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.