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))