

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
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• 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

Money in place other than Business over \$1,000

Instruments

Money on Promise of Business

Inventory of a going business

Negotiable Document of Title

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

Real Property, except leasehold estate within

Negotiable Document of Title

Securities

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

• **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.
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• **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
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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)
