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.