

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 or 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.
