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))
