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.