

## 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](#))

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### • 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 1<sup>st</sup> of every month, the service of a garnishment must be made on or after the 1<sup>st</sup> 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](#))

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