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.