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6-28/830.00 Property Levied upon by Recording or Filing

References

BPC – Business and Professions Code
CC – Civil Code
HS – Health and Safety Code
LAB – Labor Code

CCP – Code of Civil Procedure
COMM – Commercial Code
CRC – California Rules of Court
FAM – Family Code
GC – Government Code
PC – Penal Code
PROB – Probate Code
RTC – Revenue and Tax Code
WIC – Welfare and Institutions Code

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• 6-28/100.00 Release of Property Under Levy

The provisions covering the levying officer's possessory lien and manner of release are applicable not only to the releases covered by this section but also to those covered in other sections.

In most circumstances where property is to be released pursuant to a court order or a judgment for the defendant, the property may not be released immediately, but must be held for a specified period of time within which the plaintiff may take steps to continue the levy. The procedure may vary depending on the particular judgment or order in a particular case.

Property is to be released to the person from whom it was taken unless otherwise ordered by the court. (CCP 488.730(b), 699.060(b))

• 6-28/200.00 Receipt of Amount to Satisfy

After the levying officer has collected the amount necessary to satisfy the writ, plus costs and interest, all other property under levy must be released.

• 6-28/300.00 Instructions of Creditor 488.730, 699.060 CCP

The levying officer shall release property levied upon when the officer receives a written direction to release the property from the plaintiff's/judgment creditor's attorney of record or, if the plaintiff/judgment creditor does not have an attorney of record, from the plaintiff/judgment creditor. The release may be electronically transmitted to the levying

officer. (CCP 488.730, 699.060)

• 6-28/400.00 Writ of Attachment Levy

• • 6-28/410.00 Bond or Undertaking

The Bond and Undertaking Law (CCP Title 14, Chapter 2) applies to a bond given in Writs of Attachment unless otherwise prescribed.

• • 6-28/420.00 Defendantâ€™s Undertaking

Any defendant who appeared in the action may, by noticed motion, file an application with the court for an order permitting the defendant to substitute an undertaking for any of the defendant's property that has been or could be attached. (CCP 489.310(a))

The amount of the undertaking shall be equal to the lesser of the value of the property that has been or could be attached or the amount specified by the writ. (CCP 489.310(c))

The filing of an undertaking by one defendant does not prevent the levying officer from attaching or releasing from attachment the property of any other defendant. (CCP 489.310(d))

• • • 6-28/420.10 Undertaking Filed with Court

The undertaking is filed with the court and not the levying officer. (CCP 995.340)

• • • 6-28/420.20 Service of Undertaking on Plaintiff

The principal filing an undertaking shall serve a copy on the beneficiary and an affidavit of service shall be filed with the undertaking. (CCP 995.370)

• • • 6-28/420.30 Objection to Undertaking

An objection to the sufficiency of the undertaking must be made within 10 days after service of the copy of the undertaking on the beneficiary. The time is extended by mail time pursuant to CCP 1013 if the beneficiary is served by mail.

If no objection to the sufficiency of the undertaking is made timely, or if an objection is made and the court makes an order determining the undertaking to be sufficient, the property shall be released.

(CCP 995.930)

• • • 6-28/420.40 Undertaking Not Required

Under the following circumstances, a bond or undertaking is not required and the property shall be immediately released as if a bond were filed upon receipt of a court order:

- The defendant is a government entity which is exempt from the requirements to give an undertaking (CCP 995.220)
- If the plaintiff waives the bond requirement (or consents to a lesser amount) (CCP 995.230)
- The defendant is indigent (CCP 995.240)

• • • 6-28/420.50 Deposit in Lieu of Undertaking

Unless otherwise precluded by statute, the defendant makes a deposit in lieu of an undertaking in an amount specified by the writ to be secured by the attachment, the property shall be released immediately upon receiving the order permitting an undertaking to be substituted for attached property. (CCP 995.710)

• • 6-28/430.00 Judgment for Plaintiff

If a defendant appeals and the enforcement of the judgment against the defendant is stayed by the filing of a sufficient undertaking on appeal, all property of the defendant which has been attached shall be released upon the failure of the respondent to object to the undertaking within the time prescribed or, if an objection is made, upon a determination that the undertaking is sufficient. (CCP 489.420)

• • 6-28/440.00 Judgment for Defendant

• • • 6-28/440.10 Release of Property

If the defendant recovers judgment against the plaintiff and no timely motion for vacation of judgment or for judgment notwithstanding the verdict or for a new trial is filed and served and is pending and no appeal is perfected and undertaking executed and filed as provided CCP 921, the proceeds of sales and money collected by the levying officer, and all attached property remaining in the levying officer's hands shall be released to the person from whom it was collected or taken, unless otherwise ordered by the court, and the court shall order the discharge of any attachment made in the action and the release of any property held thereunder. (CCP 488.740)

• • • 6-28/440.20 Increase Amount of Undertaking

At any time after entry of judgment in favor of the defendant and before perfection of an appeal under CCP 921, upon defendants' motion, the trial court may order an increase in the amount of the original undertaking on attachment. Unless the undertaking is filed within 10 days after such order, the attachment shall be set aside and the property released. The pendency or granting of a motion to vacate judgment, for judgment notwithstanding the verdict or for new trial shall continue the attachment in force unless an undertaking is given by the plaintiff to pay all costs and damages sustained by continuing the attachment. (CCP 489.410)

• • • 6-28/440.30 Undertaking Required to Continue Levy during Appeal of Plaintiff

An appeal by a party who has levied an attachment shall not continue the attachment, unless an undertaking is executed and filed and the appeal is perfected within five days after written notice of the entry of the order appealed from. (CCP 921)

The attachment continues in effect until dissolved by court order, failure to file a required undertaking, or the expiration of the time to file an appeal if no written notice of entry of judgment is served on the plaintiff. If written notice of entry of judgment is served, then any attached property should be released on the sixth day after service, unless the plaintiff has perfected an appeal and filed the undertaking pursuant to CCP 921 prior to such time. The five days must be extended if the notice was served by mail pursuant to CCP 1013 and if the fifth day falls on a holiday (Saturday and Sunday included) pursuant to CCP 12a.

If the plaintiff has filed a timely motion in the trial court to vacate the judgment, or for judgment notwithstanding the verdict, or for a new trial, the time to file an appeal does not commence until the entry of an order denying the motion.

The provisions continuing the attachment's effect for the period to perfect an appeal and file the required undertaking apply to any form of judgment for the defendant, including a dismissal, nonsuit, order discharging attachment, etc. Appealable judgments and orders are set forth in CCP 904.1, 904.2, 904.5.

Since there is no requirement that the levying officer be given notification of the filing of an appeal or undertaking, prior to releasing property because the time has expired for the plaintiff to continue the attachment by perfecting the appeal and filing the undertaking, the levying officer should verify whether or not the plaintiff has done so with the plaintiff or the court.

• • 6-28/450.00 Bankruptcy or Assignment for the Benefit of Creditors

The making of a general assignment for the benefit of creditors, or the filing of a petition initiating a proceeding under Title 11 of the United States Code (Bankruptcy) by or against a defendant, terminates a lien of a temporary protective order or of attachment if the lien was created within 90 days prior to the filing of the petition unless the bankruptcy

court orders the lien preserved for the benefit of the bankrupt estate. (CCP 493.030(a) (b))

• • • 6-28/450.10 Request for Release of Attachment

The assignee under a general assignment for the benefit of creditors or, in the case of a bankruptcy, the trustee, interim trustee, or the debtor in possession if there is no trustee or interim trustee, may secure the release of the attachment by filing with the levying officer a request for release of attachment. (CCP 493.040(a))

• • • 6-28/450.20 Filing Request for Release

The request for release must set forth the grounds for release, describe the property to be released, be executed under oath and be filed with the levying officer, together with a copy thereof.

(CCP 493.040(b)(c))

In the case of an assignee, the request shall include two copies of the general assignment for the benefit of creditors.

In the case of a trustee, interim trustee, or debtor in possession, the request shall include a certified copy of the petition in bankruptcy, together with a copy thereof.

If immediate release of the attachment is sought, the request shall be accompanied by an undertaking to pay the plaintiff any damages resulting from an improper release of the attachment, in the amount of the plaintiff s claim to be secured by the attachment, executed by an admitted surety insurer.

(CCP 493.040(d))

It is the duty of the sheriff to see that he has in his hands a proper bond before he releases property under attachment. (Sparks v. Buckler 14 CA 2d 213 – cite available through CMB Ops)

Information regarding certificates of authority from the Insurance Commissioner is available from California Department of Insurance.

• • • 6-28/450.30 Notification of Plaintiff

Promptly upon receipt of the request for release, and in no event more than five days from its receipt, the levying officer shall mail notice to the plaintiff (CCP 493.040(e):

If an undertaking has not been given, the notice shall include the following:

- A notice that the attachment will be released pursuant to the request for release of attachment unless otherwise ordered by a court within 10 days after the date of mailing the notice (CCP 493.040(e)(2)

- A copy of the request for release of the attachment, and a copy of:
  - The general assignment for the benefit of creditors if the release request is from the assignee (CCP 493.040(b))
  - A copy of the bankruptcy petition if the release request is from trustee, interim trustee, or debtor in possession (CCP 493.040(c)

If an undertaking has been given, the notice shall include:

- A notice that the attachment has been released (CCP 493.040(e)(3))
- A copy of the request for release of the attachment, and a copy of:
  - The general assignment for the benefit of creditors if the release request is from the assignee (CCP 493.040(b))
  - A copy of the bankruptcy petition if the release request is from trustee, interim trustee, or debtor in possession (CCP 493.040(c))

• • • 6-28/450.40 Release of Attachment

Unless otherwise ordered by a court, if an undertaking has not been given, the levying officer shall release the attachment after the expiration of 10 days from the date of mailing of the notice of filing of the request for release to the plaintiff. If the required undertaking has been given, the levying officer shall immediately release the attachment pursuant to the request for release of attachment. (CCP 493.040(f))

• • • 6-28/450.50 To Whom Released

Where the attached property has been taken into custody, it shall be released to the person making the request for release of attachment or some person designated in the request.

Where the attached property has not been taken into custody, it shall be released by written release and served on the party who was provided the Notice of Attachment (CCP 488.730(c)).

(CCP 493.040(g))

• 6-28/500.00 Writ of Execution

• • 6-28/510.00 Appeal

• • 6-28/510.10 No Stay Without Appeal Bond

The perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the judgment

or order is for money or directs the payment of money unless an undertaking is given.

(CCP 917.1)

• • 6-28/510.20 No Release Until Undertaking Justifies

Unless a court specifically orders otherwise, if an undertaking is objected to and determined to be insufficient, property which has been levied upon under execution shall not be released from levy. (CCP 922) As a consequence, property under levy should not be released until the time for objecting to the undertaking has expired, or if an objection is made, the court determines that the undertaking is sufficient.

• • 6-28/510.30 Appeal Bond Releases Property

If enforcement of the judgment is stayed on appeal by the giving of a sufficient undertaking, existing liens are extinguished. (CCP 697.040) Unless the court orders it to be held, property held pursuant to a lien that has been extinguished shall be released. (CCP 697.050)

• • 6-28/520.00 Writ Recalled and/or Quashed

When a writ of execution is quashed, any property levied on pursuant to the writ is normally required to be released. The effect of the quashal of an execution or a levy made thereunder is to return the parties to the status they occupied prior to the issuance of the execution or a levy thereunder. Thus, even though it is true that an attachment lien terminates when an execution levy is made in the same case, if the execution levy is subsequently quashed, the officer should continue to hold the property under the authority of the prior attachment levy. (Durkin v. Durkin, 133 CA 2d 283)

A writ of execution may be recalled and quashed where the issuance was improperly or inadvertently made. (Meyer v. Meyer, 115 CA 2d 48)

A court may recall and quash a writ of execution where the trial court has vacated the judgment. (Stegge v. Wilkerson, 189 CA 2d 1)

When an execution is quashed, any levy made pursuantly thereto falls with it and any title to the property vested in the levying officer by the levy is defeated. If the levying officer, in violation of the court order, continues in possession of the property, it is done unlawfully and without right in the absence of some other process in the levying officer's hands which would justify the action. (Hulse v. Davis, 200 C 316)

If the order recalls the writ but does not also order it quashed and there is no order for release of property under levy, then the writ should be returned to court and no further levies executed pursuant to the writ, but levies already executed would remain in effect.

• • 6-28/530.00 Stay Order

The trial court may stay the enforcement of any judgment or order whether or not an appeal will be taken or notice thereof has been filed. If the enforcement of the judgment or order would be stayed on appeal only by the giving of an undertaking, a trial court shall not have power, without the consent of the adverse party, to stay the enforcement thereof pursuant to this section for a period which extends for more than 10 days beyond the last date on which a notice of appeal could be filed. (CCP 918) The trial court has discretion to stay the enforcement of a judgment or order if the judgment debtor has another action pending on a disputed claim against the judgment creditor. (CCP 918.5) Court commissioners have the authority to issue stay orders. (CCP 259)

A stay order does not in and of itself either mandate or authorize release of property already under levy, whether or not such property be in the levying officer's possession. If, however, a certified copy of a court order for release is received, the levying officer shall release the property under levy. (CCP 699.060)

• • 6-28/540.00 Inadvertent Levy

Any action taken by any party after the issuance of a stay is null and void. Property collected, seized, or otherwise levied upon shall be released upon receipt of the certified stay, unless otherwise ordered by the court.

• 6-28/600.00 Appeals

• • 6-28/610.00 Limited Civil Cases

To appeal a judgment or order in a limited case to the appellant division of the superior court, the appellant must:

- file and serve a Notice of Appeal (CRC 8.821(a))
- pay the filing fee (CRC 8.821(b))
- on or before the earliest of:
  - 30 days after the trial court clerk serves the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date it was served (CRC 8.822(a)(1)(A))
  - 30 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service (CRC 8.822(a)(1)(B))
  - 90 days after the entry of judgment (CRC 8.822(a)(1)(C))

  The court clerk must mail notice of the filing of the Notice of Appeal on all parties and the appellant division. (CRC 8.821(d))

The time to appeal may be extended in limited instances. (CRC 8.823)

• • 6-28/620.00 Unlimited Civil Cases

To appeal an unlimited civil case superior court judgment or order to the Court of Appeal, the appellant must:

- file a Notice of Appeal (CRC 8.100(a))
- pay the filing fee (CRC 8.100(b))
- on or before the earliest of:
  - 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served (CRC 8.104(a)(1)(A))
  - 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service (CRC 8.104(a)(1)(B))
  - 180 days after entry of judgment (CRC 8.104(a)(1)(C))

• • 6-28/630.00 Small Claims Court

An appeal from a judgment in a small claims action is taken by filing a notice of appeal with the clerk of the small claims court not later than 30 days after the clerk has delivered or mailed notice of entry of the judgment. (CCP 116.750) (CRC 8.954)

• • • 6-28/630.10 Motion to Vacate Judgment

A defendant who did not appear at the hearing in the small claims court may file a motion to vacate the judgment with the clerk of the small claims court. The motion shall be filed within 30 days after the clerk has mailed notice of entry of the judgment. (CCP 116.730)

• • • 6-28/630.20 Enforcement Automatically Stayed

Enforcement of the judgment of a small claims court, including the issuance or recording of any abstract of the judgment, is automatically suspended, without the filing of a bond by the defendant, until the expiration of the time for appeal. (CCP 116.810)

• • 6-28/640.00 Notice of Entry of Judgment

In cases other than small claims, dissolution of marriage, for nullity of marriage, or for legal separation, the party submitting an order or judgment for entry shall prepare and serve, a copy of the notice of entry of

judgment to all parties who have appeared in the action or proceeding and shall file with the court the original notice of entry of judgment together with the proof of service. "Judgment" includes any judgment, decree, or signed order from which an appeal lies. (CCP 664.5)

• 6-28/700.00 Levying Officerâ€™s Possessory Lien

The levying officer has a possessory lien on personal property levied upon and in the officer's possession in the amount of the officer's costs for which an advance fee deposit has not been made. (CCP 488.100, 687.050)

• 6-28/800.00 Manner of Release

The release of real or personal property extinguishes any lien in favor of the plaintiff/judgment creditor on the property.

• • 6-28810.00 Property in Custody of Levying Officer

Unless otherwise ordered by the court, property that has been taken into custody shall be released to the person from whom it was taken. If the person does not claim the property, the officer shall retain it and serve the person, either personally or by mail, a notice of where possession of the property can be obtained. If the property is not claimed within 30 days after service of the notice, the officer shall sell it in the manner provided for sale under execution and, after deducting the levying officer's costs, deposit the proceeds with the treasurer of the county where the property is located, payable to the order of the person. (CCP 488.730, 699.060)

• • 6-28/820.00 Property Not in Custody of Levying Officer

Property that has not been taken into custody shall be released by issuing a written notice of release and serving it, either personally or by mail, on the person who was served with a copy of the writ and notice of attachment/levy to create the lien. (CCP 488.730(c), 699.060(c))

• • 6-28/830.00 Property Levied upon by Recording or Filing

Property that was levied upon by recording or filing a copy of the writ and notice of attachment or notice of levy shall be released by recording or filing a written notice of release in the same office. A levy is released on the records of the recorder's office by the recording of an acknowledged release signed by the levying officer, the plaintiff/judgment creditor or the attorney for such party. (CCP 488.730(d), 699.060(d))
Other reference (GC 27288.1, 27201)