6-25/000.00 Collection In Lieu Of Sale

6-25/100.00 Collection in Lieu of Sale

6-25/200.00 Property Subject to Collection

6-25/210.00 Accounts Receivable

6-25/220.00 Chattel Paper

6-25/230.00 Final Money Judgment

6-25/240.00 General Intangible

6-25/250.00 Instruments

6-25/260.00 Instruments From Sale or Lease

6-25/300.00 Authorization to Sell

6-25/400.00 Sale Procedures

6-25/410.00 Judgment Creditor's Notice of Intended Sale

6-25/420.00 Judgment Debtor's Motion to Collect Rather Than Sell

References

BPC – Business and Professions Code

CC – Civil Code

CCP – Code of Civil Procedure

COMM – Commercial Code

CRC – California Rules of Court

GC – Government Code

HS – Health and Safety Code

LAB – Labor Code

PC – Penal Code

PROB – Probate Code

FAM – Family Code **WIC – Welfare and Institutions Code**

Edited May 28, 2021

Revised May 28, 2021

• 6-25/100.00 Collection in Lieu of Sale

Property levied on pursuant to a writ of execution is generally required to be sold in order that the proceeds of the sale may be applied to satisfaction of the judgment. (CCP 701.510) Certain types of personal property that are subject to levy are particularly susceptible to sacrifice and speculative sales. As a consequence, where these types of property have been levied upon, the law requires the levying officer to collect proceeds as they become due under the levied property and apply those proceeds to satisfaction of the judgment, rather than to sell the property itself. Sale of the property is still available, but only in a case where the judgment debtor does not object to the sale after being notified of the intent to sell or upon court order. (CCP 701.520) Collected checks shall be endorsed by the levying officer rather than sold. (CCP 687.020)

• 6-25/200.00 Property Subject to Collection

• • 6-25/210.00 Accounts Receivable

An “accounts 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 701.520(a)(1), 680.130, COMM 9102(a)(2))

• • 6-25/220.00 Chattel Paper

“Chattel paper” means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper. (CCP 701.520(a)(2), 680.140, COMM 9105(a)(11))

• • 6-25/230.00 Final Money Judgment

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. (CCP 701.520(a)(4), 680.270)

• • 6-25/240.00 General Intangible

“General intangibles” means any personal property (including things in action), other than goods, accounts, chattel paper, documents, instruments, and money, consisting of rights to payment. (CCP

701.520(a)(3), 680.210, COMM 9102(a)(42))

• • 6-25/250.00 Instruments

Instruments, except for a security (COMM 8102), that are not customarily transferred in an established market. An “instrument” means a negotiable instrument (COMM 3104(b)) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. (CCP 701.520(a)(5), 680.220, COMM 9102(a)(47))

• • 6-25/260.00 Instruments From Sale or Lease

Instruments that represent an obligation arising out of the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased or licensed for use, the services furnished, or the money loaned was used by an individual primarily for personal, family, or household purposes. (CCP 701.520(a)(6))

• 6-25/300.00 Authorization to Sell

After a levy on property required to be collected, rather than sold, the levying officer may sell the property only under the following circumstances:

- If the court orders that the property be sold. The order may specify terms and conditions of sale. (CCP 701.520(d))
- If the levying officer receives a copy of a notice of intended sale, together with proof of service on the judgment debtor, and does not within the time allowed receive a copy of the debtor’s notice of motion for an order that the property be collected rather than sold.

• 6-25/400.00 Sale Procedures

• • 6-25/410.00 Judgment Creditorâ€™s Notice of Intended Sale

• • 6-25/420.00 Judgment Debtorâ€™s Motion to Collect Rather Than Sell

In order to avoid sale of the property, the judgment debtor must, apply to the court on noticed motion for an order that the property be collected, rather than sold. The application must be submitted to the court within 10 days of service of the notice of intended sale (extended by the appropriate mail time pursuant to CCP 684.120 if the judgment debtor was served by mail) Within the same time period, the judgment debtor must also serve a copy of the notice of motion, either personally or by mail, on the judgment creditor and file a copy of the notice of motion with the levying officer. (CCP 701.520(c))