6-20/000.00 Writ of Execution (Money Judgment)

6-20/100.00 Writ of Execution
6-20/100.10 Enforcement Period Generally
6-20/100.20 Judgment for Support
6-20/100.30 Multiple Writs
6-20/100.40 Contents of Writ
6-20/100.41 Attachment 20
6-20/110.00 Deposit
6-20/120.00 Instructions
6-20/120.10 Information Required
6-20/120.20 Attorney of Record
6-20/120.30 Conditional Instructions
6-20/120.40 Liability
6-20/130.00 Amount to Satisfy
6-20/130.10 Interest
6-20/130.20 Costs
6-20/140.00 Payment of Judgment by Third Party
6-20/150.00 Checks
6-20/160.00 Crediting Money to Satisfaction of Judgment
6-20/160.10 Non-Child Support Judgment
6-20/160.20 Child Support Judgment
6-20/170.00 Service of Execution Process on Judgment Debtor
6-20/200.00 Property Not Subject to Enforcement of Money Judgment
6-20/200.10 Non-assignable Property
6-20/200.20 Business License
6-20/200.30 Social Security
6-20/210.00 Property Subject to Enforcement of Money Judgment
6-20/210.10 Community Property
6-20/210.20 Trust, Cause of Action
6-20/210.30 Real Property Lease
6-20/200.40 Inadvertent Levy Claim of Exemption
6-20/300.00 Pending Action or Proceeding
6-20/400.00 Time for Execution of Writ
6-20/410.00 Judgment Debtor Notification
6-20/410.10 Reliance on Instructions
6-20/410.20 Manner of Debtor Notification
6-20/410.30 Failure to Notify Debtor
6-20/410.40 Earnings Withholding Order
6-20/410.50 Debtor’s Attorney
6-20/410.60 Personal Service of Debtor Notification
6-20/410.70 Service by Mail
6-20/420.00 Proof of Service
6-20/500.00 Methods of Levy
6-20/510.00 Seizure Levies in General
6-20/510.10 Possession of Third Party
6-20/510.20 Joint Tenancy
6-20/510.30 Nature of Custody

6-20/510.40 Taking Property Into Custody
6-20/510.50 Liability of Levying Officer
6-20/510.60 Registration Information at Time of Levy
6-20/510.70 Lien of Levying Officer
6-20/510.80 Legal Owner Notification
6-20/510.90 Private Place
6-20/520.00 Seizure Levies on Specific Types of Property
6-20/520.10 Chattel Paper
6-20/520.20 Dwelling
6-20/520.21 Placing a Keeper
6-20/520.22 Removal of Occupants
6-20/520.30 Instruments
6-20/520.40 Negotiable Document of Title
6-20/520.50 Securities
6-20/520.51 Securities Defined
6-20/520.52 Issuer Defined
6-20/520.53 Certificated Security
6-20/520.54 Uncertificated Security
6-20/520.55 Security in Possession of Secured Party
6-20/520.56 Security Entitlement
6-20/520.60 United States Savings Bond
6-20/520.70 Stock Certificates
6-20/530.00 Tangible Personal Property of a Going Business
6-20/530.10 Keeper Installation
6-20/530.20 Taking Custody of Property
6-20/530.30 Cash Only Keeper
6-20/540.00 Garnishment Levies in General
6-20/540.10 Contingent Interest
6-20/540.11 Rent
6-20/540.20 Delivering Property to Levying Officer
6-20/540.30 Pension Plan
6-20/540.40 Security Interest
6-20/540.50 Notice to Third Party
6-20/540.60 Account Debtor
6-20/540.70 Memorandum of Garnishee
6-20/550.00 Public Entities Immune from Garnishment
6-20/550.10 State and Local Governments
6-20/550.20 Federal Government
6-20/550.30 Bail or Other Property in Custody of Officer
6-20/560.00 Garnishment Levies on Specific types of Property
6-20/560.10 Account Receivable
6-20/560.20 Decedent’s Estate
6-20/560.30 Deposit Account/Safe Deposit Box
6-20/560.31 Levy Without Court Order
6-20/560.32 Levy With Court Order
6-20/560.33 Charging Order
6-20/560.40 Final Money Judgment
6-20/560.50 General Intangible

6-20/560.60 Goods Held By Bailee
6-20/560.61 Where Bailee Has Not Issued a Negotiable Document of Title
6-20/560.62 Where Bailee Has Issued a Negotiable Document of Title
6-20/560.70 Negotiable Document of Title
6-20/560.80 Tangible Property in Possession of Third Party
6-20/570.00 Recording Levies in General
6-20/58.00 Recording Levies on Specific types of Property
6-20/580.10 Real Property
6-20/580.11 Real Property defined
6-20/580.12 Levy by Recording
6-20/580.13 Notification to Record Owner
6-20/580.14 Notification to Occupant
6-20/580.15 Dwelling
6-20/580.20 Growing crops, Timber, Minerals, Etc
6-20/580.21 Levy by Recording
6-20/580.22 Notification to Record Owner
6-20/580.23 Notification to Secured Party
6-20/580.24 Notification to Occupant
6-20/600.00 Levy Lien
6-20/700.00 Property in the Custody of Levying Officer
6-20/710.00 Perishable Property Sale
6-20/800.00 Return of Writ
6-20/900.00 Registered Process Server
6-20/900.10 Service by Party

References

BPC – Business and Professions Code
CC – Civil Code
CCP – Code of Civil Procedure
COMM – Commercial Code
CRC – California Rules of Court
ELEC – Elections Code
FAM – Family Code
FIN – Financial Code
GC – Government Code
HNC – Harbors and Navigation Code
HS – Health and Safety Code
INS – Insurance Code
LAB – Labor Code
MVC – Military and Veterans Code
PC – Penal Code
PROB – Probate Code
RTC – Revenue and Taxation Code
UIC - Unemployment Insurance Code
VEH – Vehicle Code
WIC – Welfare and Institutions Code

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• 6-20/100.00 Writ of Execution

A writ of Execution is a process issued by the clerk of the court, upon application of the judgment creditor, and shall be directed to the levying officer in the county where the levy is to be made, and to any registered process server. The clerk of the court shall give priority to the application for and issuance of, writs of execution on orders or judgments for child support and spousal support. (CCP 699.510) The writ of execution shall require the levying officer to whom it is directed to enforce the money judgment. (CCP699.520)

After the death of the judgment debtor, enforcement of a judgment against property in the debtor's estate is governed by the Probate Code, and not under Enforcements of Judgments. (CCP 686.020) However, the Probate Code indicates possession and sale of property may be enforce as under the Enforcement of Judgment laws. (PROB 9302, 9303)

A writ of execution may be issued to satisfy judgments in criminal cases. If a defendant is ordered to pay a fine as a condition of probation, the order to pay a fine may be enforced during the term of probation in the same manner as is provided for the enforcement of money judgments. (PC 1214.2) Earnings of a prisoner under work furlough may be garnished. (PC 1208(e)) The court may order a defendant to pay all or part of legal costs incurred by the county as a judgment in a civil matter. (PC 987.8) The court may also order restitution which may be enforceable by writ of execution. (PC 1202.42)

A court order for the payment of money for support is enforced by execution in the same manner as if it were a judgment. Orders for support, etc., in actions for dissolution of marriage may be enforced by execution. (FAM 290; CCP 680.230, 680.270) Failure to comply if so ordered may be punishable as a misdemeanor. (PC 270.6)

A money judgment against a public entity under a Writ of Execution. A Writ of Mandate is the remedy of enforcement. (GC 970.2) The remedies for judgments against a public entity is found in Title 1, Division 3.6, Part 5, Chapter 1 or Article 1 of Chapter 2 in the Government Code.

A State Warrant of Collection is enforced in the same manner as a writ of execution. (RTC 6776; UIC 1785)

For the purpose of collecting fines or penalties imposed by a court-martial, the president of any general or special court-martial and the summary court officer of any summary court shall make a list of all fines and penalties and of the persons against whom they have been imposed, and may thereafter issue a warrant under his or her hand directed to any sheriff or marshal of the county, commanding him or her to levy and collect the fines and penalties, together with the costs, upon and out of the property of the person against whom the fine or penalty is imposed. The warrant shall be executed and renewed in the

same manner as executions under the Code of Civil Procedure. (MVC 467)

• • 6-20/100.10 Enforcement Period Generally

A Writ of Execution may be issued at any time within 10 years of the date of entry of judgment or renewal of judgment. A judgment, unless renewed, is unenforceable upon the expiration of 10 years after the date of entry. Any lien created is extinguished and all enforcement procedures pursuant to a writ or order issued pursuant to the judgment shall cease. (CCP 683.020) If, however, a certified copy of the application for renewal of the judgment is filed with the levying officer prior to the expiration of the 10 years, then any enforcement proceedings previously commenced may be continued. (CCP 683.200) A judgment against a public entity may not be renewed. (GC 965.5)

Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned. (CCP 712.030)

• • 6-20/100.20 Judgment for Support

A money judgment or judgment for possession or sale of property that is made or entered under this code, including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied. (FAM 291, 4502, 5100, 17522) The application for a writ of execution shall be accompanied by an affidavit stating the total amount due and unpaid. A copy of the affidavit shall be attached to the Writ of Execution. The levying officer shall serve the copy of the affidavit on the judgment debtor when the writ of execution is first served on the judgment debtor pursuant to a levy under the writ. (FAM 5104) A judgment for child, family, or spousal support may be enforced against an employee benefit plan. (FAM 5103)

• 6-20/100.30 Multiple Writs

A separate writ shall be issued for each county where a levy is to be made. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned. (CCP 699.510)

• 6-20/100.40 Contents of Writ

The writ of execution shall require the levying officer to whom it is directed to enforce the money judgment and shall include the following information (CCP 153, 699.510, 699.520):

- The seal of the court (unless issued as an electronic record as defined in CCP 263.1)
- The date of issuance
- Case Title and Number

- Whether the judgment is for wages, support, or other
- The name and address of the judgment creditor and judgment debtor. If the judgment debtor is an artificial person, the legal entity
- Judgment entry date, and renewal dates if applicable
- The total amount of judgment entered or renewed, with costs, accrued interest from the date of judgment entry or renewal, and partial credits
- The amount to satisfy the judgment on the issuance date
- Daily interest rate from issuance date
- Whether any person has requested a Notice of Sale, and if so the name and address of that person
- Sum of fees and costs pursuant to GC 6103.5 or Article 6 of Chapter 2
- A statement indicating whether the case is limited or unlimited
- The writ should also include additional name or names and the legal entity by which the judgment debtor is known pursuant to an affidavit of identity

• • 6-20/100.41 Attachment 20

Generally, the amount required to satisfy a money judgment on the date the writ is issued, along with the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued is required to be on the writ of execution. In addition, the names and addresses of the debtors are required to be on the writ. (CCP 699.520)

California has adopted a modified version of the old common law on joint and several liability. This allows in special circumstances where there are multiple defendants although they are jointly liable for the entire amount of damages, they could be only severally liable for their apportioned percentage of fault as to amount of damages, or both jointly and severally.

A joint judgment would mean judgment debtor “x” and judgment debtor “y” owe all of the judgment jointly. The creditor can collect the full amount of the judgment from either debtor depending where assets may be located. In a “joint” judgment, only the writ of execution is needed.

“Several” and “joint and several” judgments become problematic if the levying officer becomes involved. The writ of execution does not allow to separate money amounts for particular judgment debtors. Writs may be issued successively until the money judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned. (CCP 699.510) If this is the case, the writ of execution must be supplemented with the issuance of an Attachment 20. An Attachment 20 is a supplemental document created by the court when multiple debtors in a money judgment owe different amounts. An Attachment 20 is not codified in California law and the Judicial Council has not created an Attachment 20 form. Each Superior Court within their particular county may develop their own form to supplement the writ of execution. Item #20 on the writ of execution, when so marked, notifies the levying officer that each debtor owes a different amount of the money judgment. These different amounts are documented on the Attachment 20.

If an Attachment 20 is issued, it does not nullify the requirement that the writ of execution be completely filled out. An Attachment 20 is not a substitute for a writ of execution. An Attachment 20 simply notifies

the levying officer that the amounts listed in items 11-19 on the writ of execution are different for each judgment debtor. In addition, the judgment amounts listed on the Attachment 20 cannot exceed the money judgment listed on the writ of execution. An Attachment 20 need not be sealed or certified by the court, it is a supplement to the writ.

If a money judgment is issued "jointly and severally" each debtor is paying the full amount jointly, and each debtor is liable for the full amount severally, or limited in liability severally. Therefore, the Attachment 20 is further complicated because the separate amounts listed for each judgment debtor *may* exceed the money judgment listed on the writ of execution. The accounting of collections will become critical as only the amount of the judgment as listed on the writ of execution, plus interest and costs, may be collected.

Due to the complexity involved with writs of execution with Attachment 20, take care to fully understand the instructions from the judgment creditor's attorney. Although not required by statute, it may be prudent to request a copy of the judgment in order to fully understand the court's money judgment award.

Note: an outstanding example of an Attachment 20 form was created by the Orange County Superior Court Attachment 20.

• 6-20/110.00 Fee Deposit

Except as otherwise provided by law, the levying officer is not liable for failure to take or hold property unless the judgment creditor 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 judgment creditor 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. 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 judgment creditor deposit additional amounts to cover estimated costs for periods not to exceed 30 days each.

The judgment creditor must be given at least three business days (plus five if mailed) after receipt of the demand to comply. If the plaintiff/judgment creditor 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 685.100)

• 6-20/120.00 Instructions

• • 6-20/120.10 Information Required

The judgment creditor shall give the levying officer instructions in writing. The instructions shall be signed by the creditor's attorney of record or, if the creditor does not have an attorney of record, by the judgment creditor. The instructions shall contain the information needed or requested by the levying officer to comply with the statutory provisions of the levy. The instructions shall include, but not be limited

to: an adequate description of the property to be levied upon; a statement whether the property is a dwelling and, if the property is a dwelling, whether it is real or personal property; name of judgment debtor; and, judgment debtor's legal entity if not a natural person. Unless the levying officer has actual knowledge that the information in the instructions is incorrect, the levying officer may rely on any information contained in the written instructions and shall act in accordance with them to the extent the actions taken conform to the statutory requirements. (CCP 687.010)

The levying officer may receive electronic instructions. (CCP 687.010(d))

If the levying officer is required to serve any writ, order, notice or other paper on any person, the judgment creditor shall use reasonable diligence to ascertain the correct name and address of the person and shall include the correct name and address in the instructions to the levying officer. Unless the levying officer has actual knowledge that the name and address given in the instructions is incorrect, the levying officer shall rely on the instructions in serving the writ, order, notice, or other paper on the person. (CCP 684.130)

• • 6-20/120.20 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)

• • 6-20/120.30 Conditional Instructions

Instructions may be conditional. In the case of an execution vehicle levy, for example, the levy made be made whether or not the debtor is the registered owner. However, if the instructions state to levy on a vehicle registered to the debtor, the levy may not be made unless the vehicle is registered to the debtor.

Ex., "Levy and sell (described vehicle) in the possession (the judgment debtor). Registration is not a factor and if found, the vehicle should be seized. A DMV-Registration Inquiry through JDIC shall not be completed prior to seizure.

Ex., "Levy and sell (described vehicle) registered to (judgment debtor). In this example, a DMV-Registration Inquiry should be done prior to seizure as the instructions are void if the vehicle is not registered to the judgment debtor.

• • 6-20/120.40 Liability

The direction or authority of a party or his or her attorney to a sheriff, in respect to the execution of process or return thereof, or to any related act or omission, is not available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in written instructions by the attorney of the party, including the signature and name of the attorney of the party, or by the party, if he or she has no attorney. (CCP 262)

• 6-20/130.00 Amount to Satisfy

In addition to the principal amount of the judgment, the levying officer must collect costs and interest in order to fully satisfy the writ.

• • 6-20/130.10 Interest

Interest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. (CCP 685.010, 685.020, 685.030, 685.050)

• • 6-20/130.20 Costs

CCP 685.090

(a) Costs are added to and become a part of the judgment:

(1) Upon the filing of an order allowing the costs pursuant to this chapter.

(2) If a memorandum of costs is filed pursuant to Section 685.070 and no motion to tax is made, upon the expiration of the time for making the motion.

(3) As specified in Section 685.095.

(b) The costs added to the judgment pursuant to this section are included in the principal amount of the judgment remaining unsatisfied.

(c) If a writ or earnings withholding order is outstanding at the time the costs are added to the judgment pursuant to this section, the levying officer shall add the amount of those costs to the amount to be collected pursuant to the writ or earnings withholding order if the levying officer receives either of the following before the writ or earnings withholding order is returned:

(1) A certified copy of the court order allowing the costs.

(2) A certificate from the clerk of the court that the costs have been added to the judgment where the costs have been added to the judgment after a memorandum of costs has been filed pursuant to Section 685.070 and no motion to tax has been made within the time allowed for making the motion.

(d) The levying officer shall include the costs described in subdivision (c) in the amount of the sale or collection distributed to the judgment creditor only if the levying officer receives the certified copy of the court order or the clerk's certificate before the distribution is made.

• 6-20/140.00 Payment of Judgment by Third Party

In addition to assets collected pursuant to a levy under a writ of execution, at any time after delivery of a writ of execution to a levying officer and before its return, a person indebted to the judgment debtor may pay to the levying officer the amount of the debt or so much thereof as is necessary to satisfy the money judgment. The levying officer shall give a receipt for the amount paid and such receipt is a discharge for the amount paid. (CCP 699.020)

• 6-20/150.00 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 judgment debtor comes into the possession of a levying officer, follow the procedures set forth in 6-05/500.00 Acceptance of Checks for Fees.

• 6-20/160.00 Crediting Money to Satisfaction of Judgment

CCP 695.210

The amount required to satisfy a money judgment is the total amount of the judgment as entered or renewed with the following additions and subtractions:

a. The addition of costs added to the judgment pursuant to CCP 685.090.
b. The addition of interest added to the judgment as it accrues pursuant to CCP 685.010 - 685.030.
c. The subtraction of the amount of any partial satisfactions of the judgment.
d. The subtraction of the amount of any portion of the judgment that is no longer enforceable.

• • 6-20/160.10 Non-Child Support Judgment

CCP 695.220

Money received in satisfaction of a money judgment, except a money judgment for support, is to be credited as follows:

a. The money is first to be credited against the amounts described in CCP 685.050(b) that are collected by the levying officer.
b. Any remaining money is next to be credited against any fee due the court pursuant to GC 6103.5,

68637, which are to be remitted to the court by the levying officer (CCP 699.520(j)).

c. Any remaining money is next to be credited against the accrued interest that remains unsatisfied.
d. Any remaining money is to be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money is to be credited against the matured installments in the order in which they matured.

• • 6-20/160.20 Child Support Judgment

CCP 695.221

Satisfaction of a money judgment for support is to be credited as follows:

a. The money is first to be credited against the current month's support.
b. Any remaining money is next to be credited against the accrued interest that remains unsatisfied.
c. Any remaining money is next to be credited against the principal amount of the judgment remaining unsatisfied.
d. Notwithstanding the above, a collection received as a result of a tax refund offset is first to be credited against past due support assigned to the state prior to satisfaction pursuant to subsections (1), (2), and (3).

• 6-20/170.00 Service of Execution Process on Judgment Debtor

At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the following on the judgment debtor either personally or by mail (CCP 700.010):

- The writ of execution (EJ-130)
- A notice of levy (EJ-150)

If the judgment debtor is a natural person, the following shall also be served:

- Exemptions from the Enforcement of Judgments (EJ-155)
- Current Dollar Amounts of Exemptions from Enforcement of Judgments (EJ-156)
- Claim of Exemption (Enforcement of Judgment) (EJ-160)
- Financial Statement (EJ-165)

An affidavit of identity is not served by the Sheriff's Department. An affidavit of identity is filed with the court by the creditor and indicates additional names the judgment debtor is known which may appear on the Writ of Execution. (CCP 680.135) An affidavit of identity is not a stand-alone document provided to the Sheriff's Department for service.

• 6-20/200.00 Property Not Subject to Enforcement of Money Judgment

The following types of property are not subject to execution (CCP 699.720):

1. An alcoholic beverage license that is transferable
2. The interest of a partner in a partnership or member in a limited liability company if the partnership or the limited liability company is not a judgment debtor.
3. A cause of action that is the subject of a pending action or special proceeding.
4. A judgment in favor of the judgment debtor prior to the expiration of the time for appeal from the judgment or, if an appeal is filed, prior to the final determination of the appeal.
5. A debt (other than earnings) owing and unpaid by a public entity.
6. The loan value of an unmatured life insurance, endowment, or annuity policy.
7. A franchise granted by a public entity and all the rights and privileges of the franchise.
8. The interest of a trust beneficiary.
9. A contingent remainder, executory interest, or other interest in property that is not vested.
10. Property in a guardianship or conservatorship estate.

• • 6-20/200.10 Non-assignable Property

Except as otherwise provided by law, property of the judgment debtor that is not assignable or transferable is not subject to the enforcement of a money judgment. (CCP 695.030) However, the debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer, but a provision in the security agreement making the transfer constitute a default is valid. (COMM 9401)

• • 6-20/200.20 Business License

A license issued by a public entity to engage in any business, profession, or activity is not subject to

enforcement of a money judgment. (CCP 695.060) (exception: court appointed receiver - CCP 708.630)

• • 6-20/200.30 Social Security

Social Security benefits are exempt without filing a claim. (42 USC 407)

• • 6-20/200.40 Inadvertent Levy Claim of Exemption

Property that is not subject to the enforcement of judgment cannot be levied upon. However, if the property is levied, it may be released pursuant to claim of exemption procedures. (CCP 695.040)

• • 6-20/210.00 Property Subject to Enforcement of Money Judgment

Except as otherwise provided by law, all property that is subject to enforcement of a money judgment pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 is subject to levy under a writ of execution to satisfy a money judgment. (CCP 699.710, 695.010)

• • • 6-20/210.10 Community Property

Community property is subject to enforcement of a money judgment as provided in the Family Code. (CCP 695.020, FAM 65, 63, 750, 760 - 853)

• • • 6-20/210.20 Trust, Cause of Action

An interest in a trust, to the extent provided by law and a cause of action for money or property that is the subject of a pending action or special proceeding is subject to enforcement of a money judgment. (CCP 695.030)

• • • 6-20/210.30 Real Property Lease

CCP 695.035

(a) A lessee’s interest in real property may be applied to the satisfaction of a money judgment in any of the following circumstances:

1. If the lessee has the right voluntarily to sublet the property or assign the interest in the lease.
2. If the lessee has the right voluntarily to sublet the property or assign the interest in the lease subject to standards or conditions and the purchaser at the execution sale or other assignee agrees to comply with

the standards or conditions that would have had to be complied with had the lessee voluntarily sublet the property or assigned the interest in the lease.

3. If the lessee has the right voluntarily to sublet the property or assign the interest in the lease with the consent of the lessor, in which case the obligation of the lessor to consent to the assignment is subject to the same standard that would apply had the lessee voluntarily sublet the property or assigned the interest in the lease.
4. In any other case, if the lessor consents in writing.
(b) A provision in a lease for the termination or modification of the lease upon an involuntary transfer or assignment of the lessee's interest is ineffective to the extent that such provision would prevent the application of the lessee's interest to the satisfaction of the money judgment under subdivision (a).

• 6-20/300.00 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:

1. Real property.
2. 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.
3. Tangible personal property in the possession or under the control of the judgment debtor or in the custody of a levying officer.
4. The interest of a judgment debtor in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession.

• 6-20/400.00 Time for Execution of Writ

The levying officer may not levy upon any property under the writ after the expiration of 180 days from the date the writ was issued. (CCP 699.530)

• 6-20/410.00 Judgment Debtor Notification

If the levying officer is required to serve any writ, order, notice, or other paper on any person, the judgment creditor shall include in the instructions the correct name and address of the person. The judgment creditor shall use reasonable diligence to ascertain the correct name and address of the person. Unless the levying officer has actual knowledge that the name or address in the instructions is incorrect, the levying officer shall rely on the instructions.

• • 6-20/410.10 Reliance on Instructions

The judgment creditor's attorney, or judgment creditor who does not have an attorney, shall provide the levying officer the correct name and address of the person to whom a Writ of Execution and

Notice of Levy is to be served in the signed Sheriff's Instructions for service. Unless the levying officer has actual knowledge that the name or address is incorrect, the levying officer shall rely on the instructions. (CCP 684.130)

• • 6-20/410.20 Manner of Debtor Notification

Other than an Earnings Withholding Order, at the time of levy or promptly thereafter, the levying officer shall serve personally or by mail a copy of the following on the judgment debtor (CCP 700.010):

- The WRIT OF EXECUTION (Money Judgment) (EJ-130)
- A NOTICE OF LEVY (EJ-150)

If the judgment debtor is a natural person:

- a copy of the EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS (EJ-155) form
- a copy of the CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS (EJ-156) form
- a copy of the CLAIM OF EXEMPTION (Enforcement of Judgment) (EJ-160) form for other than wages, or
- a copy of the FINANCIAL STATEMENT (WG-007/EJ-165) form

If the Writ of Execution was issued for a support judgment, the judgment debtor shall also be served with a copy of the affidavit attached to the writ when filed with the levying officer. (FAM 5104)

• • 6-20/410.30 Failure to Notify Debtor

Failure to serve the judgment debtor does not affect the lien created by the levy. (CCP 699.550)

• • 6-20/410.40 Earnings Withholding Order

The service of an Earnings Withholding Order does not require the levying officer to serve a copy of the writ or Notice of levy on the judgment debtor. (CCP 684.310) Upon receipt of an APPLICATION FOR EARNINGS WITHHOLDING ORDER (WG-001), the levying officer is only required to serve the employer. The attorney (or party without an attorney) must sign the Application, thus separate Sheriff's Instructions are not required. The Application can apply to the requirements of CCP 684.130. If the "Declarant" signing the Application is also the attorney (or party without an attorney), only the Declarant signature need be included.

Refer to Earnings Withholding Orders 6-23/000.00.

• • 6-20/410.50 Debtorâ€™s Attorney

When a writ, notice, order, or other paper is required to be served on the judgment debtor, it shall be served on the judgment debtor instead of the attorney for the judgment debtor unless the debtor has requested service on the debtor's attorney, the attorney has consented thereto, a copy of the request has been filed with the court and the creditor, and neither the debtor or debtor's attorney has revoked the consent. (CCP 684.020)

• • 6-20/410.60 Personal Service of Debtor Notification

If a writ, notice, order, or other paper is required to be personally served, it shall be served in the same manner as a summons. If the paper is required to be personally served, and service on an attorney of record is required, the service may be made on the attorney either personally, by mail, or in the manner provided in CCP 1011. (CCP 684.110)

• • 6-20/410.70 Service by Mail 684.120 CCP

If a writ, notice, order, or other paper is to be served by mail under this title, it shall be sent by first-class mail (unless some other type of mail is specifically required). (CCP 684.120)

• 6-20/420.00 Proof of Service

A proof of service is not issued by the Sheriff's Department. Instead, a return detailing the Sheriff's actions is prepared which accompanies the writ when it is returned to the court.

• 6-20/500.00 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. The appropriate method of levy is determined by the type of property levied upon and who has possession of the property. The creditor's instructions should specify the type of property, e.g., security, instrument, negotiable document of title, if not obvious to the sheriff, e.g., 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			Serve account debtor
Chattel paper	Seize if in debtor's possession		Serve third party in possession
Commercial coach	Seize in debtor's possession		
Deposit account/safe deposit box in name of debtor			Serve financial institution
Deposit account/safe deposit box in name of debtor and third party			Serve financial institution and third party
Deposit account/safe deposit box in name of spouse (spousal affidavit required			Serve financial institution and spouse
Deposit account/safe deposit box in name of fictitious business name (cannot levy if third party is not spouse of debtor)debtor and third party			Serve financial institution and spouse
Deposit account/safe deposit box in name of third party (court order required)			Serve financial institution and third party
Dwelling personal property	Install keeper		Serve occupant

Estate of decedent			Serve personal representative of decedent: serve debtor after property is delivered to Sheriff
Farm products as tangible personal property of going business	Seize if in debtor's possession		
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 bailee in possession of negotiable document of title

METHODS OF LEVY BY TYPE OF PROPERTY

PROPERTY	SEIZURE	RECORDING	GARNISHMENT
Goods held by bailee without negotiable document of title			Serve bailee in possession of goods; serve secured party
Instrument	Seize if in debtor's possession		Serve obligor

Inventory of going business	If in debtor's possession, seize, install keeper or install cash-only keeper		
Mobile home	Install keeper		
Negotiable document of title	Seize if in debtor's possession		Serve third party in possession
Property in custody of levying officer			
Real property		Record with county recorder; serve third party; serve occupant	
Security (certificated)	Seize if in debtor's possession		Serve issuer or secured party
Security (uncertificated)			Serve issuer or secured party
Security entitlement			Serve securities intermediary or secured party
Tangible personal property	Seize if in debtor's possession		Serve third party in possession
Vehicle	Seize if in debtor's possession		
Vessel	Seize if in debtor's possession		

• • 6-20/510.00 Seizure Levies in General

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

The creditor must deposit costs prior to levy. If additional fees are required to maintain the levy, the creditor must be given three business days notice. If the fees are not received timely, the levying officer shall release the property.

The following types of property in the possession of the debtor are subject to seizure as indicated.

PROPERTY	TYPE OF SEIZURE
Chattel paper	take the chattel paper into custody
Dwelling, personal property	place a keeper in charge of property for a period determined by creditor
Farm products	immediate seizure; install a keeper for not more than 10 days following
	Immediate seizure; install cash-only keeper
Instruments	take the property into custody. If instructed by the creditor, serve a Notice of Levy and a Writ of Execution on the obligor
Inventory of a going business	immediate seizure; install a keeper for not more than 10 days following
	Immediate seizure; install cash-only keeper
mobilehome	place a keeper in charge of property for a period determined by creditor
securities	take the property into custody

• • • 6-20/510.10 Possession of Third Party

Where the property is in the debtor' s possession, and the debtor 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 debtor, 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 officer is convinced that the property is in the actual possession of a third party and not in the possession of the debtor. 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 debtor. (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 the judgment creditor's attorney demands seizure of property in the possession of a third person, the officer should refuse such demand and advise the attorney to obtain a writ of mandate or other court order directing the officer to seize the property from the third person's possession.

• • • 6-20/510.20 Joint Tenancy

In levying on the debtor's interest in personal property held in tenancy in common or joint tenancy by the debtor and another, the levying officer shall seize the whole, if the property be in the debtor's possession. The officer has no authority to partition the property; however, the officer may sell only the debtor's interest in the whole of the property. (Veach v. Adams, 51 CA APP 609; Conolley v. Power, 70 CA APP 70 (link unavailable))

• • • 6-20/510.30 Nature of Custody

The nature of custody of property that must be exercised to maintain a valid levy varies depending upon the facts of the particular case, bearing in mind that the levying officer should make the expense of keeping the property under levy as light as possible consistent with its safekeeping. The taking by the officer may be either actual or constructive, dependent upon the nature, the situation, and the location of the property. (Noland v. Noland, 44 CA 2d 780) The Law Revision comments to CCP 687.030 state that the intent of subdivision (c) of that section is to provide levying officers with a degree of flexibility in determining efficient and economical means of securing custody of personal property levied upon and the use of a keeper is not required in cases where the property is not moved to a place of safekeeping, but the custody obtained must be sufficient to prevent removal of the property.

• • • 6-20/510.40 Taking Property Into Custody

The levying officer takes property into custody by (CCP 687.030):

Removing the property to a place of safekeeping,

Installing a keeper, or

Otherwise obtaining possession and control of the property.

• • • 6-20/510.50 Liability of Levying Officer

The levying officer is not liable for damage to levied property unless the officer is negligent.

(CCP 687.040)

• • • 6-20/510.60 Registration Information at Time of Levy

If property that is required by law to be registered or recorded in the name of the owner is levied upon under a writ of execution and it appears at the time of the levy that the judgment debtor was the registered or record owner of the property and the judgment creditor caused the levy to be made and the lien maintained in good faith and in reliance upon such registered or recorded ownership, neither the judgment creditor, the levying officer, nor the sureties on an undertaking given by the judgment creditor is liable to a third person for the levy itself. (CCP 699.090)

• • • 6-20/510.70 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 687.050)

• • • 6-20/510.80 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 of execution and a notice of levy on the legal owner or junior lienholder. Service shall be made personally or by mail. (CCP 700.090)

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, mobile homes, and commercial coaches sold or used within this state are subject to registration with the Department of Housing and Community Development. (HS 18075) Mobile homes which are subject to local property taxation pursuant to RTC 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)

• • • 6-20/510.90 Private Place

If the personal property sought to be seized is located in a private place of the debtor, the levying officer making the levy shall demand delivery of the property by the debtor 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 debtor does not deliver the property, the levying officer shall promptly notify the creditor 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 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 debtor.

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 CA 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 debtor exhibited an expectation of privacy in order to make a specific location a "private place," it is the debtor'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." The Legal SourceBook published by the California Attorney General is the Department's primary resource for researching search and seizure law in both criminal and civil law enforcement matters. 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 debtor 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 debtor 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, 122 CA 3d)

In People v. Moreno , 204 Cal. 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.

• • • 6-20/520.60 United States Savings Bond

A United States Savings Bond is not listed as property which cannot be levied upon. (CCP

699.720) United States Savings Bonds may be seized if the debtor is an owner or co-owner of the Bond(s). However, there are additional procedures to obtain the value of the Bond(s) which are established by the United States Government. The Department of Treasury then issues a check payable to the Sheriff in satisfaction of the writ. The method of levy, however, is based on federal law and regulations rather than state law. (31 Code of Federal Regulations 315.21)

In addition to the standard $100 the Sheriff charges for seizure, an additional fee deposit will be necessary. The fee deposit includes the fee normally charged for execution garnishments ($40) plus the cost of certified mail and the cost to certify a copy of the writ of execution. Prepare a garnishment naming the Bureau of Public Debt (United States Treasury Department), P.O. Box 1328, Parkersburg, West Virginia 26106-1328 as the garnishee. Also list as a registered owner any non-debtor co-owner whose name and address appears on the Bond. Fully describe the Savings Bond in the notice of levy including the denomination, issuance date, and the Savings Bond number. Mail a copy of the notice of levy, exemptions list, and writ to the debtor and any non-debtor co-owner. If a non-debtor co-owner is listed on the Bond, advise the creditor that a certified copy of a court order determining the interests of the debtor and non-debtor co-owner is required. If the debtor is listed as the only owner or after receipt of a court order determining the co-owners' interests, send by certified mail the original Savings Bond, original signed and dated notice of levy, certified copy of the writ of execution and any court order determining ownership interests to the garnishee. Do not endorse the Bond or otherwise write on it.

The value of the Savings Bond is determined by the Treasury Department which will issue a check payable to the levying officer for the amount of the debtor's interest in the Savings Bond. Any monies due a non-debtor co-owner will either sent to the Sheriff for payment to the third party or sent to the third party directly by the Treasury Department. The Bureau of Public Debt may request additional information or documentation and can be reached at (304) 480-6112 or savbond2@bpd.treas.gov.

• • 6-20/520.00 Seizure Levies on Specific Types of Property

• • • 6-20/520.10 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 such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper. (COMM 9102(a)(11); CCP 481.040, 680.140)

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

If the levying officer obtains custody of the chattel paper or if pursuant to a security agreement the judgment debtor 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 judgment creditor,

serve a copy of the writ and a notice of levy on the account debtor either personally or by mail. (CCP 700.100)

• • • 6-20/520.20 Dwelling

To levy upon personal property used as a dwelling, the levying officer shall serve a copy of the writ and a notice of levy 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 700.080)

House trailers and mobile homes 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.

If the dwelling meets the requirements of CCP 700.090, the levying officer must notify the legal owner.

• • • • 6-20/520.21 Placing a Keeper

If the creditor desires greater security for the levy, a keeper shall be placed in charge of the property for whatever period requested by the judgment creditor. (CCP 700.080(b))

• • • • 6-20/520.22 Removal of Occupants

After levy, the judgment creditor 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 judgment debtor is not the occupant, on the judgment debtor. The occupants may be removed by the levying officer only pursuant to a court order. (CCP 700.080(c))

• • • 6-20/520.30 Instruments

"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, but does not include a security. (COMM 9102(a)(47); CCP 680.220)

To levy upon an instrument, the levying officer shall take the instrument into custody if it is in

possession of the judgment debtor or, if it is in possession of a third person, personally serve a copy of the writ and a notice of levy on the third person.

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

• • • 6-20/520.40 Negotiable Document of Title

"Document of title" means any written instrument, such as a bill of sale, title deed, bill of lading, a bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, compress receipt, and also any other document which in the regular course of business or financing is treated as adequately evidencing that proves ownership or control and possession. A person in possession of a document of title can receive, hold, sell or otherwise dispose of the document and the goods it covers. . (CCP 481.090, 680.180; COMM 1201(b)(16), 7201, 9102(a)(30),)

To be a document of title, a document must purport to be issued by a bailee (COMM 7102(a)(1)) and purport to cover goods in the bailee's possession which are either identified or is a fungible portion of an identifiable 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, a receipt issued for the goods is a "document of title" and 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 if it runs to a named person or assigns where recognized in overseas trade. Any other document is nonnegotiable. (COMM 7104) A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. A nonnegotiable warehouse receipt and a nonnegotiable bill of lading must be conspicuously marked "nonnegotiable." In case of the bailee's failure to do so, a holder of the document who purchased it for value supposing it to be negotiable may, at his option, treat such document as imposing upon the bailee the same liabilities he would have incurred had the document been negotiable.

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 judgment debtor or, if it is in the possession of a third person, personally serve a copy of the writ and a notice of levy on the third person. (CCP 700.120)

• • • 6-20/520.50 Securities

To levy upon a security, the levying officer shall comply with Section 8112 of the Commercial Code. The legal process referred to in Section 8112 of the Commercial Code means the legal process required by the state in which the chief executive office of the issuer of the security is

located and, where that state is California, means personal service by the levying officer of a copy of the writ of execution and notice of levy on the person who is to be served. (CCP 700.130)

• • • • 6-20/520.51 Securities Defined

A "Security" is an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, that is, or is of a type, dealt in or traded on financial markets, or that is recognized in any area in which it is issued or dealt in as a medium for investment. (COMM 8102(9)(B))

A “security” 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 (CCP 8102(a)(15)):

- 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.
- 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.
- It is either of the following:
  - It is, or is of a type, dealt in or traded on securities exchanges or securities markets.
  - It is a medium for investment and by its terms expressly provides that it is a security governed by this division.

• • • • 6-20/520.52 Issuer Defined

"Issuer" includes a person that does any of the following (COMM 8201):

- Places its name on a security certificate to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate.
- Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security.
- Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate.
- Becomes responsible for another person described as an issuer in this section.

• • • • 6-20/520.53 Certificated Security

“Certificated security" means a security that is represented by a certificate. (COMM 8102(a)(4)) 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))

• • • • 6-20/520.54 Uncertificated Security

"Uncertificated security" means a security that is not represented by a certificate. (COMM 8102(a)(18) 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, except as otherwise provided in subdivision (d). (COMM 8112(b))

• • • • 6-20/520.55 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. (COMM 9102(a)(73)) "Security agreement" means an agreement which creates or provides for a security interest. (COMM 9102(a)(74))

• • • • 6-20/520.56 Security Entitlement

"Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset under COMM Chapter 5. (COMM 8102(a)(17)) "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. (COMM 8102(a)14))

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(c))

• • • 6-20/520.60 United States Savings Bond

A United States Savings Bond is not listed as property which cannot be levied upon. (CCP 699.720) United States Savings Bonds may be seized if the debtor is an owner or co-owner of the Bond(s). However, there are additional procedures to obtain the value of the Bond(s) which are established by the United States Government. The Department of Treasury then issues a check payable to the Sheriff in satisfaction of the writ. The method of levy, however, is based on federal law and regulations rather than state law. (31 Code of Federal Regulations 315.21)

In addition to the standard $100 the Sheriff charges for seizure, an additional fee deposit will be necessary. The fee deposit includes the fee normally charged for execution garnishments ($40) plus the cost of certified mail and the cost to certify a copy of the writ of execution. Prepare a garnishment naming the Bureau of Public Debt (United States Treasury Department), P.O. Box 1328, Parkersburg, West Virginia 26106-1328 as the garnishee. Also list as a registered owner any non-debtor co-owner whose name and address appears on the Bond. Fully describe the Savings Bond in the notice of levy including the denomination, issuance date, and the Savings Bond number. Mail a copy of the notice of levy, exemptions list, and writ to the debtor and any non-debtor co-owner. If a non-debtor co-owner is listed on the Bond, advise the creditor that a certified copy of a court order determining the interests of the debtor and non-debtor co-owner is required. If the debtor is listed as the only owner or after receipt of a court order determining the co-owners' interests, send by certified mail the original Savings Bond, original signed and dated notice of levy, certified copy of the writ of execution and any court order determining ownership interests to the garnishee. Do not endorse the Bond or otherwise write on it.

The value of the Savings Bond is determined by the Treasury Department which will issue a check payable to the levying officer for the amount of the debtor's interest in the Savings Bond. Any monies due a non-debtor co-owner will either sent to the Sheriff for payment to the third party or sent to the third party directly by the Treasury Department. The Bureau of Public Debt may request additional information or documentation and can be reached at (304) 480-6112 or savbond2@bpd.treas.gov.

• • • 6-20/520.70 Stock Certificates

Stock Certificates are not listed as property which cannot be levied upon. (CCP 699.720) Stock Certificates should contain information on whether they are transferable (it may be on the back). If there is no language barring transferring title, the levying officer may sell the certificates as with any other tangible property. The Notice of Sale shall not indicate any remarks as to its value, if any. The winning bidder will receive a Certificate of Sale only describing the property. In the description, use specific language contained within the Stock Certificate. Care should be taken not to use any words which could misrepresent what is being sold.

• • 6-20/530.00 Tangible Personal Property of a Going Business

To levy upon tangible personal property of a going business in the possession or under the control of the judgment debtor, whether such property be equipment or otherwise, the levying officer shall take the property into custody unless the judgment creditor instructs the levying officer to place a keeper in charge of the business.

During the period a keeper is placed in charge of the business, the business may continue to operate in its ordinary course of business provided that all sales are final and are for cash or its equivalent. For the purpose of this section, 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 directed by the judgment creditor, the keeper shall take custody of all proceeds from sales.

The keeper may remain in charge of the business for a maximum period of 10 days, at which time the levying officer must take the tangible personal property into exclusive custody. If prior to the expiration of the 10-day period either the judgment debtor objects to the keeper being in charge of the business or the judgment creditor so requests, the levying officer shall take exclusive custody of the tangible personal property at the time of the judgment debtor's objection or judgment creditor's request.

• • • 6-20/530.10 Keeper Installation

A keeper may be installed for a period of time as directed by the creditor but not more than 10 days.

• • • 6-20/530.20 Taking Custody of Property

Unless the levy is for cash proceeds only, the levying officer shall take the property into exclusive custody at the earliest of the following times:

1. At the time the debtor objects to placement of a keeper in charge of the business.
2. At any time requested by the creditor.
3. At the end of ten days.

• • • 6-20/530.30 Cash Only Keeper

The creditor may instruct the levying officer to install a keeper to collect cash or cash proceeds only. The ten day time limitation is inapplicable and the debtor has no right to object to the keeper. (CCP 700.070)

• • 6-20/540.00 Garnishment Levies in General

In general, property of the debtor in the possession or control of a third party is garnisheed. The levy is made by serving a garnishment consisting of a notice of levy, memorandum of garnishee and writ of execution on the garnishee (third party in possession) The garnishee must complete the memorandum of garnishee and return it to the levying officer within 15 days after service.

• • • 6-20/540.10 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 to garnishment even though defenses to the debt might diminish or

defeat it. As a consequence, contingent interests, such as future rental or pension 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)

• • • • 6-20/540.11 Rent

A sum payable upon a contingency is not a debt, nor does it become a debt until the contingency happens. (Doland v. Clark, 143 CA 176) The service of a garnishment on the tenant of rental property to pay the rental obligation to the levying officer instead of a landlord requires two factors:

1. The obligation of rental payment is to the judgment debtor.
2. The rental payment obligation is actually due.

That is to say if the rental agreement indicates payment is due on the 1st of every month, the service of a garnishment must be made on or after the 1st of the month. Service of the garnishment prior to the obligation is not valid.

Except for a court ordered assignment, California law does not exist dealing with the question of whether installments of rent due in the future is subject to garnishment. The obligation to pay future installments of rent is generally dependent upon the continuance of possession and enjoyment of the premises. Since it cannot be determined prospectively whether there will be any interference with that possession, the obligation of the tenant's future rental payments to the landlord cannot be garnishment. Future rents are so speculative as not to qualify as debts certain to be due, or even as debts at all and hence are not garnishable. (Hustead v. Superior Court, 2 CA 3d 780)

• • • 6-20/540.20 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. (CCP 701.010)

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 judgment creditor for the value of the judgment debtor'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 701.020)

• • • 6-20/540.30 Pension Plan

A judgment for child support or family support may be enforced by assignment or execution against a debtor's right to those existing periodic payments being made of benefits from an

employee pension plan. The amount withheld, levied by garnishment and not an earnings withholding order for support, shall not exceed the amount permitted to be withheld on an earnings withholding order for support. (CCP 701.010, 704.115) CCP 697.710 limits the duration of an execution lien to two years after the issuance of the writ of execution. FAM 5103 extends the levy lien period indefinitely until the full amount to satisfy is received by the levying officer.

• • • 6-20/540.40 Security Interest

An unperfected security interest is subordinate to the rights of a judgment creditor who had levied on the property. (Mirolla v. Mendez, 111 CA 3d 519) If the property is in the custody of the levying officer, and the security interest has priority, the secured party is liable for any proceeds received by the secured party to the extent of the execution lien. Excess property or proceeds must be delivered to the levying officer for the purposes of the levy unless otherwise order by the court or directed by the levying officer. (CCP 701.040)

• • • 6-20/540.50 Notice to Third Party

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

• • • 6-20/540.60 Account Debtor

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

- If the account debtor has been making payments to the judgment debtor, 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 judgment debtor has liberty to accept the return of goods or make repossessions, deliver to the levying officer the property returnable to the judgment debtor 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 levy, the obligor shall make payments to the levying officer as they become due. (CCP 701.060)

• • • 6-20/540.70 Memorandum of Garnishee

At the time of service of a copy of the writ of execution and a notice of levy 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 701.030)

As an example, a financial institution (bank, credit union, savings and loan) is required to deliver a completed memorandum of garnishee to the Sheriff within ten (10) days after being served with an execution garnishment (CCP 701.030(a)). The memorandum (item 6) instructs the bank to describe any claims and rights of other persons (third parties) to the levied property and the names and addresses of those parties. Once received, the Sheriff must promptly mail a copy of the memorandum to the creditor (CCP 701.030(c)). The Sheriff is also required to promptly serve a copy of the writ and notice of levy on any third party in whose name the account stands (CCP 700.160(c)).

Upon receipt of a memorandum of garnishee from a financial institution that indicates that an account stands in the name of a third party, the third party's name and address as indicated in item 6 shall be entered as a third party. A copy of the notice of levy, writ and exemptions list (if third party is a natural person) shall then be mailed to the third party. Comments shall indicate the date of mailing to the third party. The case shall be calendared for 15 days to allow the third party to file a third party claim and/or claim of exemption. If no claim is timely received, a Notice to Comply shall be mailed to the financial institution, directing the garnishee to remit the funds held in the third party's account.

• • 6-20/550.00 Public Entities Immune from Garnishment

• • • 6-20/550.10 State and Local Governments

Unless authorized by statute, a public entity is not subject to garnishment. (Irilarry v. City of San Diego, 186 CA 535) This exemption cannot be waived by their officers or agents. (Vaughn v. Condon, 52 CA 713) City and county housing authorities come under this exemption. If money is owing and unpaid to the judgment debtor by a public entity, the judgment creditor may file, in the manner provided in this article, an abstract of the money judgment or a certified copy of the money judgment, together with an affidavit that states that the judgment creditor desires the relief provided by the article and states the exact amount then required to satisfy the judgment. The judgment creditor may state in the affidavit any fact tending to establish the identity of the judgment debtor.

Promptly after filing the abstract or certified copy of the judgment and the affidavit with the public entity, the judgment creditor shall serve notice of the filing on the judgment debtor. Service shall be made personally or by mail. (CCP 708.730) Earnings of a public employee are subject to wage garnishment. (CCP 706.010-706.154)

• • • 6-20/550.20 Federal Government

Except for earnings withholding orders, the United States Government is not subject to garnishment. (Buchanan v. Alexander, 45 U.S. 20, 4 Howard 20; U.S. v. Morton, 467 U.S. 822, 104 S.Ct. 2769)

Patent rights cannot be garnished. (Peterson v. Sheriff, 115 C 211)

• • • 6-20/550.30 Bail or Other Property in Custody of Officer

Even though a political agency may not be subject to attachment or execution, an official of such agency may, under some circumstances, be subject to garnishment when he has property of the debtor in his possession or under his control. For example, a garnishment may be effectively served upon an officer of the law, such as a chief of police or sheriff, who is holding property, not under the custody of the law, as bailee of the debtor. (Coffee v. Haynes, 124 C 561)

Property of a prisoner taken from him upon his arrest by an officer charged with that duty is not subject to attachment or garnishment. By reason of public policy, it is held to be *in custodia legis* in order to avoid any possible abuse of criminal process. This rule does not apply, however, where the property was taken after a final conviction in a criminal case. (Emmanuel v. Sichofsky, 198 CA 713) Another exception to this rule is that a garnishment may be enforced where it appears that criminal process has not been abused, and the money garnished was obtained by the criminal acts of the debtor from the attaching claimant. (Golden Gate C.P. Co. v. Superior Court, I CA 2d 426)

Bail money deposited with the clerk of the court in a criminal case may be reached by a creditor of the depositor through an ordinary garnishment served on the clerk of the court after the bail has been exonerated. (Dunsmoor v. Furstenfeldt, 88 CA 522; Credit Bureau of San Diego v. Getty, 61 CA 2d Supp. 823)

Trust funds held by the county treasurer are, in legal contemplation, in the possession of the official or agency that deposited the funds, with the county treasurer as its depository. (Jensen v. Evans, 13 CA 2d 401; Credit Bureau of San Diego v. Getty, 61 CA 2d Supp. 823)

• • 6-20/560.00 Garnishment Levies on Specific types of Property

EXECUTION GARNISHMENTS

PROPERTY	FORMS	SERVICE
Account Receivable	notice of levy, writ of execution, memorandum of garnishee	personally serve account debtor (not same as judgment debtor)

Decedent's Estate	notice of levy, writ of execution, memorandum of garnishee	personally serve personal representative of decedent and mail to debtor after property is delivered to levying officer
Deposit Account	notice of levy, writ of execution, memorandum of garnishee, (if applicable: spousal affidavit, court order to levy on account, and/or fictitious business name statement)	personally serve financial institution and mail to any third party
Final Money Judgment	notice of levy, writ of execution, memorandum of garnishee	file with court clerk where final money judgment issued
General Intangible	notice of levy, writ of execution, memorandum of garnishee	personally serve account debtor (not same as judgment debtor)
Goods Held by Bailee with Negotiable Document of Title	notice of levy, writ of execution, memorandum of garnishee	personally serve bailee
Negotiable Document of Title	notice of levy, writ of execution, memorandum of garnishee	personally serve third party

Safe-deposit Box	notice of levy, writ of execution, memorandum of garnishee, (if applicable: spousal affidavit, court order to levy on account, and/or fictitious business name statement)	personally serve financial institution and mail to any third party
Securities	notice of levy, writ of execution, memorandum of garnishee	personally serve issuer, secured party or securities intermediary
Tangible Personal Property in Third Party's Possession	notice of levy, writ of execution, memorandum of garnishee	personally serve on third party in possession of debtor's property

• • • 6-20/560.10 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 receivable." (CCP 680.130; COMM 9102(a)(2))

Unless another method of levy is provided, to levy upon a receivable the levying officer shall personally serve a copy of the writ and notice of levy on the account debtor. "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper. (CCP 680.120 , COMM 9102(a)(3))

If a levy is made by serving the account debtor and payments on the account receivable are made to a person other than the judgment debtor (whether pursuant to a security agreement, assignment for collection, or otherwise), if so instructed by the judgment creditor the levying

officer shall personally serve a copy of the writ and a notice of levy on such third person. Such service is a levy on any amounts owed to the judgment debtor by such third person.

• • • 6-20/560.20 Decedentâ€™s Estate

To levy upon the interest of the judgment debtor 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 levy 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 judgment debtor, 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 money judgment, it shall be released to the judgment debtor.

Promptly after the property is delivered to the levying officer, the levying officer shall serve the judgment debtor personally or by mail a notice describing the property. See 6-20/410.20 Manner of Debtor Notification. The judgment debtor may file a claim of exemption within 10 days of such service plus the time for mailing if served by mail.

(CCP 700.180(a)(4), 700.200)

• • • 6-20/560.30 Deposit Account/Safe Deposit Box

To levy upon a deposit account or Safe-Deposit Box, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the deposit account is maintained. (CCP 700.140, 700.150) A financial institution having nine (9) or more branches shall designate one or more central locations for legal process. (CCP 680.115) The California Department of Financial Protection & Innovation maintains Central Locations for Service of Legal Process. Should a financial institution required to designate a central location fail to do so, each branch of that institution located in this state shall be deemed to be a central location at which service of legal process may be made, and all of the institution’s branches or offices located within this state shall be deemed to be a branch or office covered by central process.

"Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument. (CCP 680.170; COMM 9102(a)(29)) “Financial institution” is defined as 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 680.200)

The lien reaches only amounts in the deposit account at the time of service on the financial institution (including any item in the deposit account that is in the process of being collected) unless the item is returned unpaid to the financial institution. The lien terminates when the amount levied upon is paid to the levying officer.

• • • • 6-20/560.31 Levy Without Court Order

A court order is not required as a prerequisite to levy on a deposit account or safe deposit box standing in the name of any of the following (CCP 700.160):

1. The judgment debtor, whether alone or together with third persons.
2. The judgment debtor's spouse, whether alone or together with other third persons. An affidavit showing that the person in whose name the account or safe deposit box stands is the judgment debtor's spouse shall be delivered to the financial institution at the time of levy.
3. A fictitious business name if an unexpired fictitious business name statement is on file with the County Clerk and lists as the persons doing business under the fictitious name either the judgment debtor, the spouse of the judgment debtor, or both, but does not list any other person. A certified copy of the fictitious business name statement shall be delivered to the financial institution at the time of levy and, if the statement lists the name of the judgment debtor's spouse who is not also a judgment debtor, an affidavit showing that such person is the judgment debtor's spouse shall also be delivered to the financial institution at the time of levy.
4. An alias added to the writ execution pursuant to a court approved affidavit of identity. (CCP 680.135)

Fictitious business name statements are required to be filed with the clerk of the county in which the registrant's principal place of business is located in this state or, if there is no place of business in this state, with the Clerk of Sacramento County.

Pursuant to an affidavit of identity, the creditor may attempt to levy on property standing in an additional name (alias) used by the debtor and not listed in the judgment. The affidavit of identity sets forth grounds establishing an alias name of the debtor and is submitted to the court for approval when applying for a writ of execution. The court may, without notice or hearing, approve the affidavit of identity and order the clerk to add the debtor's alias name to the writ of execution. An affidavit of identity is not used to circumventing the need to add the alias name as an additional debtor on the writ. The notice of levy shall include any name listed in the affidavit of identity. After levy, the levying officer shall promptly serve on the debtor, personally or by mail, a copy of the writ of execution, notice of levy, exemptions list (if the debtor is a natural person) and affidavit of identity. There is no additional charge to serve the affidavit of identity. The creditor is liable to any person not the debtor whose property is wrongfully attached. The garnishee shall not transfer property levied on under an alias named in an affidavit of identity until directed to do so by the levying officer. The levying officer shall not direct delivery sooner than 15 days after levy.

The requirement of service of a copy of the writ and notice of levy on any third person, including the judgment debtor's spouse, in whose name the account or safe deposit box may stand must be complied with in the same manner as done in a levy under a court order. A copy of any fictitious business name statement or affidavit showing the third person is the spouse of the judgment debtor is not required to be served on the third person.

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

A deposit account or safe deposit box standing in the name of a person other than the judgment debtor, either alone of together with other third persons, is not subject to levy unless the levy is authorized by court order. For the purposes of levies against deposit accounts, a person who is only named on an account as a payee designated in a pay-on death provision in the account or as the beneficiary of a Totten trust account is not considered to be a third person in whose name the deposit account stands.

Although not specifically required by law, if a court order is also issued, a copy of the court order should be served on the financial institution at the time of personal service of the writ and notice of levy.

At the time of levy or promptly thereafter, the levying officer shall either personally or by mail serve a copy of the writ, notice of levy, and the court order on any third person in whose name the deposit account or safe deposit box stands.

In the case of a levy against a deposit account which stands in the name of a third person, whether alone or together with the judgment debtor, the financial institution shall not pay to the levying officer, the amount levied upon until being notified to do so by the levying officer. The levying officer may not give the notification to the financial institution until 15 days have expired from the date such officer served the third person as set forth in the previous paragraph. The 15 day period is extended if service was by mail. (CCP 684.120) If a third party claim is received prior to giving the notification, do not make the notification until the judgment creditor has filed either the required deposit or undertaking together with the statement of invalidity.

Upon receipt of a Memorandum of Garnishee indicating a safe-deposit box has been levied, the levying officer shall promptly mail a written notice to the judgment creditor demanding an additional deposit as required by GC 26723, plus costs. In the case of Los Angeles County, the deposit shall be $750 to open the safe-deposit box and seize and store the contents. The levying officer shall release the levy on the safe-deposit box if the judgment creditor does not pay the required deposit within three business days plus mailing pursuant to CCP 1013(a). Unless the judgment creditor pays in advance the cost of forcibly opening the safe deposit box and of repairing any damage caused thereby, the financial institution may refuse to permit the forcible opening of the safe deposit box.

Prior to arranging a forcible entry of a safe-deposit box with the financial institution, the levying officer may first give the person in whose name the safe deposit box stands an opportunity to open the safe deposit box to permit the removal pursuant to the levy of the property levied upon. The notice may state that the debtor provide his/her key to the safe-deposit box or incur further costs to force the entry which will be added to the judgment.

The levying officer should pay close attention to the creditor’s instructions regarding the seizure of property located in the safe-deposit box. The levying officer may only seize tangible property identified by the creditor in writing which may be sold at a Sheriff’s sale to satisfy the money judgment. Property without an intrinsic monetary value shall not be seized notwithstanding the creditor’s instructions. The judgment creditor shall be entitled to be present at that time of opening. If property is identified by the creditor does not appear on the instructions, do not seize the property until such time the creditor amends the instructions. Property seized shall be inventoried and a copy left in the safe-deposit box along with a copy of the writ. If property is not

seized, it shall remain in the safe-deposit box and the execution lien is released automatically with respect to any property that remains in the safe-deposit box.

• • • • 6-20/560.32 Levy With Court Order

A deposit account or safe deposit box standing in the name of a person other than the judgment debtor, either alone of together with other third persons, is not subject to levy unless the levy is authorized by court order. (CCP 700.160) For the purposes of levies against deposit accounts, a person who is only named on an account as a payee designated in a pay-on death provision in the account or as the beneficiary of a Totten trust account is not considered to be a third person in whose name the deposit account stands.

Although not specifically required by law, a copy of the court order should be served on the financial institution at the time of personal service of the writ and notice of levy.

All other provisions of 6-20/560.31 Levy Without Court Order apply.

• • • • 6-20/560.33 Charging Order

A partner's interest in partnership or limited liability company property is not subject to an execution levy by seizure or garnishment. (CCP 699.720(a)(2)) A money judgment can be enforced against a debtor partner's interest in a partnership through other enforcement procedures. A special enforcement procedure enables the creditor to reach a debtor's partnership interests by obtaining a charging order. (CCP 708.310) If a money judgment is rendered against a partner but not against the partnership, the judgment debtor's interest in the partnership may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to CORP 15907.03 and 17705.03.

The service of a notice of motion for a charging order on the judgment debtor and the partnership creates a lien on the judgment debtor's partnership interest similar to the lien created by service of an examination order. (CCP 708.110)

The interest of a debtor partner in an account of a non-debtor partnership can only be garnished pursuant a charging order. A creditor's instructions should clearly instruct the Sheriff to levy on the non-debtor partnership's accounts pursuant to the charging order and 700.160(a) CCP. For example, "Levy on the interest of the debtor in the accounts of (partnership name), a partnership, including account numbers 123456 and 789000 at (financial institution) pursuant to the enclosed charging order and CCP 700.160(a))."

• • • 6-20/560.40 Final Money Judgment

To levy upon a final money judgment, the levying officer shall file a copy of the writ of execution and a notice of levy 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 execution lien and the time it was created.

If an abstract of the judgment is issued, it shall include a statement of the execution lien in favor of the judgment

creditor.

A "final money judgment" means a money judgment after the time for appeal from the judgment has expired or, if an appeal is filed, after the appeal has been finally determined.

At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor obligated to pay the final money judgment levied upon. Service shall be made personally or by mail.

(CCP 700.190)

• • • 6-20/560.50 General Intangible

Unless another method of levy is provided, to levy upon a general intangible, the levying officer shall personally serve a copy of the writ and a notice of levy on the account debtor. (CCP 700.170)

"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. (CCP 680.210; COMM 9102(a)(42))

“Account debtor” means the person who is obligated on general intangible.

(CCP 680.120; COMM 9102(a)(3))

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

• • • 6-20/560.60 Goods Held By Bailee

“Bailee” means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them. (COMM 7102(a)(1))

• • • • 6-20/560.61 Where Bailee Has Not Issued a Negotiable Document of Title

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

If the goods are subject to a security interest, and the judgment creditor instructs the levying officer to serve the secured party, the levying officer shall serve a copy of the writ and or notice of levy on the secured party either personally or by mail.

(CCP 700.060)

• • • • 6-20/560.62 Where Bailee Has Issued a Negotiable Document of Title 700.040 CCP

If goods are in the possession of a bailee who has issued a negotiable document of title, the goods may not be levied upon, but the negotiable document of title may be levied upon in the manner provided for levies on such property. (CCP 700.040)

• • • 6-20/560.70 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 judgment debtor or, if it is in the possession of a third person, personally serve a copy of the writ and a notice of levy on the third person. (CCP 700.120)

"Document of title" means a bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, compress receipt, and also any other document which 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 goods it covers. To be a document of title a document must purport to be issued by a bailee and purport to cover goods in the bailee's possession which are either identified or is a fungible portion of an identifiable 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, a receipt issued for the goods is a "document of title" and 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. (CCP 680. 180; COMM 1201(b)(16), 7104, 7201, 9102(a)(30))

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 if it runs to a named person or assigns where recognized in overseas trade. Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. A nonnegotiable warehouse receipt and a nonnegotiable bill of lading must be conspicuously marked "nonnegotiable." In case of the bailee's failure to do so, a holder of the document who purchased it for value supposing it to be negotiable may, at his option, treat such document as imposing upon the bailee the same liabilities he would have incurred had the document been negotiable.

• • • 6-20/560.80 Tangible Property in Possession of Third Party

Unless another method of levy is provided by this article, to levy upon tangible personal property in the possession or under the control of a third person, the levying officer shall serve a garnishment on the third person. (CCP 700.040)

If goods are in the possession of a bailee who has issued a negotiable document of title therefor, the goods may not be levied upon, but a garnishment can be served on the bailee for the negotiable document of title. (CCP 700.120) If goods are in the possession of a bailee other than one who has issued a negotiable document of title therefor, the goods may be levied upon by serving the bailee with a garnishment. (CCP 700.060)

• • 6-20/570.00 Recording Levies in General

To attach real property, growing crops, timber or minerals, the sheriff shall record a copy of the writ of execution and notice of levy 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 and notice of levy 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.

• • 6-20/580.00 Recording Levies on Specific types of Property

• • • 6-20/580.10 Real Property

• • • • 6-20/580.11 Real Property Defined

The term "real property" includes land and permanent buildings. (CC 14(b)(2), CCP 17(b)(8)(A), 680.320) Things which are affixed to land, or incidental or appurtenant thereto, are generally considered as part of the real estate. (CC 658, 659, 660, 662) Land also embraces all titles, legal or equitable, perfect or imperfect, including such rights as lie in contract whether executory or executed. Therefore, 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 C 566 - this cite does not have an electronic copy (1886))

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)

• • • • 6-20/580.12 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 that describes the property levied upon and states that the judgment debtor's interest in the described property has been levied upon. If the judgment debtor's interest in the real property stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person. (CCP 700.015)

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.

• • • • 6-20/580.13 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 or notice of levy on any third person in whose name the judgment debtor'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 700.015(b))

• • • • 6-20/580.14 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 levy 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 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.

• • • • 6-20/580.15 Dwelling

If the real property contains a dwelling (a place where a person actually resides as defined in CCP 704.710(a)), promptly after the levy (recording), the levying officer shall serve notice on the

judgment creditor, either personally or by mail, that the levy has been made and that the property will be released unless a copy of an application for an order for sale of the dwelling is received by the officer within 20 days. The 20 days is extended by the appropriate number of days pursuant to CCP 684.120 if the notice to the creditor is served by mail. (CCP 704.750)

The interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale. If the debtor's interest in the real property is a leasehold estate with an unexpired term of less than two years at the time of levy or the dwelling is personal property, a court order for sale is not required. (CCP 704.740)

• • • 6-20/580.20 Growing crops, Timber, Minerals, Etc.

• • • • 6-20/580.21 Levy by Recording

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 levy that describes the property levied upon and states that the judgment debtor'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 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 judgment debtor, the notice of levy shall identify the third person. (CCP 700.020(a))

• • • • 6-20/580.22 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 notice of levy on any third person in whose name the 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. (CCP 700.020(b), (1))

• • • • 6-20/580.23 Notification to Secured Party

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 levy 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. (CCP 700.020(b)(2))

• • • • 6-20/580.24 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 levy 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 700.020(c))

• 6-20/600.00 Levy Lien

Except for a levy upon the interest of the judgment debtor in personal property in the estate of a decedent, a levy on property under a writ of execution creates a lien on the property until two years after the date the writ was issued, unless the judgment is satisfied sooner. If the levy was upon the interest of the judgment debtor in personal property in the estate of a decedent, the levy creates a lien on the property until one year after the decree distributing the interest has become final, unless the judgment is satisfied sooner. (CCP 697.710, 700.200) The duration of an execution lien to two years after the issuance of the writ of execution. FAM 5103 extends the levy lien period indefinitely until the full amount to satisfy is received by the levying officer if a garnishment levy on a pension plan for support.

• 6-20/700.00 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 701.010 et seq. (CCP 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.

• • 6-20/710.00 Perishable Property Sale

The court may appoint a receiver or order the levying officer to take any action the court orders that is necessary to preserve the value of property levied upon, including but not limited to selling the property, if the court determines that the property is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served by the order. An order may be made under this subdivision upon application of the judgment creditor, the judgment debtor, or a person who has filed a third-party claim – CCP 720.010 et seq. The application shall be made on noticed motion if the court so directs or a court rule so requires. Otherwise, the application may be made ex parte.

If the levying officer determines that property levied upon is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order could be obtained, the levying officer may take any action necessary to preserve the value of the property or may sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

Except as otherwise provided by order of the court, a sale of shall be made in the manner as other Sheriff sales. See 6-27/000.00 Execution Sales. The required notice of sale shall be posted and served at a reasonable time before the sale, considering the character and condition of the property. The proceeds shall be applied to the satisfaction of the money judgment in the manner as 6-27/000.00 Execution Sales.

If a receiver is appointed, the court shall fix the daily fee of the receiver and may order the judgment creditor to pay the fees and expenses of the receiver in advance or may direct that the whole or any part of the fees and expenses be paid from the proceeds of any sale of the property.

(CCP 699.070)

• 6-20/800.00 Return of Writ

The officer must certify the manner and time of service of the execution, or if he fails to make service, the reason for the officer's failure, and return the process without delay. (GC 26609)
The levying officer shall return the writ reporting his actions and an accounting of amounts collected, and costs incurred, at the earliest of the following times (CCP 699.560):

- Two years from the date of issuance of the writ, unless it involves a wage garnishment.
- Promptly after all of the duties under the writ are performed.
- When requested in writing by the judgment creditor.
- If no levy takes place promptly after the expiration of the 180-day period.
- Promptly upon expiration of the 10 year judgment period. (CCP 683.020)
- If a levy has been made on personal property in the estate of a decedent, one year after the date of the

decree distributing the interest becomes final. (CCP 700.200)

- If a levy has been made for support, no later than one year after the lien expires. (FAM 5103)
- In the case of an active earnings withholding order, and the writ was already returned to court, upon termination of the earnings withholding order, the levying officer shall make a supplemental return in the same manor and information as a writ return. (CCP 706.033)

In lieu of returning to court the paper version of an original writ of execution, the levying officer may retain the original writ or an electronic copy of the original writ and file only a return of the levying officer's actions. (CCP 263.6, 699.560(e))

A creditor seeking the issuance of a writ directed to another county may direct the levying officer to file an accounting of the levying officer's actions with the court. This does not constitute a return of the writ.

The return of an officer upon process or notices is prima facie evidence of the facts stated in the return. (GC 26662) A statement in a return that the officer had levied on property is not evidence proving that the various steps required to effectuate a valid levy had been taken. (Kee v. Becker, 54 CA 2d 466) An officer's opinion as to the legal effect of the officer's acts, whether correct or erroneous, does not form any part of the return. (Gilbank v. Benton, 9 CA 2d 517) Since the officer has a duty to state in the return what acts were performed in serving the writ, in order to enable the court to decide on the sufficiency to constitute a valid service, it must be assumed that the officer's return stated all that was done; and as the acts stated were insufficient to constitute a valid service, there was no lien created by the attachments. (Sharp v. Baird, 43 CA 577) When the necessary acts prescribed by statute have actually been performed by the officer, the court may allow the filing of an amended officer's return to recite the truth. (Alpha Stores, Ltd. v. You Bet Mining Company, 18 CA 2d 249)

A deputy under a public officer and the officer or person holding the office are, in contemplation of law and in an official sense, one and the same person. The deputy acts for and in the place of the principal, and the deputy's acts are, therefore, not the deputy's, but those of the holder or incumbent of the office. (Sarter v. Siskiyou County, 42 CA 530) The law recognizes deputies only through their principals, and their acts must be done in the name of their principals. (People v. Le Doux, 155 CA 535) A return of a deputy is a nullity unless it is done in the name of and by the authority of the principal officer. (Joyce v. Joyce, 5 CA 449: 1855 case, no link available) The duty of making returns is an official duty; consequently a deputy having no personal knowledge of the facts is qualified to make a return.

(Colver v. W. B. Scarborough Co., 73 CA 441)

The power and authority for the sheriff under a writ of execution terminates with the return thereof. (Duncan v. Standard Accident Ins. Co., 1 CA 2d 385)

• 6-20/900.00 Registered Process Server

A registered process server may levy under a writ of attachment pursuant to CCP 699.080. 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

The registered process shall perform of the applicable levy, posting, and service duties required under Methods of Levy – CCP 700.010 – 700.200, and provide third persons served with a Memorandum of Garnishee (EJ/152).

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

- The writ of execution
- 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 levy was served on the defendant and required other persons
- Sheriff's Instructions (CCP 687.010)

• • 6-20/900.10 Service by Party

If the levying officer is required to serve an order, notice, or other paper that runs in favor of a particular person, with the levying officer's permission the person or the person's agent may make personal service of the paper. This provision does not apply to the service of a writ or notice of levy. (CCP 684.140)
