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References

BPC – Business and Professions Code
CC – Civil Code
CCP – Code of Civil Procedure
COMM – Commercial Code
CRC – California Rules of Court
ELEC – Elections Code
FAM – Family Code
FIN – Financial Code
GC – Government Code
HNC – Harbors and Navigation Code
HS – Health and Safety Code
INS – Insurance Code
LAB – Labor Code
MVC – Military and Veterans Code
PC – Penal Code
PROB – Probate Code
RTC – Revenue and Taxation Code
UIC - Unemployment Insurance Code
VEH – Vehicle Code
WIC – Welfare and Institutions Code

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• 6-22/100.00 Writ of Possession of Personal Property

In any action to recover possession of personal property, the plaintiff may obtain a judgment for possession. If possession cannot be obtained for some reason by the plaintiff, the value of the property may be accepted, plus any damages for detention of the property. If the property has been delivered to the plaintiff, a defendant's claim may result in the return of the property. If the property cannot be redelivered for some reason, the value of the property may be accepted, plus any damages for detention of the property. (CCP 667)

• • 6-22/110.00 Death of Debtor

A judgment for the possession of property may be enforced after the death of the judgment debtor governed by the Probate Code. (CCP 686.020) A judgment for possession of property may be enforced under the Enforcement of Judgments Law as long as the property is specifically described in the judgment. (PROB 9302)

• • 6-22/120.00 Public Entity Debtor

A writ of possession is enforceable against a public entity to the extent of seizure of the specified property. (CCP 712.070, 695.050)

• • 6-22/130.00 Money Judgment

A writ of possession or sale may be enforced as a writ of execution to satisfy any money judgment included in

the judgment for possession or sale. (CCP 712.040)

• • 6-22/140.00 Order Directing Transfer

Whether a writ of possession has or has not been issued, the judgment creditor may apply to the court for an order directing the judgment debtor to transfer possession of the property or documentary evidence of title to the property or both to the judgment creditor. The order shall be personally served and contain a notice to the judgment debtor that failure to comply may subject them to being held in contempt of court. (CCP 714.030)

• 6-22/200.00 Issuance of Writ

A judgment for possession of personal property may be enforced by a writ of possession of personal property issued pursuant to CCP 712.010. After entry of a judgment for possession or sale of property, a writ of possession or sale shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the judgment is to be enforced. A separate writ shall be issued for each county where the judgment is to be enforced. Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned. (CCP 714.010)

• • 6-22/210.00 Contents of Writ

A writ of possession shall require the levying officer to whom it is directed to enforce the judgment and shall include all of the following information (CCP 712.020, 714.010:

- The seal of the court (CCP 153) (unless issued as an electronic record as defined in CCP 263.1)
- The date of issuance of the writ.
- Case Title and Number
- The name and address of the judgment creditor and judgment debtor. If the judgment debtor is an artificial person, the legal entity
- Judgment entry date, and renewal dates if applicable
- If the judgment for possession or sale includes a money judgment
    - the total amount of judgment entered or renewed, with costs, accrued interest from the date of judgment entry or renewal, and partial credits
    - Sum of fees and costs pursuant to GC 6103.5 or Article 6 of Chapter 2
- Whether any person has requested notice of sale under the judgment and, if so, the name and address of such person.
- A statement indicating whether the case is limited or unlimited
- A description of the property to be delivered to the judgment creditor in satisfaction of the judgment.
- The value of the property, if the value is specified in the judgment or a supplemental order

• • 6-22/220.00 Enforcement Period Generally

A Writ of Possession for Personal Property may be issued at any time within 10 years of the date of entry of judgment or renewal of judgment. A judgment, unless renewed, is unenforceable upon the expiration of 10 years after the date of entry. Any lien created is extinguished and all enforcement procedures pursuant to a writ or order issued pursuant to the judgment shall cease. (CCP 683.020) If, however, a certified copy of the application for renewal of the judgment is filed with the levying officer prior to the expiration of the 10 years, then any enforcement proceedings previously commenced may be continued. (CCP 683.200) A judgment against a public entity may not be renewed. (GC 965.5)

Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned. (CCP 712.030)

• 6-22/300.00 Method of Seizure

Upon delivery of the writ of possession to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor, the levying officer shall execute the writ in the manner prescribed by law. (CCP 712.030)

To execute the writ of possession of personal property, the levying officer shall take custody of the property and deliver it to the judgment creditor in satisfaction of the judgment. The property may only be taken from the possession of the judgment debtor or an agent of the judgment debtor, and the property is seized in the same manner as a levy under a writ of execution on such property from the possession of the judgment debtor. (CCP 714.020)

The special requirements for a levy on personal property used as a dwelling (see 6-22/310.00 Dwelling) and for a levy on personal property in a private place (see 6-22/400.00 Private Place) are applicable to seizure of property pursuant to a writ of possession for personal property. (CCP 714.020(a))

The judgment debtor does not have the right to retain the property by paying the value (itemized in 25e of the writ of possession) specified in the judgment or supplemental order. The value provision is for the benefit of the prevailing party in the event delivery of the property cannot be had. (Law v. Beiniger, 132 CA 2d Supp. 898)

If the judgment states the alternative value of each item in the event delivery cannot be had, then the judgment creditor can recover the value of any portion of the property not found. (Black v. Black, 74 CA

520) The judgment debtor may deliver the property and discharge the amount of the judgment

representing the value of the items delivered. (Stienback v. Halsey, 115 CA 2d 213)

The judgment creditor is not required to accept just a portion of the property where the judgment fixes only the value of the property as a whole. If, under these circumstances, the judgment creditor does accept a portion of

the property, the judgment creditor could not collect any amount represented by the alternative money value. (Whetmore v. Rupe, 65 CA 237)

If the property specified in the writ of possession cannot be taken into custody, the levying officer shall make a demand upon the judgment debtor for the property if the judgment debtor can be located. If custody of the property is not then obtained, the levying officer shall so state in the return. Thereafter the writ of possession of personal property may be treated as a writ of execution and may be enforced in the same manner as a money judgment for the value of the property as specified in the writ (25e). The writ of possession may be enforced as a writ of execution at all times to satisfy any money judgment included in the judgment for possession.

Although not specifically required by statute, the levying officer should, as in other cases, at the time of levy or promptly thereafter, serve the judgment debtor either personally or by mail a copy of the writ and a notice of levy.

• • 6-22/310.00 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)

(b) If the judgment creditor so instructs, the levying officer shall place a keeper in charge of the property for a period requested by the judgment creditor.

(c) The judgment creditor may apply to the court on noticed motion for an order directing the levying officer to remove the occupants. The notice of motion shall be served on any legal owner and any junior lienholder who was served pursuant to Section 700.090, on the occupant, and, if the judgment debtor is not the occupant, on the judgment debtor. Service shall be made personally or by mail. At the hearing on the motion the court shall determine the occupant's right to possession and shall make an order including terms and conditions that are appropriate under the circumstances of the case.

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.

• 6-22/400.00 Private Place

If the personal property sought to be seized is located in a private place of the debtor, the levying officer

making the levy shall demand delivery of the property by the debtor and shall advise such person of potential liability for additional costs and attorney's fees that may be incurred in further proceedings to obtain delivery of the property. If the debtor does not deliver the property, the levying officer shall promptly notify the creditor of the failure to obtain custody of the property and shall make no further attempt to obtain custody of the property until a court order is delivered to the officer which states that there is probable cause to believe that the specific property sought to be levied upon is in a specific location described in the order. Upon receipt of the court order, the levying officer making the levy shall go to the location, announce the officer's identity, purpose, and authority pursuant to the order, and demand delivery of the property. If the property is not voluntarily delivered, the levying officer may cause the building or enclosure where the property is believed to be located to be broken open in such manner as the levying officer reasonably believes will cause the least damage, but if the officer reasonably believes that entry and seizure of the property will involve a substantial risk of serious injury to anyone, the officer shall not enter the location and shall promptly make a return to the court stating the reasons for believing that the risk exists. In such a case, the court shall make such orders as may be appropriate. (CCP 699.030)

The provisions requiring a court order based on probable cause prior to levying on property in a private place should be complied with prior to levying on personal property physically on the person or held in the hands of a debtor.

Unless consent is freely, voluntarily and knowledgeably given, the levying officer is not authorized to enter any private place to seize property unless in possession of a writ or other order of court directing the officer to enter that specific private place.

Fourth Amendment protections against unreasonable searches and seizures extend to civil as well as criminal matters. Intrusions into private places in execution of process are searches and seizures within meaning of Fourth Amendment, and a search is unreasonable unless supported by a warrant (order) issued by a magistrate upon a showing of probable cause. Where government officials rely on consent to justify the lawfulness of a search, the burden is on them to show by clear and positive evidence that consent was freely, voluntarily and knowledgeably given. The occupant of the premises is confronted not only by the intimidating presence of an officer of law, but also by the existence of legal process which appears to justify the intrusion. In such a situation, acquiescence in the intrusion generally cannot operate as a voluntary waiver of Fourth Amendment rights. Although it is established that one may waive the Fourth Amendment right to be free from unreasonable searches and seizures, the courts indulge every reasonable presumption against waiver of fundamental constitutional rights. Invitations to enter one's house, extended to armed officers of the law who demand entrance, are usually to be considered as invitations secured by force. (Blair v. Pitchess, 5 CA 3d 258)

The preceding paragraphs set forth objective standards to be followed by the levying officer in executing the officer's ministerial duties. These objective standards, however, are based upon the levying officer having knowledge of whether the property is located in a "private place," as such term is used in connection with the Fourth Amendment proscription against unreasonable searches and seizures. In this context the law, through the doctrine of *stare decisis* or case law, is continually changing. The situation is exacerbated by the fact that, although the courts look to objective factors to decide if the debtor exhibited an expectation of privacy in order to make a specific location a "private place," it is the debtor's subjective intent as demonstrated by these objective factors that are controlling. The following cases offer some insight into the uncertainty of what may or may not be found to be a "private place." The Legal SourceBook published by the California Attorney General is the Department's primary resource for researching search and seizure law in both criminal and civil law enforcement matters. In each and every case some independent judgment will be required based on the

specific facts and circumstances. Each levy situation should be approached from the standpoint that if it is unclear whether the location is a “private place,” the actions to be taken should be consistent with those that would be authorized if the location were a “private place.”

Homes, offices and hotel rooms fall within the category of maximum protection from unreasonable searches. Certain places carry with them expectation of privacy which, although considerable, is less intense and insistent than in the case of homes, offices and hotel rooms; such places may be searched upon probable cause alone under circumstances of less demanding urgency, and include automobiles, and trunks consigned to common carrier. Some sites are regarded as so public in nature that searches are justifiable without any particular showing of cause or exigency, and include places which might be classified as open fields and places in which the debtor has not exhibited a subjective expectation of privacy or where such an expectation would be unreasonable. (People v. Dumas, 9 CA 3d 871)

A resident of a house may justifiably rely upon privacy of surrounding areas as protection from peering of officers, unless the resident is exposed to that intrusion by existence of public pathways or other invitations to the public to enter upon the property. (Lorenzana v. Superior Court, 9 CA 3d 626) A fenced front yard does not necessarily show an expectation of privacy. The determining factor in considering whether an individual’s yard is protected by the Fourth Amendment is what reasonable expectation of privacy was exhibited, not what the debtor subjectively claimed. There is no reasonable expectation of privacy in a front yard of a residence in the absence of a locked gate, high solid fence blocking the front yard from view, a written notice to keep out or beware of a dog, or perhaps a doorbell at the front gate. (People v. Mendoza, 122 CA 3d)

In People v. Moreno , 204 Cal. Rptr. 17, the court held that an attached garage, whether or not it has a common entry, is considered an integral part of the house and is simply one room of several which together compose the dwelling. Consequently, attached garages may not be entered to make a levy or for any other purpose unless the deputy has first obtained the occupant’s consent or is in possession of a court order authorizing entry into the specified garage.

• 6-22/500.00 Third Party Claim

• • 6-22/510.00 Persons Who May Claim

A person, not a party to an action, who claims ownership or the right to possession of real or personal property, or claims a security interest or lien in personal property or fixtures, may file a third party claim. The lien, security or other interest claimed must be superior to the creditor’s lien on the property. (CCP 720.110, 720.210)

A third party claim may not be made by a person who is a party to the action. The legislature has provided that the third party claim procedure be available to third persons whose property has been attached so that an immediate determination respecting title to the property can be made. In such a case, the plaintiff has no claim against the third person which would support attachment of the third person’s property, and in such circumstances the attachment itself is improper if the third person’s claim is proven. (Commercial and Farmers National Bank v Hetrick (Paris Jet, Inc., third party), 64 CA 3d 158 – case available through CMB Operations)

For Third Party Claim procedures, see 6-31/000.00 Third Party Claims.

• • 6-22/520.00 Claim of Ownership or Right to Possession

A third person may claim real property levied on under a writ of attachment or a writ of execution and personal property levied on under a writ of attachment, a writ of execution, a prejudgment or postjudgment writ of possession, or a writ of sale. (CCP 720.110)

• • 6-22/530.00 Claim of Security Interest or Lien

A third person may claim personal property, including fixtures, levied on under a writ of attachment, a writ of execution, a prejudgment or post-judgment writ of possession or a writ of sale. (CCP 720.210)

• 6-22/600.00 Return of Writ of Possession

The officer must certify the manner and time of service of the execution, or if he fails to make service, the reason for the officer's failure, and return the process without delay. (GC 26609) The levying officer shall return the writ reporting his actions and an accounting of amounts collected, and costs incurred, at the earliest of the following times (CCP 712.050, 699.560):

- Two years from the date of issuance of the writ, unless it involves a wage garnishment.
- Promptly after all of the duties under the writ are performed.
- When requested in writing by the judgment creditor.
- If no levy takes place promptly after the expiration of the 180-day period.
- Promptly upon expiration of the 10 year judgment period. (CCP 683.020)
- If a levy has been made on personal property in the estate of a decedent, one year after the date of the decree distributing the interest becomes final. (CCP 700.200)

In lieu of returning to court the paper version of an original writ of execution, the levying officer may retain the original writ or an electronic copy of the original writ and file only a return of the levying officer's actions. (CCP 263.6, 699.560(e))

A creditor seeking the issuance of a writ directed to another county may direct the levying officer to file an accounting of the levying officer's actions with the court. This does not constitute a return of the writ.

The return of an officer upon process or notices is prima facie evidence of the facts stated in the return. (GC 26662) A statement in a return that the officer had levied on property is not evidence proving that the various steps required to effectuate a valid levy had been taken. (Kee v. Becker, 54 CA 2d 466) An officer's opinion as to the legal effect of the officer's acts, whether correct or erroneous, does not form any part of the return. (Gilbank v. Benton, 9 CA 2d 517) Since the officer has a duty to state in the return what acts were performed in serving the writ, in order to enable the court to decide on the sufficiency to constitute a valid service, it must

be assumed that the officer's return stated all that was done; and as the acts stated were insufficient to constitute a valid service, there was no lien created by the attachments. (Sharp v. Baird, 43 CA 577) When the necessary acts prescribed by statute have actually been performed by the officer, the court may allow the filing of an amended officer's return to recite the truth. (Alpha Stores, Ltd. v. You Bet Mining Company, 18 CA 2d 249)

A deputy under a public officer and the officer or person holding the office are, in contemplation of law and in an official sense, one and the same person. The deputy acts for and in the place of the principal, and the deputy's acts are, therefore, not the deputy's, but those of the holder or incumbent of the office. (Sarter v. Siskiyou County, 42 CA 530) The law recognizes deputies only through their principals, and their acts must be done in the name of their principals. (People v. Le Doux, 155 CA 535) A return of a deputy is a nullity unless it is done in the name of and by the authority of the principal officer. (Joyce v. Joyce, 5 CA 449: 1855 case, no link available) The duty of making returns is an official duty; consequently a deputy having no personal knowledge of the facts is qualified to make a return.

(Colver v. W. B. Scarborough Co., 73 CA 441)

The power and authority for the sheriff under a writ of execution terminates with the return thereof. (Duncan v. Standard Accident Ins. Co., 1 CA 2d 385)