

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 reposessions, 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)

