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))
