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.