troy, 1 CA 2d 732) An attachment lien terminates by operation of law when an execution levy is made in the same case. (Durkin v. Durkin, 133 CA 2d 283)

In any case where property has been levied upon and, pursuant to a levy, a copy of the writ of attachment and a notice of attachment are required by statute to be posted or to be served on or mailed to the defendant or other person, failure to post, serve, or mail the copy of the writ and the notice does not affect the attachment lien created by the levy. (CCP 488.120)

• 6-19/530.00 Perishable Property Sale

If perishable property is levied upon, the provisions for disposition thereof are the same as under writs of execution, except the proceeds shall be deposited in the court to abide the judgment in the action. (CCP 488.700) (CCP 701.510 – 701.680)

• 6-19/540.00 Defendant's Payover Authorization

Where money of the defendant is being held by the officer, the defendant may authorize the officer to pay the money to the plaintiff.

The deputy shall fill in the blanks on the printed defendant's authorization form in triplicate; one for the defendant, one for the court, and the original for the sheriff's office. Request the defendant to carefully read both the authorization and the printed notice on the bottom of the form before signing.

The defendant’s signature should conform to the name of the defendant on the writ. Do not accept the signature of any person other than a defendant. If the defendant is a corporation, partnership, or fictitious firm, the signature must contain:

1. The firm name;

2. The signature of an officer, partner, owner or authorized agent;

3. The title of the person signing.

All authorizations should be witnessed or notarized, or bear the signature of the creditor's attorney on the same instrument. A sample form for a Defendant's Payover Authorization can be found at the end of this chapter.

If cash in lieu of attached property was deposited by someone other than the defendant, the depositor's signature is also necessary on any authorization or stipulation

• 6-19/550.00 Release

Property shall be released to the person from whom it was taken. The levying officer may sell the property if not claimed within 30 days after service of the release notice. If the levy is made within 90 days before the making of a general assignment for the benefit of creditors or the filing of a bankruptcy petition, the lien is terminated and the property released. (CCP 488.730)

• 6-19/600.00 Judgment for Defendant

If the defendant recovers judgment against the plaintiff and no timely motion for vacation of judgment or for judgment notwithstanding the verdict or for a new trial is filed and served and is pending and no appeal is perfected and undertaking executed and filed as provided in Section 921, any undertaking received from the defendant in the action, all the proceeds of sales and money collected by the levying officer, and all the property attached remaining in the levying officer's hands shall be delivered to the person from whom it was collected or taken, unless otherwise ordered by the court; and the court shall order the discharge of any attachment made in the action and the release of any property held thereunder. (CCP 488.740)

• 6-19/700.00 Bankruptcy/Assignment for Benefit of Creditors

The filing of a petition commencing a voluntary or involuntary case under Bankruptcy terminates a lien of a temporary protective order or of attachment if the lien was created within 90 days prior to the filing of the petition. (CCP 493.030) The trustee, interim trustee, or the debtor in possession if there is no trustee or interim trustee, may secure the release of the attached property by filing with the levying officer a request for release of attachment stating the grounds for release and describing the property to be released, executed under oath, together with a certified copy of the bankruptcy petition. If the request is from an assignee (general assignment), two copies of the general assignment for the benefit of creditors shall be included.

If immediate release of the attachment is sought, the request shall be accompanied by an

undertaking to pay the plaintiff any damages resulting from an improper release of the attachment, in the amount to be secured by the attachment, executed by an admitted surety insurer.

Within five days of receiving the request for release, the levying officer shall mail to the plaintiff:

- a copy of the request for release
- a copy of the undertaking and general assignment for the benefit of creditors
- if an undertaking is not provided, a notice that the attachment will be released pursuant to the request unless otherwise ordered by a court within 10 days after the date of mailing the notice
- If an undertaking has been given, a notice that the attachment has been released

Unless otherwise ordered by a court, the attachment shall be released:

- At the expiration of 10 days from mailing the request for release if an undertaking has not been filed
- Immediately if a request for release includes an undertaking

(CCP 493.040)

• 6-19/800.00 Registered Process Server

A registered process server may levy under a writ of attachment pursuant to CCP 488.080. Prior to making a levy, the registered process server must open a file with the levying officer where the levy is to be served. (Real estate levies shall be opened at the Los Angeles Office only) The registered process server shall:

- deposit a copy of the writ with the levying officer
- deposit a copy of the levy instructions (LASD requirement)
- pay the required levying officer service fee

Within five court days after levy, all of the following shall be filed with the levying officer:

- The writ of attachment
- A proof of service by the registered process server stating the manner of levy performed
- Proof that a copy of the writ and notice of attachment was served on the defendant
- Sheriff's Instructions (CCP 488.030)

• 6-19/900.00 Checks

If pursuant to a levy, a check, draft, money order, or other order for the withdrawal of money from a financial institution, the United States, any state, or any public entity which is payable on demand to the defendant comes into the possession of a levying officer, the levying officer shall promptly endorse and present it for payment except under the circumstances set forth in the next paragraph.

If it appears from the face of the instrument that it has been tendered to the defendant in satisfaction of a claim or demand and that endorsement of the instrument is considered a release and satisfaction by the defendant of the claim or demand, the levying officer shall not endorse the instrument unless the judgment debtor has first endorsed it to the levying officer. If the judgment debtor does not endorse the instrument to the levying officer, the levying officer shall hold it for 30 days and then return it to the maker.

To endorse the instrument the levying officer shall write the following on the instrument:

1. The name of the defendant.

2. The name and official title of the levying officer.

3. The title of the court and the cause in which the writ was issued.

(CCP 488.710)

• 6-19/910.00 Writ Return to Court

The levying officer should return the writ to court promptly upon completion of plaintiff's instructions, but in no event later than 60 days after receiving the writ. Where the writ was served upon a third person, allow 15 days from the date of service of the writ for such person to file the Memorandum of Garnishee. Additional instructions to levy on the property described in the writ may be received and executed if the writ is still in the officer's possession, and 60 days have not expired from the date the writ was received by the officer. A full inventory of levied property, including any memorandum of garnishee, shall accompany the writ when returned to court. (CCP 488.130) If a garnishee’s memorandum is not received from the third person, the levying officer shall so state in the return. (CCP 488.610(c))

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6-19/420.00 Growing crops

6-19/500.00 Property in the Custody of Levying Officer

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6-19/520.00 Levy Lien

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6-19/540.00 Defendant's Payover Authorization

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6-19/800.00 Registered Process Server

6-19/900.00 Checks

6-19/910.00 Writ Return to Court

References

CCP – Code of Civil Procedure

COMM – Commercial Code

FIN – Financial Code

HS – Health and Safety

VEH – Vehicle Code

WIC – Welfare and Institutions Code

Updated December 15, 2020

Edited December 15, 2020

6-19/000.00 WRIT OF ATTACHMENT

6-19/100.00 Writ of Attachment

he court may issue a writ of attachment directing the levying officer to levy on property of the defendant and) hold it as security for the payment of any judgment that may be recovered in the lawsuit.

he original statute authorizing writs of attachment was declared unconstitutional. (Randone v. Appellate epartment, 5 CA 3d 536) The California Supreme Court held that prejudgment attachment of property ithout prior notice to the defendant or hearing violated due process. The present Attachment Law was evised to afford defendants due process under the 14th Amendment of the U.S. Constitution. Attachment roceedings are ancillary to and independent of the main lawsuit.

. writ of attachment was unknown at common law and is provided for by statute. (Anaheim National Bank v. raemer, 120 CA APP 63) In as much as attachment procedures are purely the creation of the Legislature, ne statute is subject to strict construction. (Commercial & Farmers National Bank v. Hetrick, 64 CA 3d 158) Unless specifically provided for by the Attachment Law, no attachment procedure may be ordered by the ourt. (Nakasone v. Randall 129 CA 3d 757)

. writ of attachment may be issued ex parte (without notice to the defendant) or following a noticed hearing. The court must find that the claim is one upon which an attachment may be issued, the claim is probably valid, nd the property sought to be levied is not exempt from attachment. Additionally, if the writ is issued ex arte, the court must find that great or irreparable injury would result to the plaintiff if issuance was delayed ntil the matter could be heard on notice.

-19/110.00 Jurisdiction of Court

alifornia's trial courts consisted of superior and municipal courts, each with its own jurisdiction and number f judges. In June 1998, California voters approved Proposition 220, permitting the judges in each county to nerge their superior and municipal courts into a "unified," or single, superior court. As of February 2001, all 8 counties have unified their trial courts.

he writ of attachment is not found in the small claims court. The small claims court is generally presided over y a justice of the peace or judge pro temp and is a summary method of expediting causes where the amount nvolved is less than $5,000. It is an abbreviated procedure heard informally without the presence of attorneys n either side and without formal pleadings. Writs of attachment and garnishment are denied the plaintiff. Superior Wheeler C. Corp. v. Superior Count, et al, 203 Cal. 384)

-19/120.00 Definitions

-19/120.01 Interchangeable Terms

- “Amount required to satisfy the judgment” shall be deemed references to the amount required to satisfy the amount to be secured by the attachment.
- “Execution lien” or “lien” shall be deemed references to the attachment lien.
- “Judgment creditor” shall be deemed references to the plaintiff.
- “Judgment debtor” shall be deemed references to the defendant.
- “Levy” shall be deemed references to levy of attachment.

- “Notice of levy” shall be deemed references to notice of attachment.
- “Release” of property shall be deemed references to release of property pursuant to this title.
- “Satisfaction or discharge of the judgment” shall be deemed references to the satisfaction or termination of the attachment.
- “Writ” or “writ of execution” shall be deemed references to a writ of attachment.
- “Levy” shall be deemed references to levy of attachment.
- “Notice of the levy” shall be deemed references to notice of attachment.

CCP 488.600)

-19/120.02 Account Debtor

Account debtor" means the person who is obligated on an account, chattel paper or general intangible.
CCP 481.020, COMM 9102(a)(3))

-19/120.03 Account Receivable

Account receivable" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. (CCP 481.030, COMM 9102(a)(2))

-19/120.04 Chattel Paper

Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper. (CCP 481.040, 480.140;COMM 9102(a)(11))

-19/120.05 Complaint

Complaint" includes a cross-complaint. (CCP 481.060**)**

-19/120.06 Defendant

Defendant" includes a cross-defendant. (CCP 481.070)

-19/120.07 Deposit Account

Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, avings and loan association, credit union or like organization, other than an account evidenced by a egotiable certificate of deposit. (CCP 481.080, COMM 9102(a)(29))

-19/120.08 Document of Title

Document of title" includes a bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, or ompress receipt, and any other document that, in the regular course of business or financing, is treated as dequately evidencing that the person entitled under the document has the right to receive, hold, and dispose f the document and the goods it covers. To be a document of title, a document shall purport to be issued by bailee and purport to cover goods in the bailee's possession that either are identified as or are fungible ortions of an identified mass. Where goods including distilled spirits and agricultural commodities are tored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the ature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even hough issued by a person who is the owner of the goods and is not a warehouseman. A document of title is egotiable if by its terms the goods are to be delivered to bearer or to the order of a named person; or where ecognized in overseas trade, if it runs to a named person or assigns. (COMM 1201(b)(16), 7104, 7201(b), 102(a)(30), CCP 481.090)

-19/120.09 Equipment

Equipment" means tangible personal property in the possession of the defendant and used or bought or use primarily in the defendant's trade, business, or profession if it is not included in the definitions of nventory or farm products. (CCP 481.100)

-19/120.10 Farm Products

Farm products" means crops or livestock or supplies used or produced in farming operations or products of rops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, milk, and ggs), while in the possession of a defendant engaged in raising, fattening, grazing, or other fanning perations. If tangible personal property is a farm product, it is neither equipment nor inventory. (CCP 81.110)

-19/120.11 Financial Institution

Financial institution" means a state or national bank, state or federal savings and loan association or credit nion, or like organization, and includes a corporation engaged in a safe deposit business. (CCP 481.113)

-19/120.12 General Intangible

General intangibles" consist of a right to payment and means any personal property (including things in ction) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to roceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or

ther contract involving the use or hire of a vessel and all rights incident to the charter or contract are ccounts. (COMM 9102(a)(42), CCP 481.115)

-19/120.13 Instrument

nstrument" means a negotiable instrument or any other writing which evidences a right to the payment of ıoney and is not itself a security agreement or lease and is of a type which is in ordinary course of business ansferred by delivery with any necessary endorsement or assignment. The term does not include investment roperty. (COMM 3104, 9102(a)(47), CCP 481.117)

-19/120.14 Inventory

nventory" means tangible personal property in the possession of a defendant that (a) is held by the efendant for sale or lease or to be furnished under contracts of service or (b) is raw materials, work in

rocess, or materials used or consumed in his trade, business, or profession. Inventory of a person is not to e classified as his equipment. (CCP 481.120)

-19/120.15 Levying Officer

Levying officer" means the sheriff or marshal who is directed to execute a writ or order issued under this title. CCP 481.140)

-19/120.16 Person

Person" includes a natural person, a corporation, a partnership or other unincorporated association, a mited liability company, and a public entity. (CCP 481.170)

-19/120.17 Personal Property

Personal property" includes both tangible and intangible personal property. (CCP 481.175)

-19/120.18 Plaintiff

Plaintiff" means a person who files a complaint or cross-complaint. (CCP 481.180)

-19/120.19 Probable validity

. claim has "probable validity" where it is more likely than not that the plaintiff will obtain a judgment against ıe defendant on that claim. (CCP 481.190)

-19/120.20 Property

Property" includes real and personal property and any interest therein. (CCP 481.195)

-19/120.21 Public Entity

Public entity" includes the state, the Regents of the University of California, a county, a city, district, public uthority, public agency, and any other political subdivision or public corporation in the state. (CCP 481.200)

-19/120.22 Real Property

Real property" includes any right in real property, including, but not limited to, a leasehold interest in real roperty. The term "real property" includes land and permanent buildings. Things which are affixed to land, r incidental or appurtenant thereto, are generally considered as part of the real estate. Land also embraces ll titles, legal or equitable, perfect or imperfect, including such rights as lie in contract whether executory or xecuted. (CCP 17(B),481.203; CC 14, 658, 659, 660, 662)

-19/120.23 Secured party

Secured party" means a lender, seller or other person in whose favor there is a security interest, including a erson to whom accounts or chattel paper have been sold. If a security interest is in favor of a trustee, ıdenture trustee, agent, collateral agent, or other representative, the representative is the secured party. (CCP 481.207, COMM 9102(a)(72))

-19/120.24 Security

Security", except as otherwise provided in COMM 8103, means an obligation of an issuer or a share, articipation, or other interest in an issuer or in property or an enterprise of an issuer that is all of the following:

. It is represented by a security certificate in bearer or registered form, or the transfer of it may be egistered upon books maintained for that purpose by or on behalf of the issuer.

. It is one of a class or series or by its terms is divisible into a class or series of shares, participations, nterests, or obligations.

. It is either of the following:

(1) It is, or is of a type, dealt in or traded on securities exchanges or securities markets.

(2) It is a medium for investment and by its terms expressly provides that it is a security governed by this division. (COMM 8102, CCP 481.210)

-19/120.25 Security Agreement

Security agreement" means an agreement which creates or provides for a security interest.

COMM 9102(a)(74); CCP 481.220)

-19/120.26 Security Interest

Security interest" means an interest in personal property or fixtures that secures payment or performance of n obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a ayment intangible, or a promissory note in a transaction that is subject to COMM Division 9. “Security nterest” does not include the special property interest of a buyer of goods on identification of those goods to contract for sale under COMM 2401. (COMM 1201(35); CCP 481.223)

-19/130.00 Additional Writs of Attachment

everal writs in the same form may be issued simultaneously or from time to time upon the same undertaking, whether or not any writ previously issued has been returned. After the return of the writ of attachment, or upon he filing by the plaintiff of an affidavit setting forth the loss of the writ of attachment, the clerk, upon demand of he plaintiff at any time before judgment, may issue an alias writ which shall be in the same form as the riginal without requirement of a new undertaking. The date of issuance of a writ of attachment shall be eemed to be the date the writ is first issued. (CCP 482.090)

-19/140.00 Actions in Which Attachment Authorized

writ of attachment may be issued for a claim based on a contract where the amount exceeds $500, xcluding costs, interest and attorney fees. If the defendant is a natural person, the claim must arise from the efendant's trade or business. A writ of attachment may be issued against certain defendants residing utside the state. (CCP 483.010, 492.010) A writ of attachment may also be issued in an elder abuse case. WIC 15657.01)

-19/150.00 Undertaking

n undertaking of $10,000, unless increased by the court, is required before a writ of attachment is issued to ay the defendant for any wrongful attachment. (CCP 489.210, 489.220) A writ of attachment issued without ıe mandated bond is void. (Vershbow v. Reiner, 231 CA 3rd 879)

-19/160.00 Noticed Hearing Procedure

-19/160.10 Service on Defendant

he defendant is usually given the opportunity to appear at a hearing to determine whether the court should ssue a writ of attachment. The defendant must be served with a copy of the summons and complaint, a otice of application and hearing, and a copy of the application and of any affidavit in support of the pplication at least 16 court days before the hearing. (CCP 484.040, 1005)

. defendant shall be served all of the following:

- Summons and Complaint
- Notice of Application and Hearing
- Application for Attachment and any affidavits in support of the application

-19/160.20 Application for Writ

he application shall be executed under oath and shall include statement why the attachment is sought, the mount to be attached, a statement the attachment is not for another purpose, a statement the property is not nder bankruptcy protections, a description of the property to be attached. (CCP 484.020)

-19/160.30 Affidavit in Support of Application

he application shall be supported by an affidavit showing that the plaintiff on the facts presented would be ntitled to a judgment on the claim upon which the attachment is based. (CCP 484.030)

-19/160.40 Notice of Application and Hearing

he notice of application and hearing shall inform the defendant of the hearing place, date, and time, and all ther requirements stated in CCP 484.050.

-19/160.50 Opposition to Issuance of Writ

he defendant may oppose the issuance of the writ of attachment and/or claim an exemption by filing and erving a notice of opposition no later than five court days before the right to attach hearing. (CCP 84.060)

-19/160.60 Claim of Exemption

the defendant claims that the personal property described in the plaintiffs application, or a portion of such roperty, is exempt from attachment, the defendant shall claim the exemption. (CCP 484.070)

he claim of exemption shall:

- Describe the property claimed to be exempt.
- List the statute section(s) supporting the claim.
- Include an affidavit and points and authorities supporting any legal issues.

he claim of exemption shall be filed (with the court) and served on the plaintiff not less than five court days efore the date set for the hearing. If the plaintiff desires to oppose the claim of exemption, the plaintiff shall le (with the court) and serve on the defendant, not less than two days before the date set for the hearing, a otice of opposition and an affidavit with points and authorities in support thereof.

-19/160.70 Right to Attach Order

t the hearing, the court shall consider the showing made by the parties appearing and shall issue a right to ttach order, which shall state the amount to be secured by the attachment determined by the court. (CCP 84.090)

-19/170.00 Ex Parte Hearing Procedure

he right to due process of law ordinarily entitles a defendant to a noticed hearing and the opportunity to ppose the issuance of a writ of attachment. However, a writ may be issued ex parte (without notice to the

efendant) if the plaintiff will suffer great or irreparable injury or if the defendant resides outside the state.

-19/170.10 Grounds for Ex Parte Hearing

xcept as otherwise provided by statute, no right to attach order or writ of attachment may be issued pursuant) this chapter unless it appears from facts shown by affidavit that great or irreparable injury would result to the laintiff if issuance of the order were delayed until the matter could be heard on notice. (CCP 485.010)

-19/170.20 Issuance of Right to Attach Order and Writ of Attachment

pon the filing of the complaint or at any time thereafter, the plaintiff may apply pursuant to this article for a ght to attach order and a writ of attachment by filing an application for the order and writ with the court in hich the action is brought. (CCP 485.210)

he court shall examine the application and supporting affidavit and, except as provided in CCP 486.030, hall issue a right to attach order, which shall state the amount to be secured by the attachment, and order a rit of attachment to be issued upon the filing of an undertaking. (CCP 485.220) See 6-19/150.00 ndertaking

-19/180.00 Temporary Protective Order

pon application of the plaintiff or at the discretion of the court, the court may issue a temporary protective rder restricting the transfer of property or disposition of proceeds described in the order.

-19/180.10 Grounds for Issuing Temporary Protective Order

he court may in its discretion if it determines that the requirements of the right to attach order and writ of ttachment are met and would be in the interest of justice and equity to the parties instead issue a temporary rotective order. (CCP 486.030)

pplication for Temporary Protective Order

t the time of applying for a right to attach order, the plaintiff may apply for a temporary protective order by ling an application for the order stating what relief is requested supported by an affidavit showing that the laintiff would suffer great or irreparable injury if the temporary protective order were not issued. (CCP 86.010)

-19/180.30 Temporary Protective Order

he temporary protective order issued under this chapter shall contain such provisions as the court etermines would be in the interest of justice and equity to the parties, taking into account the effects on both ıe defendant and the plaintiff under the circumstances of the particular case. (CCP 486.040)

-19/180.40 Service on Defendant

he order must be personally served on the defendant. A defendant shall be served all of the following (CCP 86.080):

- Summons and Complaint
- Notice of Application and Hearing
- Application for Attachment and any affidavits in support of the application
- Temporary Protective Order

-19/180.50 Effect of Temporary Protective Order

he service of the order creates a lien on property of the defendant as described in the order. The lien ontinues notwithstanding transfer or encumbrance. The lien terminates upon the expiration of the temporary rotective order unless levied on under the writ of attachment. (CCP 486.110) The temporary protective rder may prohibit a transfer by the defendant of any of the defendant's property in this state subject to the evy of the writ of attachment. (CCP 486.050)

-19/180.60 Expiration of Temporary Protective Order

he temporary protective order terminates forty days after issuance unless an earlier date is specified in the rder or when a levy of attachment is made upon the property, whichever is earliest. (CCP 486.090)

-19/181.00 Order Directing Transfer

a writ of attachment is issued, the court may issue an order directing the defendant to transfer to the levying fficer possession of property or documentary evidence of title to property sought to be attached. The order hall be personally served on the defendant and contain a notice that failure to comply with the order may ubject the defendant to arrest and punishment for contempt of court. The order shall be served at the time of evy or, in the case of documentary evidence of title, may be served after levy on the property or debt. The rder is not issued in lieu of a writ, but in addition thereto. (CCP 482.080) The levying officer must have a rit in his possession before taking custody of the property.

-19/182.00 Fee Deposit

xcept as otherwise provided by law, the levying officer is not liable for failure to take or hold property unless ie plaintiff deposits a sum of money with the levying officer sufficient to pay the costs.

s a prerequisite to the taking of property into custody by the levying officer, whether by keeper or otherwise, ie plaintiff shall deposit with the levying officer a sum of money sufficient to pay the costs of taking the roperty and keeping it safely for a period not to exceed 15 days.

fter a levy, if continuation of the custody of the property is required, the levying officer shall, from time to me, demand orally or in writing that the plaintiff deposit additional amounts to cover estimated costs for eriods not to exceed 30 days each. The plaintiff must be given at least three business days after receipt of ıe demand to comply. If the plaintiff does not comply with the demand within the time allowed, the evying officer shall release the property. If the demand is a written demand and is served by mail, ppropriate mailing time would have to be added to the time to comply. (CCP 488.050)

-19/183.00 Instructions

-19/183.10 Contents

he plaintiff's written instructions must adequately describe the property and, if the property is a dwelling, state hether it is real or personal property. The sheriff may rely on the instructions unless the sheriff has actual nowledge that the information is incorrect. In the case of an ex parte writ where a copy of the summons and omplaint has not previously been served on the defendant, the plaintiff or his attorney of record shall instruct ıe officer to make such service at the same time he serves the defendant with a copy of the writ and notice of ttachment. It is the duty of the attorney to instruct the levying officer to make the service, rather than the duty f the levying officer to refuse to make the levy absent instructions to serve the summons and complaint. Consequently, if an ex parte writ is received, the requirement should be brought to the attention of the laintiff's attorney. If the attorney does not issue instructions for the service, that fact should be noted in the le, but the levy should be performed. (CCP 488.020, 488.030, 488.040)

he defendant must be served personally, in the manner of a summons, unless the defendant has "appeared n the action", which is not the same as having appeared at a hearing. If the defendant has an attorney of ecord, the process must be served on the defendant's attorney, not the defendant. In order to determine hom to serve (the defendant or the attorney) and how to serve (personally or by mail), the plaintiff's nstructions must include that information.

-19/183.20 Attorney of Record

nstructions to the levying officer may be taken only from the attorney of record. The attorney shall have uthority to receive money claimed by a client in an action or proceeding during the pendency thereof, or after udgment, unless a revocation of the attorney's authority is filed, and upon the payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. An attorney in an action or pecial proceeding may be changed at any time before or after judgment or final determination either upon he consent of both client and attorney filed with the clerk, or entered upon the minutes; or upon the order of he court, upon the application of either client or attorney, after notice from one to the other. The former ttorney must be recognized as the exclusive agent for the client until such time as written notice of the change nd of the substitution of a new attorney or of the appearance of the party in person is given to the adverse arty. (CCP 283, 284, 285)

-19/184.00 Contents of Writ of Attachment

A writ of attachment must be directed to the levying officer in the county where the levy is to be made. (CCP 488.020) The writ of attachment shall include the following information (CCP 488.010):

(a) The date of issuance of the writ.

(b) The title of the court that issued the writ and the cause and number of the action.

(c) The name and address of the plaintiff and the name and last known address of the defendant.

(d) The amount to be secured by the attachment.

(e) A description of the property to be levied upon to satisfy the attachment.

-19/185.00 Amount to Satisfy

he levying officer shall levy on the property described in the writ or so much thereof as is clearly sufficient to atisfy the amount to be secured by the attachment. The officer is not liable for a determination made in good ıith under this provision. (CCP 488.020)

cash is attached in the amount of the writ plus the officer's costs, any other property levied upon should be eleased and no further levies should be executed as the cash amount would be clearly sufficient to satisfy ıe amount to be secured.

property other than cash or a combination of cash and other property has been levied upon where the cash mount alone is insufficient to satisfy the amount of the writ and the levying officer's costs, the levying officer hould not attempt to determine whether sufficient _____property has been levied. The defendant may pply to the court for an order to release property to the extent it exceeds the amount necessary to secure the ttachment. (CCP 488.720)

-19/186.00 Property Subject to Levy

he type of property to be levied upon and the type of defendant determine whether the attachment levy can e made and the method of levy. If the defendant is an artificial person (corporation, partnership, nincorporated association or limited liability company) all property for which there is a method of levy is ubject to levy. If the defendant is a natural person, only certain property is subject to levy. (CCP 487.010, 88.475, 492.040, 695.010)

ıRTIFICIAL PERSON DEFENDANT	**NATURAL PERSON DEFENDANT**
.ccount Receivable	Account Receivable with at Least $150 balance

hattel Papers	Chattel Papers with at least $150 balance
eposit Accounts	Community Property
welling, Personal Property used as a	Deposit Account exceeding $1,000
quipment of a Going Business	Equipment
state of Decedent	Farm Products
arm Products	Final Money Judgment
inal Money Judgment	General Intangible with at least $150 balance
eneral Intangible	Instrument
oods held by Bailee without negotiable	Inventory
ocument of Title	Minerals, Oil, Gas to be extracted
rowing Crops	Money in place other than Business over $1,000
struments	Money on Promise of Business
ventory of a going business	Negotiable Document of Title
	Minerals, Oil, Gas to be extracted Real Property, except leasehold estate within unexpired term of less than one year
egotiable Document of Title	Securities
ersonal Property in Sheriff's custody	
ending Action	
eal Property	
afe Deposit Box Contents	
ecurities	
angible Personal Property in Third-Party's	
Possession	
angible Personal Property in Defendant's	

Possession

imber to be cut

ehicle or Vessel

-19/187.00 Pending Action or Proceeding

levy upon property that is the subject of an action or special proceeding pending at the time of the levy is not ffective unless the property levied upon is one of the following (CCP 488.475):

- Real property
- Growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead
- Tangible personal property in the possession or under the control of the defendant or in the custody of a levying officer
- The interest of a defendant in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession.

-19/188.00 Service of Writ of Attachment

-19/188.10 Service on Other than Defendant

ll of the following shall be provided at the time of service:

Where the writ was issued after hearing:

- Writ of Attachment (AT-135)
- Right to Attach Order and Order for Issuance of Writ of Attachment After Hearing (AT-120)

- Notice of Attachment (AT-165)

Where the writ was issued ex parte:

- Writ of Attachment (AT-135)
- *Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (Resident) (AT-125), or
- *Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (NonResident) (AT-130)
- Notice of Attachment (AT-165)

Service is made in the same manner as a summons. (CCP 684.110)

Resident/nonresident refers to the court finding that the defendant is or is not a resident of California.

6-19/188.20 Service on the Defendant

At the time of levy or promptly thereafter (CCP 488.305), the defendant must be served personally, in the manner of a summons, unless the defendant has "appeared in the action", which is not the same as having appeared at a hearing. If the defendant has an attorney of record, the process must be served on the defendant's attorney, not the defendant. In order to determine whom to serve (the defendant or the attorney) and how to serve (personally or by mail), the plaintiff's instructions must include that information.

In addition to the documents listed in 6-19/188.10, a summons and complaint must also be served on the defendant if he has not previously been served. (CCP 488.020(c)) It is the duty of the attorney to instruct the levying officer to make the service, rather than the duty of the levying officer to refuse to make the levy absent instructions to serve the summons and complaint. Consequently, if an ex parte writ is received, the requirement should be brought to the attention of the plaintiff's attorney. If the attorney does not issue instructions for the service, that fact should be noted in the file, but the levy should be performed. (CCP 488.020, 488.030, 488.040)

6-19/189.00 Duties After Levy

Within 10 days after service, the third person shall mail or deliver a memorandum to the levying officer whether or not the levy is effective. The memorandum shall be under oath and include:

(1) A description of any property of the defendant sought to be attached that is not delivered to the levying officer and the reason for not delivering the property.

(2) A statement of the amount and terms of any obligation to the defendant sought to be attached that is due and payable and is not paid to the levying officer and the reason for not paying the obligation.

(3) A statement of the amount and terms of any obligation to the defendant sought to be attached that is not due and payable at the time of levy.

(4) A description of claims and rights of other persons to the attached property or obligation that are known to the third person and the names and addresses of those other persons.

(5) A statement that the garnishee holds neither any property nor any obligations in favor of the judgment debtor.

A memorandum is not required if the third person delivered all of the property sought to be attached and has paid to the levying officer the amount due at the time of levy on any obligation to the defendant that was attached and there is no additional amount that thereafter will become payable on the obligation levied upon. If a garnishee's memorandum is received from the third person, the levying officer shall promptly mail or deliver a copy of the memorandum to the plaintiff. (CCP 488.610)

6-19/190.00 Property Exempt from Levy

Property exempted from an attachment levy includes: property exempt from the enforcement of a money judgment; property of a natural person defendant needed for support; earnings; property not delineated as subject to attachment levy; and business licenses. (CCP 487.020, 695.060, 699.720)

RTIFICIAL PERSON DEFENDANT	NATURAL PERSON DEFENDANT
lcoholic Beverage License	Alcoholic Beverage License
usiness License	Business License
ontingent Remainder	Cause of Action in Pending Case
terest of Partner in Partnership or LLC	Contingent Remainder
ause of Action in Pending Case	Earnings
ublic Agency Debt	Estate of Guardianship or Conservatorship
state of Guardianship or Conservatorship	Public Agency Franchise
ublic Agency Franchise	Interest of Partner in Partnership or LLC
udgment prior to expiration of appeal	Judgment prior to expiration of appeal
ife Insurance Loan Value	Life Insurance Loan Value
roperty not listed as subject to levy	Property not listed as subject to levy
	Trust Beneficiary Interest
	Property Necessary for Support of defendant or Defendant's Family
	Trust Beneficiary Interest

-19/191.00 Claim of Exemption

he defendant may file a claim of exemption with the levying officer or the court if the levy is made upon ersonal property. The claim must be filed within 30 days after the defendant was served with the notice of ttachment by the sheriff. If the levy is on real property, the claim may be filed any time before entry of udgment in the lawsuit. (CCP 485.610, 482.100, 703.510)

-19/200.00 Methods of Levy

ı general, there are four methods of levy: seizure, garnishment, recording and filing a lien. Levying on roperty in the custody of the levying officer is a distinct form of levy. (CCP 488.300 – 488.485) The ppropriate method of levy is determined by the type of property levied upon and who has possession of the roperty. The plaintiff's instructions should specify the type of property if not readily apparent to the sheriff, .g., security, instrument, negotiable document of title, certificated or uncertificated security, vehicle used as quipment or inventory.

he following chart is a guide to determine the proper method of levy.

METHODS OF LEVY BY TYPE OF PROPERTY

PROPERTY	SEIZURE	RECORDING	GARNISHMENT	LIEN
Account Receivable			Serve account debtor	

Chattel Paper	Defendant's possession		Serve third-party in possession	
Commercial Coach				File with Department of Housing and Community Development; serve legal owner or junior lienholder
Deposit Account/Safe-Deposit Box in the name of defendant			Serve financial institution	
Deposit Account/Safe-Deposit Box in the name of defendant and third-party			Serve financial institution and third-party	
Deposit Account/Safe-Deposit Box in the name of spouse (spousal affidavit required)			Serve financial institution and spouse	
Deposit Account/Safe-Deposit Box in the name of fictitious business name (cannot levy if third-party is not spouse of debtor)			Serve financial institution and any spouse	

Deposit Account/Safe-Deposit Box in the name of third-party (requires court order)			Serve financial institution and third-party	
Deposit Account/Safe-Deposit Box in the name of an alias (requires Affidavit of Identity)			Serve financial institution	
Dwelling - Personal Property	Install Keeper		Serve occupant	
Estate of Decedent			Serve personal representative of decedent; serve defendant after property is delivered to Sheriff	
Farm Products	Install Keeper for 2 or 10 days			File Secretary of State
Final Money Judgment			File with clerk of the court; serve debtor of final money judgment	
General Intangible			Serve account debtor	
Goods held by Bailee with negotiable document of title			Serve third-party in possession of negotiable document of title	
Instrument	Defendant's possession		Serve third-party in possession	
Inventory of going business	Install Keeper for 2 or 10 days			File Secretary of State

Mobilehome				File with Department of Housing and Community Development; serve legal owner or junior lienholder

METHODS OF LEVY BY TYPE OF PROPERTY

PROPERTY	SEIZURE	RECORDING	GARNISHMENT	LIEN
Negotiable Document of Title	Defendant's possession		Serve third-party in possession	
Property in Levying Officer's Custody				
Real Property		Record with County recorder; serve third-party; serve occupant		

Security (certificated)	Defendant's possession		Serve issuer or secured party	
Security Entitlement			Serve securities intermediary or secured party	
Security (uncertificated)			Serve issuer or secured party	
Tangible Personal Property	Defendant's possession		Serve third-party in possession	
Vehicle used as Inventory	Defendant's possession			serve legal owner or junior lienholder
Vehicle used as Equipment				File with Department of Motor Vehicles; serve legal owner or junior lienholder
Vessel not registered with DMV	Defendant's possession			
Vessel as Equipment (registered with DMV)				File with Department of Motor Vehicles; serve legal owner or junior lienholder
Vessel as Inventory (registered with DMV)				serve legal owner or junior lienholder

-19/210.00 Seizure Levies in General

nless another method of levy is provided, to attach tangible property in the possession of the defendant the heriff shall take it into custody. The sheriff can only seize property from the possession or control of the efendant. Seizure from the possession of a third party requires a writ of mandate.

he levying officer is not liable for damage to levied property unless the officer is negligent. The plaintiff must eposit costs for taking property into custody prior to levy. If additional fees are required to maintain the levy, ıe plaintiff must be given three business days notice. If the fees are not received timely, the levying officer hall release the property. (See 6-19/182.00 Fee Deposit)

a keeper is installed at a going business, only cash proceeds and inventory (not the equipment) are under evy. The keeper must remain installed for two days, if the business is an artificial person defendant, or ten ays, if the defendant is a natural person and the writ was issued ex parte. If the defendant objects to the eeper, the property must be taken into the exclusive custody of the levying officer. The property must be emoved to safekeeping at the expiration of the keeper installation period. The keeper may remain beyond ıe maximum time period if both parties agree. A keeper may be installed to levy on cash proceeds only. In ıe case of a cash only keeper installation, the above time limits and the right to object to the keeper are ıapplicable. The levying officer acquires a possessory lien on levied property. The levying officer takes roperty into custody by: (1) removing the property to a place of safekeeping, (2) installing a keeper, or (3) therwise obtaining possession and control of the property.

-19/210.10 Taking Property Into Custody

/hen the method requires or otherwise directed to take property into custody, the levying officer may do so y removing the property to a safe place, installing a keeper, or otherwise obtaining possession or control of ıe property. (CCP 488.090)

-19/210.20 Possession of Third Party

Where the property is in the defendant's possession, and the defendant is present, the property should normally be seized, even though a third party is present and claiming title or right to possession. In this case, the officer is taking the property from the defendant, and the third party has the right to file a third party claim. It is not the officer's duty to decide the case in field. There may be situations where the levying deputy is convinced that the property is in the actual possession of a third party and not in the possession of the defendant, even though the defendant is physically present. In such a case, the deputy should not seize the property. Several California decisions, while not directly on point, indicate that the protection given an officer by requiring a third party claim does not apply when the officer or any other party goes out and takes possession of property not found in the possession of the defendant. (Henrique v. Bank of Cottonwood, 97 CA 725) An officer has no authority to seize property in the hands of a third person; a garnishment is the only lawful method.

plaintiff's attorney demands a levy of property in the possession of a third person be made by seizing the property, the officer should refuse such demand and direct the attorney to secure a writ of mandate or other court order directing the officer to seize the property from the third person's possession.

-19/210.30 Joint Tenancy

n levying on the defendant's interest in personal property held in tenancy in common or joint tenancy by the defendant and another, the levying officer shall seize the whole, if the property be in the defendant's possession. The officer has no authority to partition the property; however, the officer may sell only the

efendant's interest in the whole of the property. (Fonda v. Fidelity& Deposit Company, 40 CA APP 2nd 830-
efers to Veach v. Adams, 51 CA 609 (1877); Conolley v. Power, 70 CA 70 (1924))

-19/210.40 Liability of Levying Officer

he levying officer is not liable for neglect or misconduct if is directed by written and signed instructions from
n attorney of record unless he has actual knowledge the information is incorrect or negligent in the care or
andling of the property. (CCP 262, 488.140)

-19/210.50 Inventory of Property

ı an attachment levy, CCP 488.130 requires the levying officer to make a full inventory of property attached
nd return the inventory with the writ. If a keeper is installed, the keeper shall
nmediately commence to take an inventory of all personal property subject to the levy. The inventory
hould be in detail as to such items as fixtures, furniture, equipment, and machinery, and may be general as to
ems such as stock in trade, supplies and manufactured products. If property is to be moved to storage or
old, a detailed inventory will be required of all items included. The inventory should be taken in triplicate, one
opy for the plaintiff, one copy for the levying officer's file, and the original to be returned to court with the writ.

-19/210.60 Lien of Levying Officer

he levying officer has a special lien, dependent upon possession, on personal property levied upon in the
mount of the levying officer's costs for which an advance has not been made. (CCP 488.100)

-19/210.70 Private Place

the personal property sought to be seized is located in a private place of the defendant, the levying officer
ıaking the levy shall demand delivery of the property by the defendant and shall advise such person of
otential liability for additional costs and attorney's fees that may be incurred in further proceedings to obtain
elivery of the property. If the defendant does not deliver the property, the levying officer shall promptly notify
ıe plaintiff of the failure to obtain custody of the property and shall make no further attempt to obtain custody

f the property until a court order is delivered to the officer which states that there is probable cause to believe ıat the specific property sought to be levied upon is in a specific location described in the order. Upon ɛceipt of the court order, the levying officer making the levy shall go to the location, announce the officer's ldentity, purpose, and authority pursuant to the order, and demand delivery of the property. If the property is ɔt voluntarily delivered, the levying officer may cause the building or enclosure where the property is believed ɔ be located to be broken open in such manner as the levying officer reasonably believes will cause the least amage, but if the officer reasonably believes that entry and seizure of the property will involve a substantial sk of serious injury to anyone, the officer shall not enter the location and shall promptly make a return to the ɔurt stating the reasons for believing that the risk exists. In such a case, the court shall make such orders as ıay be appropriate. (CCP 488.070, 699.030)

he provisions requiring a court order based on probable cause prior to levying on property in a private place hould be complied with prior to levying on personal property physically on the person or held in the hands of a efendant.

lnless consent is freely, voluntarily and knowledgeably given, the levying officer is not authorized to enter any rivate place to seize property unless in possession of a writ or other order of court directing the officer to nter that specific private place.

ourth Amendment protections against unreasonable searches and seizures extend to civil as well as riminal matters. Intrusions into private places in execution of process are searches and seizures within ıeaning of Fourth Amendment, and a search is unreasonable unless supported by a warrant (order) issued y a magistrate upon a showing of probable cause. Where government officials rely on consent to justify the ıwfulness of a search, the burden is on them to show by clear and positive evidence that consent was freely, ɔluntarily and knowledgeably given. The occupant of the premises is confronted not only by the intimidating resence of an officer of law, but also by the existence of legal process which appears to justify the intrusion. ı such a situation, acquiescence in the intrusion generally cannot operate as a voluntary waiver of Fourth

mendment rights. Although it is established that one may waive the Fourth Amendment right to be free om unreasonable searches and seizures, the courts indulge every reasonable presumption against vaiver of fundamental constitutional rights. Invitations to enter one's house, extended to armed officers of the w who demand entrance, are usually to be considered as invitations secured by force. (Blair v. Pitchess, 5 al.3d 258)

he preceding paragraphs set forth objective standards to be followed by the levying officer in executing the fficer's ministerial duties. These objective standards, however, are based upon the levying officer having nowledge of whether the property is located in a "private place," as such term is used in connection with the ourth Amendment proscription against unreasonable searches and seizures. In this context the law, through ne doctrine of stare decisis or case law, is continually changing. The situation is exacerbated by the fact that, lthough the courts look to objective factors to decide if the defendant exhibited an expectation of privacy in rder to make a specific location a "private place," it is the defendant's subjective intent as demonstrated by nese objective factors that are controlling. The following cases offer some insight into the uncertainty of what ay or may not be found to be a "private place." In each and every case some independent judgment will be equired based on the specific facts and circumstances. Each levy situation should be approached from the tandpoint that if it is unclear whether the location is a "private place," the actions to be taken should be onsistent with those that would be authorized if the location were a "private place."

lomes, offices and hotel rooms fall within the category of maximum protection from unreasonable searches. ertain places carry with them expectation of privacy which, although considerable, is less intense and nsistent than in the case of homes, offices and hotel rooms; such places may be searched upon probable ause alone under circumstances of less demanding urgency, and include automobiles, and trunks onsigned to common carrier. Some sites are regarded as so public in nature that searches are justifiable ithout any particular showing of cause or exigency, and include places which might be classified as open elds and places in which the defendant has not exhibited a subjective expectation of privacy or where such n expectation would be unreasonable. (People v. Dumas, 9 CA 3d 871)

resident of a house may justifiably rely upon privacy of surrounding areas as protection from peering of fficers, unless the resident is exposed to that intrusion by existence of public pathways or other invitations to ne public to enter upon the property. (Lorenzana v. Superior Court, 9 CA 3d 626)

fenced front yard does not necessarily show an expectation of privacy. The determining factor in onsidering whether an individual's yard is protected by the Fourth Amendment is what reasonable xpectation of privacy was exhibited, not what the defendant subjectively claimed. There is no reasonable xpectation of privacy in a front yard of a residence in the absence of a locked gate, high solid fence blocking ne front yard from view, a written notice to keep out or beware of a dog, or perhaps a doorbell at the front ate. (People v. Mendoza, Super., 122 CA 3d Supp. 12)

ı People v. Moreno (204 CA Rptr. 17), the court held that an attached garage, whether or not it has a ɔmmon entry, is considered an integral part of the house and is simply one room of several which together ɔmpose the dwelling. Consequently, attached garages may not be entered to make a levy or for any other urpose unless the deputy has first obtained the occupant's consent or is in possession of a court order uthorizing entry into the specified garage.

-19/220.00 Seizure of Specific Types of Property

he following types of property in the possession of the defendant are subject to seizure as indicated.

WRIT OF ATTACHMENT BY TYPE OF SEIZURE

ROPERTY	**TYPE OF SEIZURE**
:hattel Paper	Take the Chattel into custody
	Personal Property used as a Dwelling — Place a keeper in charge for a period of time determined by the plaintiff
	Farm Products — Install a keeper for 2 days (if the defendant is not a natural person) or 10 days (if the defendant is a natural person and writ issued ex parte). At the end of the keeper period, the property is taken into custody. If the defendant objects to the keeper, the property is taken into custody. The preceding does not apply if only cash is attached.
	Instruments — Take the property

	into custody. If instructed by the plaintiff, serve a notice of attachment and writ of attachment on the obligor.
Inventory of a Going Business	Install a keeper for 2 days (if the defendant is not a natural person) or 10 days (if the defendant is a natural person and writ issued ex parte). At the end of the keeper period, the property is taken into custody. If the defendant objects to the keeper, the property is taken into custody. The preceding does not apply if only cash is attached.
Mobilehome	The plaintiff may request the placement of a keeper in charge of the property for a period of time determined by the plaintiff.
Negotiable Documents of Title	Take the property into custody
Securities	Take the property into custody

-19/220.10 Chattel Paper

o levy upon chattel paper, the levying officer shall take the chattel paper into custody if it is in the possession f the defendant or, if it is in possession of a third person, personally serve a copy of the writ and a notice of ttachment on the third person.

the levying officer obtains custody of the chattel paper or if pursuant to a security agreement the defendant as liberty to collect or compromise the chattel paper or to accept the return of goods or make epossessions, the levying officer shall, if instructed by the plaintiff, serve a copy of the writ and a notice of ttachment on the account debtor either personally or by mail. (CCP 488.435, 700.100)

-19/220.20 Dwelling

o levy upon personal property used as a dwelling, the levying officer shall serve a copy of the writ and a otice of attachment on one occupant of the property. Service on the occupant shall be made by leaving the opy of the writ and the notice with the occupant personally or, in the occupant's absence, with a person of uitable age and discretion found at the property when service is attempted who is a member of the ccupant's family or household. If unable to serve such an occupant at the time service is attempted, the evying officer shall make the levy by posting the copy of the writ and the notice in a conspicuous place on the roperty. (CCP 488.415, 700.080)

louse trailers and mobilehomes are classified as personal property capable of manual delivery when their heels have not been removed, and they have not been so connected with the ground so as to become a xture of the realty.

-19/220.21 Placing a Keeper

the plaintiff desires greater security for the levy, a keeper shall be placed in charge of the property for hatever period requested by the plaintiff.

-19/220.22 Removal of Occupants

fter levy, the plaintiff may, by noticed motion, apply for a court order for the levying officer to remove the ccupants. The notice of motion shall be served either personally or by mail on an occupant, any legal wner and junior lienholder previously required to be served notice by the levying officer and, if the defendant not the occupant, on the defendant. The occupants may be removed by the levying officer only pursuant to court order.

-19/220.23 Legal Owner Notification

a vehicle or vessel is levied upon and a certificate of ownership has been issued by the Department of lotor Vehicles for such vehicle or vessel and the certificate of ownership is still in effect, or if a nanufactured home, mobilehome, or commercial coach is levied upon and a permanent title record has een established by the Department of Housing and Community Development for such manufactured home, nobilehome, or commercial coach, the levying officer shall determine from the appropriate department the ame and address of the legal owner and each junior lienholder of the property levied upon. If the legal owner r junior lienholder is not the judgment debtor and is not in possession of the vehicle, vessel, manufactured ome, mobilehome, or commercial coach, the levying officer shall _____at the time of levy or romptly thereafter serve a copy of the writ and a notice of attachment on the legal owner and any junior enholder either personally or by mail. (CCP 488.425, 700.090)

the levy was made by serving a garnishment, a copy of the original notice of attachment which was served n the garnishee shall suffice as the notice required to be served to any other person. (CCP 488.065, 99.545)

louse trailers and undocumented vessels are required to be registered with the Department of Motor ehicles. (VEH 630, 635, 4000, 5350 and 9840, et seq)

lanufactured homes, mobilehomes, and commercial coaches sold or used within this state are subject to egistration with the Department of Housing and Community Development. (HS 18075) Mobilehomes which re subject to local property taxation pursuant to Revenue and Taxation Code 5800 et seq., are excepted om the annual registration generally required for mobile homes and commercial coaches, and are subject to egistration only at the time of sale, resale or transfer of title. (HS 18075.5)

-19/220.30 Instruments

o levy upon an instrument, the levying officer shall take the instrument into custody if it is in possession of the efendant or, if it is in possession of a third person, personally serve a copy of the writ and a notice of ttachment on the third person.

the levying officer obtains custody of the instrument, the levying officer shall, if instructed by the plaintiff, serve copy of the writ and a notice of attachment on the obligor either personally or by mail. (CCP 488.440, 00.110)

-19/220.40 Inventory and Farm Products

nder a writ of attachment, farm products or inventory of a going business may be attached by the levying fficer either by seizure or the filing of a lien. This section does not apply to growing crops, timber to be cut, r minerals or the like.

-19/220.41 Keeper

o attach farm products or inventory of a going business in the possession or under the control of the efendant, the levying officer may place a keeper in charge of the property. During the keeper period, the usiness may continue to operate in the ordinary course of business provided that all sales are final and are r cash or its equivalent. For this purpose a check is the equivalent of cash, and the levying officer is not able for accepting payment in the form of a cash equivalent. Unless the levying officer is otherwise instructed y the plaintiff, the keeper shall take custody of all proceeds from sales. The keeper shall remain in charge of e business for (CCP 488.395):

- 10 days if the defendant is a natural person and the writ has been issued ex parte, or
- two (2) days in all other cases.

-19/220.42 Cash Only Keeper

. keeper may be installed to collect cash or cash proceeds only. The time limitations are inapplicable and ıe defendant cannot object to a cash only keeper installation. (CCP 488.395(e), 700.070(c))

-19/220.43 Taking Property Into Custody

Inless some other disposition is agreed upon by the plaintiff and defendant, the levying officer shall take the ırm products or inventory into exclusive custody at the earlier of the following times:

- At the time the defendant objects to placement of a keeper in charge of the business.
- At the conclusion of the applicable period prescribed (see 6-19/220.41).

the plaintiff and defendant agree that it would be in the best interest of both parties to allow the business to perate beyond the applicable time period, and they jointly notify the Sheriff in writing, the business may ontinue to operate. Sheriff's Department personnel shall not arbitrarily extend the time the business may ontinue to operate beyond the applicable two or ten-day period. Sheriff's Department personnel shall not olicit such information from the plaintiff and defendant.

-19/220.44 Lien with Secretary of State

ee 6-19/310.20 Inventory and Farm Products

-19/220.50 Negotiable Document of Title

o levy upon a negotiable document of title, the levying officer shall take the negotiable document of title into ustody if it is in the possession of the defendant or, if it is in the possession of a third person, personally erve a copy of the writ and a notice of attachment on the third person.

CCP 488.445, 700.120)

-19/220.60 Securities

o levy on a certificated security in the possession of the defendant, the levying officer shall take the security nto custody. (CCP 488.450; COMM 8112)

-19/220.70 Tangible Property in Defendant's Possession

Inless another method of attachment is provided by this article, to attach tangible personal property in the possession or under the control of the defendant, the levying officer shall take the property into custody. CCP 488.335)

-19/220.80 United States Savings Bond

. United States Savings Bond is not listed as property which cannot be levied upon. (CCP 487.020, 99.720) United States Savings Bonds may be seized if the debtor is an owner or co-owner of the Bond(s). Iowever, the method of levy, however, is based on federal law and regulations rather than state law. (31 ode of Federal Regulations 315.21) The value of the Bond(s) cannot be redeemed with the United States overnment because it only recognizes a money judgment, not an attachment. The Bond(s) must remain in ne levying officer's custody via storage until a final judgment is rendered and a Writ of Execution received. nce a Writ of Execution is received, the levying officer may transfer the attachment to execution, retrieve the ond(s) from storage, and follow the procedures set forth in 6-20/520.60**.**

-19/230.00 Garnishment Levies in General

ı general, property of the defendant in the possession or control of a third party may be levied by arnishment. The levy is made by serving a garnishment consisting of a notice of attachment, order for ssuance of the writ, memorandum of garnishee and writ of attachment on the garnishee (third party in ossession). The garnishee must complete the memorandum of garnishment and return it to the levying fficer within 15 days after service. Certain types of property have distinctive garnishment procedures.

-19/230.10 Contingent Interest

o be subject to levy by garnishment a debt or credit must actually exist as an attaching creditor can acquire o greater right in attached property than the debtor has at the time of levy. A debt which is uncertain and ontingent in the sense that it may never come due and payable is not subject to garnishment. If the ncertainty, however, only involves the amount of the debt and not the liability itself, the debt is subject to arnishment even though defenses to the debt might diminish or defeat it.

.s a consequence, contingent interests, such as future rental payments and funds in escrow when further onditions of escrow must be performed before the escrow will close, are not subject to garnishment. (First entral Coast bank v. Cuesta Title Guarantee Company, 143 CA 3rd 12)

-19/230.20 Delivering Property to Levying Officer

Unless otherwise provided by statute or the third person has good cause for failure or refusal to do so, the hird person shall at the time of levy or promptly thereafter deliver to the levying officer any of the property evied upon that is in the possession or under the control of the third person at the time of levy unless the third erson claims the right to possession of the property. A third person who is required to deliver property or ake payments to the levying officer and who, without good cause, fails or refuses to do so, is liable to the laintiff for the value of the defendant's interest in the property, or the amount of the payments required to be ade up to the amount required to satisfy the levy.

CCP 488.600)

-19/230.30 Security Interest

xcept as otherwise ordered by the court, if property levied upon is subject to a security interest which ttached prior to the levy, the property or obligation is subject to enforcement of the security interest without egard to the levy unless the property is in the custody of the levying officer. If the attachment lien has priority ver the security interest, the secured party is liable to the plaintiff for any proceeds received by the secured arty from the property to the extent of the attachment lien. After the security interest is satisfied, the secured arty shall, to the extent the defendant would have been entitled, deliver any excess property and pay any xcess payments or proceeds of property remaining in the secured party's possession to the levying officer or the purposes of the levy, unless otherwise ordered by the court or directed by the levying officer. (CCP 88.600)

-19/230.40 Account Debtor

fter service of a copy of the writ and notice of attachment on an account debtor obligated on an account eceivable, chattel paper, or general intangible, the account debtor shall, unless otherwise directed by court rder or the levying officer: (CCP 488.600, 701.050)

the account debtor has been making payments to the defendant or is required to make payments to the efendant, make payments to the levying officer as they become due.

the account debtor has been making payments to a third person or is required to make payments to a third erson, continue to make payments to the third person notwithstanding the levy until the account debtor eceives notice that the obligation to the third person is satisfied or is otherwise directed by court order or by ıe third person; thereafter the payments shall be made to the levying officer as they become due.

pursuant to a security agreement, the defendant has liberty to accept the return of goods or make epossessions, deliver to the levying officer the property returnable to the defendant unless otherwise directed y court order or by the levying officer. If the levying officer obtains custody of an instrument levied upon and erves the obligor under the instrument a copy of the writ and a notice of attachment or levy, as applicable, to ıe obligor shall make payments to the levying officer as they become due.

-19/230.50 Memorandum of Garnishee

t the time of service of a copy of the writ of attachment and a notice of attachment on a third person, the evying officer shall request the third person to give the levying officer a garnishee's memorandum containing ıe information required by this section. Within 10 days after the request is made, the third person shall mail r deliver the garnishee's memorandum to the levying officer whether or not the levy is effective. (CCP 88.610)

-19/240.00 Garnishment Levies on Specific Types of Property

-19/240.10 Account Receivable

Unless another method of levy is provided, to levy upon an account receivable or general intangible, the levying officer shall personally serve a copy of the writ and a notice of attachment on the account debtor.

a levy is made by serving the account debtor and payments on the account receivable or general intangible re made to a person other than the defendant (whether pursuant to a security agreement, assignment for ollection, or otherwise) and if instructed by the plaintiff, the levying officer shall personally serve a copy of the rit and a notice of attachment on such third person. Such service is a levy on any amounts owed to the efendant by such third person. (CCP 488.470)

-19/240.20 Decedent's Estate

o levy upon the interest of the defendant in personal property in the estate of a decedent, whether the interest rises by testate or intestate succession, the levying officer shall personally serve a copy of the writ and a otice of attachment on the personal representative of the decedent.

he personal representative shall report the levy to the court in which the estate is being administered when ny petition for distribution is filed. If a decree orders distribution to the defendant, the court making the ecree shall order the property levied upon to be delivered to the levying officer. The property may not be elivered to the levying officer until the decree has become final. To the extent the property delivered to the evying officer is not necessary to satisfy the attachment, it shall be released to the defendant.

romptly after the property is delivered to the levying officer, the levying officer shall serve the defendant ersonally or by mail a notice describing the property. The defendant may file a claim of exemption within 10 ays of such service, plus mailing time if service is by mail. (CCP 488.485)

-19/240.30 Deposit Account/Safe Deposit Box

the service is on a financial institution, a title insurer or underwritten title company, industrial loan company or avings and loan company, service shall be made at the office or branch that has actual possession of the

roperty levied upon or at which a deposit account levied upon is carried and shall be made upon the officer, ıanager, or other person in charge of the office or branch at the time of service. (CCP 488.455, 488.460; IN 6663) If served at a centralized location designated by the financial institution, other than a savings and ɔan association, the garnishment attaches all accounts at any location.

he word "officer" has been held to mean any other representative of the banking corporation whose duties, ınctions, and responsibilities are such that service upon him would reasonably inform the bank of such ervice. (Walters v. Bank of America, 9 CA 2d 46, 53)

. spousal affidavit, fictitious business name statement, and court order to levy on third party account are used xclusively to garnish deposit accounts/safe-deposit boxes.

ee 6-05/800.29 (fees) and 6-20/560.31 for additional requirements regarding Open Safe Deposit Box.

-19/240.40 Final Money Judgment

o attach a final money judgment, the levying officer shall file a copy of the writ of attachment and a notice of

ttachment with the clerk of the court that entered the final money judgment. The court clerk shall endorse pon the judgment a statement of the existence of the attachment lien and the time it was created. If an bstract of the judgment is issued, it shall include a statement of the attachment lien in favor of the plaintiff. he levying officer shall serve a copy of the writ and Notice of Attachment at the same time or shortly ıereafter. (CCP 488.480)

-19/240.50 General Intangible

lnless another method of attachment is provided by this article, to attach an account receivable or general ıtangible, the levying officer shall personally serve a copy of the writ of attachment and a notice of attachment n the account debtor. If the intangible is payable to a third-party, serve the writ and notice of attachment on ıe third-party. (CCP 488.470)

-19/240.60 Goods Held by Bailee

o levy upon goods in the possession of a bailee, other than one who has issued a negotiable document of tle therefore, the levying officer shall personally serve a copy of the writ and notice of attachment on the ailee. (CCP 488.365, 700.060(a))

the goods are subject to a security interest, and the plaintiff instructs the levying officer to serve the secured arty, the levying officer shall serve a copy of the writ and notice of attachment on the secured party ;ither personally or by mail. (CCP 488.365, 700.060(b))

-19/240.70 Negotiable Document of Title

o levy upon a negotiable document of title, the levying officer shall take the negotiable document of title into ustody if it is in the possession of the defendant or, if it is in the possession of a third person, personally erve a copy of the writ and a notice of attachment on the third person.

CCP 488.445, 700.120)

-19/240.80 Securities

o attach a security, the levying officer shall comply with COMM 8112. (CCP 488.450)

-19/240.81 Certificated Security

he interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the ecurity certificate by the officer making the levy. However, a certificated security for which the certificate has een surrendered to the issuer may be reached by a creditor by legal process upon the issuer. (COMM 112(a))

-19/240.82 Uncertificated Security

he interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon ıe issuer at its chief executive office in the United States. (COMM 8112(b))

-19/240.83 Security in Possession of Secured Party

he interest of a debtor in a certificated security for which the certificate is in the possession of a secured arty, or in an uncertificated security registered in the name of a secured party, or a security entitlement aintained in the name of a secured party, may be reached by a creditor by legal process upon the secured arty. (COMM 8112(d)) "Secured party" means a lender, seller or other person in whose favor there is a ecurity interest, including a person to whom accounts or chattel paper have been sold. If a security interest in favor of a trustee, indenture trustee, agent, collateral agent, or other representative, the representative is e secured party. "Security agreement" means an agreement which creates or provides for a security terest.

-19/240.84 Security Entitlement

Security entitlement" means the owner holds a security indirectly through a securities intermediary. Securities intermediary" means either a clearing corporation or a person, including a bank or broker, that the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

he interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the ecurities intermediary with whom the debtor's securities account is maintained. (COMM 8112(e)) arnishments of shares or investment certificates of any savings and loan association

lust be served at the office at which the shares or certificates were issued if such branch is still being aintained and, if not, at the principal office of the association.

-19250.00 Tangible Property in Possession of Third Party

nless another method of attachment is provided by this article, to attach tangible personal property in the ossession or under the control of a third person, the levying officer shall personally serve a copy of the writ of xecution and a notice of levy on the third person. (CCP 488.345, 700.040)

-19/300 Lien Levies in General

o attach equipment of a going business, vehicle, vessel, mobilehome or commercial coach, the sheriff shall le a lien with the Secretary of State, Department of Motor Vehicles or the Department of Housing evelopment. As an alternative to seizure, farm products or inventory of a going business also may be levied pon by filing a lien.

-19/310.00 Lien Levies On Specific Types of Property

-19/310.10 Equipment of Going Business

-19/310.11 Equipment Other Than Vehicle or Vessel

o attach equipment of a going business in the possession or under the control of the defendant, the levying fficer shall file the statutory $20 fee (check payable to the Office of the Secretary of State) and shall file with ne Office of Secretary of State an original and a copy of a notice of attachment in the form prescribed by the ecretary of State. A copy of the writ is not filed with the notice. The original notice will be retained by the ecretary of State, and the copy will be returned to the levying officer with the filing date, time and number tamped thereon. The notice shall contain all of the following: (CCP 488.375)

- The name and mailing address of the plaintiff.
- The name and last known mailing address of the defendant.
- The title of the court where the action is pending and the cause and number of the action.
- A description of the specific property attached.
- A statement that the plaintiff has acquired an attachment lien on the specified property of the defendant.

nformation regarding an attachment lien is available from the Secretary of State for a fee; however, this is not one through the levying officer.

-19/310.12 Equipment That Is a Vehicle or Vessel

o attach a vehicle or vessel for which a certificate of ownership has been issued by the Department of lotor Vehicles, or a mobilehome or commercial coach for which a certificate of title has been issued by the epartment of Housing and Community Development, which is equipment of a going business in the ossession or under the control of the defendant, the levying officer shall tender a $15 filing fee to the ppropriate department and shall file with the appropriate department a notice of attachment, in the form rescribed by such department, which shall contain the following: (CCP 488.385)

- The name and mailing address of the plaintiff.
- The name and last known mailing address of the defendant.
- The title of the court where the action is pending and the cause and number of the action.
- A description of the specific property attached.
- A statement that the plaintiff has acquired an attachment lien on the specific property of the defendant.

-19/310.20 Inventory and Farm Products

n alternative method of attaching farm products or inventory of a going business in the possession or under e control of the defendant, the plaintiff may instruct the levying officer to file a lien with the Secretary of State. his section does not apply to growing crops, timber to be cut, or minerals or the like. The levying officer shall le the statutory $20 fee (check payable to the Office of the Secretary of State) and shall file with the Office of ecretary of State an original and a copy of a notice of attachment in the form prescribed by the Secretary of tate. A copy of the writ is not filed with the notice. The original notice will be retained by the Secretary of tate, and the copy will be returned to the levying officer with the filing date, time and number stamped ereon.

he notice of attachment shall be in the form prescribed by the Secretary of State and shall contain all of the llowing: (CCP 488.405)

- The name and mailing address of the plaintiff.
- The name and last known mailing address of the defendant.
- The title of the court where the action is pending and the cause and number of the action.
- A description of the farm products and inventory attached.
- A statement that the plaintiff has acquired an attachment lien on the described property and on identifiable cash proceeds and, if permitted by the writ of attachment or court order, on after-acquired property.

-19/400.00 Recording Levies in General

o attach real property, growing crops, timber or minerals, the sheriff shall record a copy of the writ of ttachment, notice of attachment and order for issuance of the writ with the county recorder in which the roperty is located. At the time of levy or promptly thereafter, the sheriff shall serve a copy of the writ, notice of ttachment and order for issuance on (1) any third person standing on the recorder's records; (2) any secured arty with a filed financing agreement; and, (3) any occupant of the property.

-19/410.00 Recording Levies on Specific Types of Property

-19/410.10 Real Property

. trust created for the sole purpose of selling the real property and paying the proceeds from such sale to the eneficiary gives the beneficiary no interest in the real property, but only the right to receive money from the

ustee. However, the trustee of such a trust may be garnisheed. (Houghton v. Pacific Southwest Trust, 111 A 509) Any interest in land, legal or equitable, is subject to attachment or execution, levy and sale. (Lynch v. unningham, 131 CA 164) The holder of a mortgage has only a lien on the mortgaged premises therefore, mortgage creates no attachable interest in such realty that could be levied upon by creditors of the ortgage holder. (McGurren v. Garrity, 68 CA 566 (1886))

-19/410.20 Levy by Recording

o levy upon real property, or any interest therein including but not limited to a leasehold interest, the levying fficer shall record with the recorder of the county where the real property is located a copy of the writ and a otice of attachment or notice of levy that describes the property levied upon and states that the defendant's nterest in the described property has been levied upon. If the defendant's interest in the real property stands pon the records of the county in the name of a person other than the defendant debtor, the notice of ttachment or notice of levy shall identify the third person. (CCP 488.315, 700.015(a))

nly one recording is made under an instruction to levy on real property regardless of the number of lots or arcels involved. The complete descriptions should be shown on the notice of levy.

-19/410.30 Notification to Record Owner

t the time of levy or promptly thereafter, the levying officer shall, either personally or by mail, serve a copy of ıe writ and a notice of attachment on any third person in whose name the defendant's interest in the real roperty stands upon the records of the county. If service on the third person is by mail, it shall be sent to the erson at the address for such person, if any, shown by the records of the office of the tax assessor of the ounty where the real property is located or, if no address is so shown, to the person at the address used by ıe county recorder for the return of the instrument creating the interest of the third person in the property. CP 488.315, 700.015(b))

-19/410.40 Notification to Occupant

t the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of ttachment on one occupant of the real property. Service on the occupant shall be made by leaving the copy f the writ and notice with the occupant personally or, in the occupant's absence, with a person of suitable age nd discretion found upon the real property when service is attempted who is either an employee or agent of ıe occupant or a member of the occupant’s household. If unable to serve such an occupant at the time ervice is attempted, the levying officer shall post the copy of the writ and notice in a conspicuous place on the eal property. If the real property described in the notice consists of more than one distinct lot, parcel, or overnmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of ıe others so as to form one or more continuous, unbroken tracts, only one service or posting need be made s to each continuous, unbroken tract. (CCP 488.315, 700.015(c))

he number of services or postings required, where several lots or tracts are attached, depends upon the umber of continuous, unbroken parcels. Remember that a street would break the continuity, and an alley etween lots would probably do likewise.

-19/420.00 Growing crops

o levy upon growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or ccounts receivable resulting from the sale thereof at the wellhead or minehead, the levying officer shall ecord with the recorder of the county where such crops, timber, or minerals or the like are located a copy of ıe writ and a notice of attachment that describes the property levied upon and states that the defendant's nterest in the described property has been levied upon and describes the real property where the crops, mber, or minerals or the like are located. If the defendant's/judgment debtor's interest in the crops, timber, ıinerals or the like, or if the real property where the crops, timber, or minerals or the like are located, stands pon the records of the county in the name of a person other than the defendant, the notice of attachment ;hall identify the third person.

t the time of levy or promptly thereafter, the levying officer shall, either personally or by mail, serve a copy of ıe writ and notice of attachment on any third person in whose name the defendant's / judgment debtor's ıterest in the crops, timber, minerals or the like stands upon the records of the county and any third person in 'hose name the real property stands upon the records of the county. If service on the third person is by mail, it

hall be sent to the person at the address for such person, if any, shown by the records of the office of the tax ssessor of the county where the real property is located or, if no address is so shown, to the person at the ddress used by the county recorder for the return of the instrument creating the interest of the third person in ıe property.

t the time of levy or promptly thereafter, the levying officer shall, either personally or by mail, serve a copy of ıe writ and notice of attachment on any secured party who has filed a financing statement with respect to the rops, timber, or minerals or the like or the accounts receivable, prior to the date of levy on the property.

t the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of ttachment on one occupant of the real property where the crops, timber, or minerals or the like are located. Service on the occupant shall be made by leaving the copy of the writ and notice with the occupant personally r, in the occupant's absence, with a person of suitable age and discretion found upon the real property when ervice is attempted who is either an employee or agent of the occupant or a member of the occupant's

ousehold. If unable to serve such an occupant at the time service is attempted, the levying officer shall post ıe copy of the writ and notice in a conspicuous place on the real property. If the real property described in ıe notice consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, arcels, or governmental subdivisions lies with relation to any of the others so as to form one or more ontinuous, unbroken tracts, only one service or posting need be made as to each continuous, unbroken act. (CCP 488.325, 700.020)

-19/500.00 Property in the Custody of Levying Officer

o levy upon personal property that is already in the custody of a levying officer, if the writ is directed to the evying officer having custody of the property, the plaintiff shall deliver the writ to the levying officer. If the writ s directed to a levying officer other than the levying officer having custody of the property, the levying officer to 'hom the writ is directed shall either personally or by mail serve a copy of the writ and a notice of attachment n the levying officer having custody. The levying officer having custody of the property shall comply with the 'rits in the order received and is not subject to the duties and liabilities of third persons after levy as set forth ı CCP 488.600. (CCP 488.355, 700.050)

ı most counties, only the Sheriff serves as the levying officer. However, the California Highway Patrol can act s a levying officer under state warrants of collection. The Los Angeles County Child Support Services may lso act as a levying officer.

-19/510.00 Service of Attachment Process on Defendant

ı addition to serving process on any third party in possession of property of the defendant, attachment rocess (writ of attachment, order for issuance and notice of attachment) must be served on the defendant at

ıe time of levy or promptly thereafter. (CCP 488.305) In the case of a levy on the estate of a decedent, the ttachment process is not served on the defendant until an order from the Probate court is received. (CCP 88.485(c))

ervice on the defendant shall be personal, in the manner of service of summons, or, if the defendant has ppeared in the action, by mail. Any service required to be made on the defendant shall be made personally the defendant has not appeared in the action. Except for service of a subpoena or other process to require ıe attendance of the defendant or service of a paper to bring the defendant into contempt, if the defendant as an attorney of record in the action, service shall be made on the attorney, rather than on the defendant. ailure to serve the defendant does not invalidate the levy.

-19/520.00 Levy Lien

ın attachment levy creates a levy lien which expires three years from the date of issuance of the writ of ttachment. (CCP 488.500) The lien period may be extended in one year increments for a total of not more ıan eight years after issuance of the writ. (CCP 488.510)

he time limitation for a levy under a writ of attachment does not apply where the attachment levy is against ıe interest of a defendant in personal property in the estate of a decedent. (Estate of Troy, 1 CA 2d 732) An attachment lien terminates by operation of law when an execution levy is made in the same case. (Durkin . Durkin, 133 CA 2d 283)

ı any case where property has been levied upon and, pursuant to a levy, a copy of the writ of attachment and notice of attachment are required by statute to be posted or to be served on or mailed to the defendant or ther person, failure to post, serve, or mail the copy of the writ and the notice does not affect the attachment ən created by the levy. (CCP 488.120)

-19/530.00 Perishable Property Sale

perishable property is levied upon, the provisions for disposition thereof are the same as under writs of xecution, except the proceeds shall be deposited in the court to abide the judgment in the action. (CCP 88.700) (CCP 701.510 – 701.680)

-19/540.00 Defendant's Payover Authorization

Where money of the defendant is being held by the officer, the defendant may authorize the officer to pay the money to the plaintiff.

The deputy shall fill in the blanks on the printed defendant's authorization form in triplicate; one for the defendant, one for the court, and the original for the sheriff's office. Request the defendant to carefully read both the authorization and the printed notice on the bottom of the form before signing.

The defendant’s signature should conform to the name of the defendant on the writ. Do not accept the signature of any person other than a defendant. If the defendant is a corporation, partnership, or fictitious firm, the signature must contain:

1. The firm name;
2. The signature of an officer, partner, owner or authorized agent;
3. The title of the person signing.

All authorizations should be witnessed or notarized, or bear the signature of the creditor's attorney on the same instrument. A sample form for a Defendant's Payover Authorization can be found at the end of this chapter.

cash in lieu of attached property was deposited by someone other than the defendant, the depositor's ignature is also necessary on any authorization or stipulation.

-19/550.00 Release

roperty shall be released to the person from whom it was taken. The levying officer may sell the property if ot claimed within 30 days after service of the release notice. If the levy is made within 90 days before the aking of a general assignment for the benefit of creditors or the filing of a bankruptcy petition, the lien is erminated and the property released. (CCP 488.730)

-19/600.00 Judgment for Defendant

the defendant recovers judgment against the plaintiff and no timely motion for vacation of judgment or for dgment notwithstanding the verdict or for a new trial is filed and served and is pending and no appeal is erfected and undertaking executed and filed as provided in Section 921, any undertaking received from ne defendant in the action, all the proceeds of sales and money collected by the levying officer, and all the roperty attached remaining in the levying officer's hands shall be delivered to the person from whom it as collected or taken, unless otherwise ordered by the court; and the court shall order the discharge of any ttachment made in the action and the release of any property held thereunder. (CCP 488.740)

-19/700.00 Bankruptcy/Assignment for Benefit of Creditors

he filing of a petition commencing a voluntary or involuntary case under Bankruptcy terminates a lien of a emporary protective order or of attachment if the lien was created within 90 days prior to the filing of the etition. (CCP 493.030) The trustee, interim trustee, or the debtor in possession if there is no trustee or nterim trustee, may secure the release of the attached property by filing with the levying officer a request for elease of attachment stating the grounds for release and describing the property to be released, executed nder oath, together with a certified copy of the bankruptcy petition. If the request is from an assignee general assignment), two copies of the general assignment for the benefit of creditors shall be included.

immediate release of the attachment is sought, the request shall be accompanied by an undertaking to pay ne plaintiff any damages resulting from an improper release of the attachment, in the amount to be secured y the attachment, executed by an admitted surety insurer.

Within five days of receiving the request for release, the levying officer shall mail to the plaintiff:

- a copy of the request for release
- a copy of the undertaking and general assignment for the benefit of creditors
- if an undertaking is not provided, a notice that the attachment will be released pursuant to the request unless otherwise ordered by a court within 10 days after the date of mailing the notice
- If an undertaking has been given, a notice that the attachment has been released

Inless otherwise ordered by a court, the attachment shall be released:

- At the expiration of 10 days from mailing the request for release if an undertaking has not been filed
- Immediately if a request for release includes an undertaking

CCP 493.040)

-19/800.00 Registered Process Server

A registered process server may levy under a writ of attachment pursuant to CCP 488.080. Prior to making a levy, the registered process server must open a file with the levying officer where the levy is to be served. (Real estate levies shall be opened at the Los Angeles Office only) The registered process server shall:

- deposit a copy of the writ with the levying officer
- deposit a copy of the levy instructions (LASD requirement)
- pay the required levying officer service fee

/ithin five court days after levy, all of the following shall be filed with the levying officer:

- The writ of attachment
- A proof of service by the registered process server stating the manner of levy performed
- Proof that a copy of the writ and notice of attachment was served on the defendant
- Sheriff's Instructions (CCP 488.030)

-19/900.00 Checks

pursuant to a levy, a check, draft, money order, or other order for the withdrawal of money from a financial ıstitution, the United States, any state, or any public entity which _____is ayable on demand to the defendant comes into the possession of a levying officer, the levying officer shall romptly endorse and present it for payment except under the circumstances set forth in the next paragraph.

it appears from the face of the instrument that it has been tendered to the defendant in satisfaction of a claim r demand and that endorsement of the instrument is considered a release and satisfaction by the defendant f the claim or demand, the levying officer shall not endorse the instrument unless the judgment debtor has rst endorsed it to the levying officer. If the judgment debtor does not endorse the instrument to the levying fficer, the levying officer shall hold it for 30 days and then return it to the maker.

o endorse the instrument the levying officer shall write the following on the instrument:

. The name of the defendant.

. The name and official title of the levying officer.

. The title of the court and the cause in which the writ was issued.

CP 488.710)

-19/910.00 Writ Return to Court

he levying officer should return the writ to court promptly upon completion of plaintiff's instructions, but in no

vent later than 60 days after receiving the writ. Where the writ was served upon a third person, allow 15 days om the date of service of the writ for such person to file the Memorandum of Garnishee. Additional ıstructions to levy on the property described in the writ may be received and executed if the writ is still in the fficer's possession, and 60 days have not expired from the date the writ was received by the officer. A full ıventory of levied property, including any memorandum of garnishee, shall accompany the writ when returned › court. (CCP 488.130) If a garnishee's memorandum is not received from the third person, the levying fficer shall so state in the return. (CCP 488.610(c))

COUNTY OF LOS ANGELES
SHERIFF'S DEPARTMENT
COURT SERVICES DIVISION

Plaintiff: [Plaintiff Name]
Defendant: [Defendant Name]
Case Number: [Case No.]

DEFENDANT'S PAY OVER AUTHORIZATION

I herewith hand to the Sheriff of Los Angeles County, the sum of $ [Amount] in full/partial settlement in the above entitled action, and authorize the Sheriff to pay said sum, less Sheriff's fee, to the plaintiff or plaintiff's attorney.

Date: _____ Defendant: _____
Signature

By: _____
Owner, Partner, or Officer and Title

Date: _____ _____
Witnessed by (Deputy)

DEFENDANT'S PAY OVER AUTHORIZATION