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.