6-20/560.00 Garnishment Levies on Specific types of Property

EXECUTION GARNISHMENTS

PROPERTY	FORMS	SERVICE
Account Receivable	notice of levy, writ of execution, memorandum of garnishee	personally serve account debtor (not same as judgment debtor)
Decedent's Estate	notice of levy, writ of execution, memorandum of garnishee	personally serve personal representative of decedent and mail to debtor after property is delivered to levying officer
Deposit Account	notice of levy, writ of execution, memorandum of garnishee, (if applicable: spousal affidavit, court order to levy on account, and/or fictitious business name statement)	personally serve financial institution and mail to any third party
Final Money Judgment	notice of levy, writ of execution, memorandum of garnishee	file with court clerk where final money judgment issued
General Intangible	notice of levy, writ of execution, memorandum of garnishee	personally serve account debtor (not same as judgment debtor)

Goods Held by Bailee with Negotiable Document of Title	notice of levy, writ of execution, memorandum of garnishee	personally serve bailee
Negotiable Document of Title	notice of levy, writ of execution, memorandum of garnishee	personally serve third party
Safe-deposit Box	notice of levy, writ of execution, memorandum of garnishee, (if applicable: spousal affidavit, court order to levy on account, and/or fictitious business name statement)	personally serve financial institution and mail to any third party
Securities	notice of levy, writ of execution, memorandum of garnishee	personally serve issuer, secured party or securities intermediary
Tangible Personal Property in Third Party's Possession	notice of levy, writ of execution, memorandum of garnishee	personally serve on third party in possession of debtor's property

• 6-20/560.10 Account Receivable

"Account receivable" means any right to payment for goods sold or leased or for services

rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are "accounts receivable." (CCP 680.130; COMM 9102(a)(2))

Unless another method of levy is provided, to levy upon a receivable the levying officer shall personally serve a copy of the writ and notice of levy on the account debtor. "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper. (CCP 680.120 , COMM 9102(a)(3))

If a levy is made by serving the account debtor and payments on the account receivable are made to a person other than the judgment debtor (whether pursuant to a security agreement, assignment for collection, or otherwise), if so instructed by the judgment creditor the levying officer shall personally serve a copy of the writ and a notice of levy on such third person. Such service is a levy on any amounts owed to the judgment debtor by such third person.

• 6-20/560.20 Decedentâ€™s Estate

To levy upon the interest of the judgment debtor in personal property in the estate of a decedent, whether the interest arises by testate or intestate succession, the levying officer shall personally serve a copy of the writ and a notice of levy on the personal representative of the decedent.

The personal representative shall report the levy to the court in which the estate is being administered when any petition for distribution is filed. If a decree orders distribution to the judgment debtor, the court making the decree shall order the property levied upon to be delivered to the levying officer. The property may not be delivered to the levying officer until the decree has become final. To the extent the property delivered to the levying officer is not necessary to satisfy the money judgment, it shall be released to the judgment debtor.

Promptly after the property is delivered to the levying officer, the levying officer shall serve the judgment debtor personally or by mail a notice describing the property. See 6-20/410.20 Manner of Debtor Notification. The judgment debtor may file a claim of exemption within 10 days of such service plus the time for mailing if served by mail.

(CCP 700.180(a)(4), 700.200)

• 6-20/560.30 Deposit Account/Safe Deposit Box

To levy upon a deposit account or Safe-Deposit Box, the levying officer shall personally serve a copy of the writ of execution and a notice of levy on the financial institution with which the deposit account is maintained. (CCP 700.140, 700.150) A financial institution having nine (9) or more branches shall designate one or more central locations for legal process. (CCP 680.115) The California Department of Financial Protection & Innovation maintains Central Locations for Service of Legal Process. Should a

financial institution required to designate a central location fail to do so, each branch of that institution located in this state shall be deemed to be a central location at which service of legal process may be made, and all of the institution's branches or offices located within this state shall be deemed to be a branch or office covered by central process.

"Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument. (CCP 680.170; COMM 9102(a)(29)) "Financial institution" is defined as a state or national bank, state or federal savings and loan association or credit union, or like organization, and includes a corporation engaged in a safe deposit business. (CCP 680.200)

The lien reaches only amounts in the deposit account at the time of service on the financial institution (including any item in the deposit account that is in the process of being collected) unless the item is returned unpaid to the financial institution. The lien terminates when the amount levied upon is paid to the levying officer.

• • 6-20/560.31 Levy Without Court Order

A court order is not required as a prerequisite to levy on a deposit account or safe deposit box standing in the name of any of the following (CCP 700.160):

1. The judgment debtor, whether alone or together with third persons.
2. The judgment debtor's spouse, whether alone or together with other third persons. An affidavit showing that the person in whose name the account or safe deposit box stands is the judgment debtor's spouse shall be delivered to the financial institution at the time of levy.
3. A fictitious business name if an unexpired fictitious business name statement is on file with the County Clerk and lists as the persons doing business under the fictitious name either the judgment debtor, the spouse of the judgment debtor, or both, but does not list any other person. A certified copy of the fictitious business name statement shall be delivered to the financial institution at the time of levy and, if the statement lists the name of the judgment debtor's spouse who is not also a judgment debtor, an affidavit showing that such person is the judgment debtor's spouse shall also be delivered to the financial institution at the time of levy.
4. An alias added to the writ execution pursuant to a court approved affidavit of identity. (CCP 680.135)

Fictitious business name statements are required to be filed with the clerk of the county in which the registrant's principal place of business is located in this state or, if there is no place of business in this state, with the Clerk of Sacramento County.

Pursuant to an affidavit of identity, the creditor may attempt to levy on property standing in an additional name (alias) used by the debtor and not listed in the judgment. The affidavit of identity sets forth grounds establishing an alias name of the debtor and is submitted to the court for approval when applying for a writ of execution. The court may, without notice or hearing, approve the affidavit of identity and order the clerk to add the debtor's alias name to the writ of execution. An affidavit of identity is not used to circumventing the need to add the alias name as an additional debtor on the writ. The notice of levy shall include any name listed in the affidavit of

identity. After levy, the levying officer shall promptly serve on the debtor, personally or by mail, a copy of the writ of execution, notice of levy, exemptions list (if the debtor is a natural person) and affidavit of identity. There is no additional charge to serve the affidavit of identity. The creditor is liable to any person not the debtor whose property is wrongfully attached. The garnishee shall not transfer property levied on under an alias named in an affidavit of identity until directed to do so by the levying officer. The levying officer shall not direct delivery sooner than 15 days after levy.

The requirement of service of a copy of the writ and notice of levy on any third person, including the judgment debtor's spouse, in whose name the account or safe deposit box may stand must be complied with in the same manner as done in a levy under a court order. A copy of any fictitious business name statement or affidavit showing the third person is the spouse of the judgment debtor is not required to be served on the third person.

A spousal affidavit, fictitious business name statement, and court order to levy on a third party's account are used exclusively to garnish deposit accounts/safe-deposit boxes.

A deposit account or safe deposit box standing in the name of a person other than the judgment debtor, either alone of together with other third persons, is not subject to levy unless the levy is authorized by court order. For the purposes of levies against deposit accounts, a person who is only named on an account as a payee designated in a pay-on death provision in the account or as the beneficiary of a Totten trust account is not considered to be a third person in whose name the deposit account stands.

Although not specifically required by law, if a court order is also issued, a copy of the court order should be served on the financial institution at the time of personal service of the writ and notice of levy.

At the time of levy or promptly thereafter, the levying officer shall either personally or by mail serve a copy of the writ, notice of levy, and the court order on any third person in whose name the deposit account or safe deposit box stands.

In the case of a levy against a deposit account which stands in the name of a third person, whether alone or together with the judgment debtor, the financial institution shall not pay to the levying officer, the amount levied upon until being notified to do so by the levying officer. The levying officer may not give the notification to the financial institution until 15 days have expired from the date such officer served the third person as set forth in the previous paragraph. The 15 day period is extended if service was by mail. (CCP 684.120) If a third party claim is received prior to giving the notification, do not make the notification until the judgment creditor has filed either the required deposit or undertaking together with the statement of invalidity.

Upon receipt of a Memorandum of Garnishee indicating a safe-deposit box has been levied, the levying officer shall promptly mail a written notice to the judgment creditor demanding an additional deposit as required by GC 26723, plus costs. In the case of Los Angeles County, the deposit shall be $750 to open the safe-deposit box and seize and store the contents. The levying officer shall release the levy on the safe-deposit box if the judgment creditor does not pay the required deposit within three business days plus mailing pursuant to CCP 1013(a).

Unless the judgment creditor pays in advance the cost of forcibly opening the safe deposit box and of repairing any damage caused thereby, the financial institution may refuse to permit the forcible opening of the safe deposit box.

Prior to arranging a forcible entry of a safe-deposit box with the financial institution, the levying officer may first give the person in whose name the safe deposit box stands an opportunity to open the safe deposit box to permit the removal pursuant to the levy of the property levied upon. The notice may state that the debtor provide his/her key to the safe-deposit box or incur further costs to force the entry which will be added to the judgment.

The levying officer should pay close attention to the creditor's instructions regarding the seizure of property located in the safe-deposit box. The levying officer may only seize tangible property identified by the creditor in writing which may be sold at a Sheriff's sale to satisfy the money judgment. Property without an intrinsic monetary value shall not be seized notwithstanding the creditor's instructions. The judgment creditor shall be entitled to be present at that time of opening. If property is identified by the creditor does not appear on the instructions, do not seize the property until such time the creditor amends the instructions. Property seized shall be inventoried and a copy left in the safe-deposit box along with a copy of the writ. If property is not seized, it shall remain in the safe-deposit box and the execution lien is released automatically with respect to any property that remains in the safe-deposit box.

• • 6-20/560.32 Levy With Court Order

A deposit account or safe deposit box standing in the name of a person other than the judgment debtor, either alone of together with other third persons, is not subject to levy unless the levy is authorized by court order. (CCP 700.160) For the purposes of levies against deposit accounts, a person who is only named on an account as a payee designated in a pay-on death provision in the account or as the beneficiary of a Totten trust account is not considered to be a third person in whose name the deposit account stands.

Although not specifically required by law, a copy of the court order should be served on the financial institution at the time of personal service of the writ and notice of levy.

All other provisions of 6-20/560.31 Levy Without Court Order apply.

• • 6-20/560.33 Charging Order

A partner's interest in partnership or limited liability company property is not subject to an execution levy by seizure or garnishment. (CCP 699.720(a)(2)) A money judgment can be enforced against a debtor partner's interest in a partnership through other enforcement procedures. A special enforcement procedure enables the creditor to reach a debtor's partnership interests by obtaining a charging order. (CCP 708.310) If a money judgment is rendered against a partner but not against the partnership, the judgment debtor's interest in the partnership may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to CORP 15907.03 and 17705.03.

The service of a notice of motion for a charging order on the judgment debtor and the partnership creates a lien on the judgment debtor's partnership interest similar to the lien created by service of an examination order. (CCP 708.110)

The interest of a debtor partner in an account of a non-debtor partnership can only be garnished pursuant a charging order. A creditor's instructions should clearly instruct the Sheriff to levy on the non-debtor partnership's accounts pursuant to the charging order and 700.160(a) CCP. For example, "Levy on the interest of the debtor in the accounts of (partnership name), a partnership, including account numbers 123456 and 789000 at (financial institution) pursuant to the enclosed charging order and CCP 700.160(a))."

• 6-20/560.40 Final Money Judgment

To levy upon a final money judgment, the levying officer shall file a copy of the writ of execution and a notice of levy with the clerk of the court that entered the final money judgment. The court clerk shall endorse upon the judgment a statement of the existence of the execution lien and the time it was created.

If an abstract of the judgment is issued, it shall include a statement of the execution lien in favor of the judgment creditor.

A "final money judgment" means a money judgment after the time for appeal from the judgment has expired or, if an appeal is filed, after the appeal has been finally determined.

At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ of execution and a notice of levy on the judgment debtor obligated to pay the final money judgment levied upon. Service shall be made personally or by mail.

(CCP 700.190)

• 6-20/560.50 General Intangible

Unless another method of levy is provided, to levy upon a general intangible, the levying officer shall personally serve a copy of the writ and a notice of levy on the account debtor. (CCP 700.170)

"General intangibles" consist of a right to payment and means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. (CCP 680.210; COMM 9102(a)(42))

"Account debtor" means the person who is obligated on general intangible.

(CCP 680.120; COMM 9102(a)(3))

If a levy is made by serving the account debtor and payments on the general intangible are made to a person other than the judgment debtor (whether pursuant to a security agreement, assignment for collection, or otherwise), if so instructed by the judgment creditor the levying officer shall personally serve a copy of the writ and a notice of levy on such third person. Such service is a levy on any amounts owed to the judgment debtor by such third person.

• 6-20/560.60 Goods Held By Bailee

"Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them. (COMM 7102(a)(1))

• • 6-20/560.61 Where Bailee Has Not Issued a Negotiable Document of Title

To levy upon goods in the possession of a bailee, other than one who has issued a negotiable document of title, the levying officer shall personally serve a copy of the writ and notice of levy on the bailee.

If the goods are subject to a security interest, and the judgment creditor instructs the levying officer to serve the secured party, the levying officer shall serve a copy of the writ and or notice of levy on the secured party either personally or by mail.

(CCP 700.060)

• • 6-20/560.62 Where Bailee Has Issued a Negotiable Document of Title 700.040 CCP

If goods are in the possession of a bailee who has issued a negotiable document of title, the goods may not be levied upon, but the negotiable document of title may be levied upon in the manner provided for levies on such property. (CCP 700.040)

• 6-20/560.70 Negotiable Document of Title

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)

"Document of title" means 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 the person entitled under the document has the right to receive, hold and dispose of the document and goods it covers. To be a document

of title a document must purport to be issued by a bailee 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. (CCP 680. 180; COMM 1201(b)(16), 7104, 7201, 9102(a)(30))

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. 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.

• 6-20/560.80 Tangible Property in Possession of Third Party

Unless another method of levy is provided by this article, to levy upon tangible personal property in the possession or under the control of a third person, the levying officer shall serve a garnishment on the third person. (CCP 700.040)

If goods are in the possession of a bailee who has issued a negotiable document of title therefor, the goods may not be levied upon, but a garnishment can be served on the bailee for the negotiable document of title. (CCP 700.120) If goods are in the possession of a bailee other than one who has issued a negotiable document of title therefor, the goods may be levied upon by serving the bailee with a garnishment. (CCP 700.060)