6-30/000.00 Exemptions

• 6-30/100.00 Exemptions

Exemptions are creatures of statute, and no property is exempt unless made so by express provisions of law. (Estate of Brown, 123 C 399 – cite available through CMB Ops) Whether or not property is exempt and in what amount shall be determined by the exemption statute in effect when the lien was created, or if there has been a series of overlapping liens, when the earliest lien was created. If there is a levy of execution, then the law in effect at the time of the levy governs, regardless of prior liens. (CCP 703.050)

• 6-30/110.00 Adjustment of Exemption Amounts

The Judicial Council is responsible for periodically adjusting and publishing exemption amounts for bankruptcy (CCP 703.140), motor vehicles (CCP 704.010), and homestead (CCP 704.730). As a result, the exemption amount in an underlying section may not match the governing exemption amount determined by the Judicial Council.

The CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS (EJ-156) contains the latest exemption amounts and is published on the Judicial Council's website, https://www.courts.ca.gov/home.htm.

• 6-30/120.00 Waiver of Exemption Rights

An individual's exemption rights cannot be waived. (CCP 703.040)

• 6-30/130.00 Exempt Property

• • 6-30/130.10 Writ of Attachment

Except for CC 3439.07, the following property is exempt from attachment:

- All property exempt from enforcement of a money judgment (CCP 487.020(a))
- Property necessary for the support, or the family in whole or in part, of a natural person defendant (CCP 487.020(b))
- Earnings (CCP 487.020(c))
- All property not subject to attachment – see CCP 487.010 (CCP 487.020(d))

• • 6-30/130.20 Writ of Execution

Property that is exempt from enforcement of a money judgment are found in Title 9, Division 2, Article 1.

• 6-30/140.00 Persons Who Can Claim Exemption

Exemptions apply only to a natural person. (CCP 703.020(a)) However, the following person may file a claim of exemption:

- The judgment debtor or a person acting on behalf of the judgment debtor (CCP 703.020(b)(1)
- In the case of community property
  - The spouse of the debtor whether or not the spouse is also a judgment debtor (CCP 703.020(b)(2)
  - Domestic partner of a debtor whether or not the domestic partner is also a judgment debtor (CCP 703.020(b)(3)

• 6-30/150.00 Exemptions Only Apply to Writs of Attachment or Execution

The exemptions do not apply if the judgment to be enforced is for foreclosure of a mortgage, deed of trust, or other lien or encumbrance on the property other than the lien created by attachment or execution. (CCP 703.010)

• 6-30/160.00 Property Not Subject to Levy

Property that is not subject to enforcement of a money judgment is exempt without making a claim and may not be levied upon or in any other manner applied to the satisfaction of money judgment. (CCP 704.210) If exempt property is levied upon, it may be released pursuant to the claim of exemption procedure. (CCP 695.040) This is also true for property not subject to levy under a writ of attachment. (CCP 482.100, 487.020)

A fund that is exempt remains exempt after deposited in a deposit account to the extent it can be traced. (CCP 703.080) This is also true for earnings paid during the 30-day period ending on the date of levy. (CCP 704.070)

The court can authorize property otherwise exempt upon filing a claim to be applied toward satisfaction of a judgment for child, family, or spousal support. (CCP 703.070)

• 6-30/170.00 Time Extension to File Exemption

Property that is exempt by filing a claim may be claimed within the time and in the manner prescribed in the applicable enforcement procedure, and if not so claimed, the exemption is waived. (CCP 703.030) However, the court does have authority to grant relief from a failure to file a timely and proper claim of exemption. (CCP 473) Therefor, if a claim is submitted beyond the statutory time accompanied by a certified court order allowing the claim, it shall be accepted so long as the lien is in place or property remains in the custody of the levying officer.

• 6-30/180.00 Jointly Owned Property

• • 6-30/180.10 Joint Property

Property which would otherwise be exempt is nonetheless exempt because the debtor owns an undecided interest in it in common with a third party. (Servanti v. Lusk, 43 CA 238)

• • 6-30/180.20 Partnership or Corporate Property

Although a partner is co-owner of specific partnership property, it is not assignable except in connection with the assignment of rights of all the partners in the same property. A partner's right in specific partnership property, is not subject to enforcement except on a claim against the partnership, and when partnership property is levied upon for a partnership debt, a partner cannot claim any right under the exemption laws.

A corporation, whether general or professional, has no right to a claim of exemption as the statute applies only to natural persons since the purpose is to protect an individual debtor and the debtor's family, not to bestow exemption benefits on corporations. (Canal-Randolph Anaheim Inc. v. Wilkoski, 103 CA 3d 282)

• • 6-30/180.30 Community Property

person. (CCP 487.010, 695.020) The exemptions apply to all property that is subject to enforcement of a money judgment, including the interest of the spouse of the judgment debtor in community property. The fact that one or both spouses are judgment debtors under the judgment or that property sought to be applied to the satisfaction of the judgment is separate or community does not increase or reduce the number or amount of the exemptions.

Where the property exempt under a particular exemption is limited to a specified maximum dollar amount, unless the exemption provision specifically provides otherwise, the two spouses together are entitled to one exemption limited to the specified maximum dollar amount, whether one or both of the spouses are judgment debtors under the judgment and whether the property sought to be applied to the satisfaction of the judgment is separate or community. (CCP 703.110)

Exemptions may be claimed, in the case of community property, by the spouse of the judgment debtor whether or not the spouse is also a judgment debtor. (CCP 703.020)

• 6-30/200.00 Specific Exemptions

• • 6-30/201.00 Aid

Prior to payment, all public assistance or similar aid provided by a charitable organization or fraternal benefit society is exempt without making a claim. After payment, the aid is exempt upon filing a claim. (CCP 704.170) A claim of a county against a debtor who has received public support limits exempt property. (WIC 17409)

• • 6-30/202.00 Cause of Action

• • • 6-30.202.10 Personal Injury

Until final and not appealable, a cause of action for personal injury is exempt without making a claim, although it is subject to a lien (CCP 708.410). After settlement or final judgment, the award is exempt upon filing a claim to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor. The award is not exempt against a judgment creditor who is a health care provider whose claim is based on providing health care for the injury for which the award or settlement was made. If the award is payable periodically, the amount that may be applied to satisfaction of a money judgment is the same as may be withheld pursuant to an earnings withholding order. (CCP 704.140)

• • • 6-30/202.20 Wrongful Death

Until final and not appealable a cause of action for wrongful death is exempt without making a claim although it is subject to a lien. (CCP 708.410). If the award arose out of the wrongful death of the judgment debtor's spouse or a

person on whom the judgment debtor or the judgment debtor's spouse was dependent, the award after settlement or final judgment is exempt upon filing a claim to the extent reasonably necessary for support of the judgment debtor and the spouse and dependents of the judgment debtor. If an award meets the previous criteria, but is payable periodically, the amount that may be applied to satisfaction of a money judgment is the same as may be withheld pursuant to an earnings withholding order. (CCP 704.150)

• • 6-30/203.00 Cemetery Plot

A family plot is exempt without making a claim. A plot for the judgment debtor and the spouse of a judgment debtor is exempt. Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt. (CCP 704.200)

Proceeds of sale of cemetery lands, whether unused lands or lands from which all remains have been removed, are not subject to enforcement of a money judgment. (HS 7925)

• • 6-30/204.00 Direct Deposit Public Benefits and Social Security Deposit Accounts

Direct Deposit Public Benefits and Social Security Deposit Accounts are deposit accounts in which payments of public benefits or social security benefits are directly deposited by the government or its agent. These accounts are exempt without making a claim in the following amount:

- Where one depositor is the designated payee of public benefits-$1,750 (CCP 704.080(b)(1))
- Where one depositor is the designated payee of social security payments-$3,500 (CCP 704.080(b)(2))
- Where two or more depositors are designated payee of public benefits-$2,600
  - Unless such depositors are joint payees of payments which represent a benefit to only one of the depositors, in which case the exempt amount is $1,750 (CCP 704.080(b)(3))
- Where two or more depositors are designated payee of social security payments-$5,250
  - unless such depositors are joint payees of payments which represent a benefit to only one of the depositors, in which case the exempt amount is $3,500 (CCP 704.080(b)(4))

Any amount which exceeds the exemption is exempt to the extent it consists of public benefits payments. (CCP 704.050(c))

• • 6-30/205.00 Earnings

• • • 6-30/205.10 Child or Spousal Support Debt

A withholding order for support under an execution for alimony or child support does not reach all of the debtor's earnings. 50 percent of the debtor's earnings are automatically exempt if the debt is for child or spousal support. (CCP 706.052(a))

15 USC 1677 permits the states to have more stringent restrictions than are set forth in Federal legislation. As a consequence, the Federal restrictions pursuant to 15 USC 1673(b) of the amounts that may be withheld from wages do not apply to a judgment for alimony or child support, and California law is controlling.

Although no claim of exemption may be filed for earnings withheld pursuant to a withholding order for support, upon motion of any interested party, the court shall make an equitable division of the judgment debtor's earnings that takes into account the needs of all the persons the judgment debtor is required to support and shall effectuate such division by an order determining the amount to be withheld from the judgment debtor's earnings pursuant to the withholding order for support. (CCP 706.052(b))

Such an order may not authorize an amount to be withheld which is in excess of that allowable by Federal law under 15 USC 1673. (CCP 706.052(c))

Attorney's fees and costs awarded in an action for dissolution of marriage are not in the same category as a judgment for support.

• • • 6-30/205.20 All Other Debt

75 percent of the debtor's disposable wages are automatically exempt if the debt is not for child or spousal support. (CCP 706.050, 15 USC 1673)

• • • 6-30/205.30 Exemption Claimed for Support of Debtor and Debtorâ€™s Family

The debtor may claim as exempt the portion of the debtor's earnings which is necessary for the support of the debtor or the debtor's family supported in whole or in part by the debtor unless the debt is incurred for personal services rendered by any employee or former employee of the debtor or is incurred by the debtor, or

his or her spouse or family for the common necessaries of life. In determining whether the debtor's earnings are necessary for the use of the debtor's family, the circumstances of each case and the position of the family involved must be considered. It has been held that items of expense for recreation, music lessons and insurance for the debtor's wife and family were for necessaries. (Sanker v. Humborg, 48 CA 2d 205)

Monthly expenses expended on behalf of the debtor's minor daughter attending university have been held to be necessaries. (Diamond v. Bent 157 CA 2d Supp. 857) The term "common necessaries of life" has a different meaning than above. If the plaintiff's cause of action is based on an obligation incurred for "common necessaries of life," only that portion of the debtor's earnings included in the automatic exemption is exempt.

Common necessaries of life as used in (rechaptered as CCP 706.051) means those things which are commonly required by persons for the sustenance of life regardless of their employment or status. It must be such an article that in the hands of anyone, it is to be regarded universally, or substantially so, as necessary to sustain life. (Los Angeles Finance v. Flores, 110 CA 2d Supp. 850)

• • • 6-30/205.40 Earnings in Deposit Account

Earnings already received by the debtor may still be claimed as exempt earnings if they can be traced into deposit accounts or in the form of cash or its equivalent. (CCP 703.080) Earnings that have already been garnished for support and placed in a deposit account are totally exempt. If earnings have not been previously garnished, then 75 percent of the earnings in the account are exempt. This is not an automatic exemption and a claim must be filed. The procedures governing such a claim are not the procedures for claiming an exemption pursuant to an earnings withholding order, but rather the procedures for claiming an exemption for other property. (CCP 704.070)

• • • 6-30/205.50 Seamen

The wages of a seaman on a fishing vessel are not subject to levy except for support. (46 USC 11109)

• • 6-30/206.00 Education Benefits

Prior to payment, all financial aid for expenses while attending school provided to a student by an institution of higher education (20 USC 1141(a)) is exempt without making a claim. After payment, it is exempt upon filing a claim. (CCP 704.190)

• • 6-30/207.00 Health Aids

Upon filing a claim, health aids reasonably necessary to enable the judgment debtor to work or sustain health, and prosthetic and orthopedic appliances, are exempt. (CCP 704.050)

• • 6-30/208.00 Health Insurance and Disability Payments

Prior to payment, benefits from a disability or health insurance policy or program are exempt without making a claim. After payment, the benefits are exempt upon filing a claim. The exemption is not operative against a judgment creditor who is a health care provider whose claim is the basis on which the benefits are paid or payable. (CCP 704.130)

• • 6-30/209.00 Home Improvement Materials

Material that in good faith is about to be applied to the repair or improvement of the judgment debtor's principal residence, or the spouse's principal residence in the event the judgment debtor and spouse are living separate and apart, are exempt upon filing a claim to the extent the equity in the material does not exceed $3,500. (CCP 704.030)

• • 6-30/210.00 Homestead

A "Homestead" means the principal dwelling in which the debtor or the spouse resided on the date the creditor's lien attached to the dwelling, and in which the debtor or the spouse resided continuously until the date of the court determination that the dwelling is a homestead. (CCP 704.710(3)(c))

Any proceeds received for a homestead remain exempt in the amount of the exemption for six months after receipt, unless such proceeds are applied to property other than a new homestead, in which case the proceeds are no longer exempt. (CCP 704.720)

The amount of the exemption is the greater of the median sale price of a single-family home, not to exceed $600,000, or $300,000. (CCP 704.730)

• • 6-30/211.00 Jewelry, etc.

The exemption amount for jewelry, heirlooms and art is $8,725. (CCP 704.040)

• • 6-30/212.00 Life Insurance Policies

Unmatured life insurance, endowment, and annuity policies are exempt without making a claim. However, loan values based on the policies are not.

Upon filing a claim, the aggregate loan value of such unmatured policies is exempt to the extent of $13,975. If the judgment debtor is married, each spouse is entitled to a separate exemption, and the exemptions may be combined, regardless of whether the policies belong to either or both spouses, or the spouse of the judgment debtor is also a judgment debtor under the judgment. Benefits received from matured life insurance, endowment, and annuity policies are only exempt upon filing a claim to the extent reasonably necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor. (CCP 704.100)

• • 6-30/213.00 Motor Vehicle

If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of three thousand three hundred twenty-five dollars ($7,500) without making a claim. (CCP 704.010(d)) The Notice of Sale shall reflect this automatic exemption and shall be factored as a minimum bid.

In order to determine if the judgment debtor has only one registered vehicle, a registration check must be made with the California Department of Motor Vehicles (DMV). Care should be made to include alias or married name of the debtor listed on the registration of the levied vehicle is also checked. Similarly, vehicles may be registered to the debtor at a prior address. The record search must be reasonable but need not be exhaustive. The results of the DMV query shall be placed in the case folder.

• • 6-30/214.00 Prisoner Trust Account

The funds of a state, county, or city prisoner who is a judgment debtor, are exempt without filing a claim in the amount of $1,750 if such funds are held to the credit of the judgment debtor in an inmate's trust or similar account. If the judgment debtor is married, each spouse is entitled to a separate exemption, or the spouses may combine their exemptions. The exemption amount is $325 if the judgment is a restitution fine or order. (CCP 704.090)

• • 6-30/215.00 Relocation Benefits

Prior to payment, relocation benefits for displacement from a dwelling to be paid by a public entity, quasi public entity, or a public utility, are exempt without making a claim. After payment, relocation benefits are exempt upon filing a claim. (CCP 704.180)

• • 6-30/216.00 Retirement Benefits from Private Plan

Upon filing a claim, all amounts held, controlled, in the process of distribution, or paid from a private retirement plan are exempt. However, amounts held in self-employed retirement plans and individual retirement annuities or accounts provided for in the Internal Revenue Code of 1954, as amended, that exceed the maximum amounts exempt from federal income taxation under that code are not exempt. (CCP 704.115)

In a judgment for child or spousal support, the court may determine the extent of the exemption pursuant to CCP 703.070. If the amount sought to be applied to the judgment is payable periodically, the amount is subject to a wage assignment for support or any other applicable procedure, but the amount to be withheld shall not exceed the amount permitted on an earnings withholding order for support.

If a judgment other than for support, amounts in a self-employed retirement plan and individual retirement annuities or accounts provided for in the Internal Revenue Code are exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for support of the spouse and dependents of the judgment debtor. If the amount sought to be applied to the judgment is payable periodically, the amount to be withheld shall not exceed the amount that may be withheld from a like amount of earnings pursuant to an earnings withholding order.

• • 6-30/217.00 Retirement Benefits from Public Entity

Prior to disbursement, public employee benefits are exempt without making a claim. After payment, all amounts received by a resident of this state as a public retirement benefit from the United States or a public entity or from a public retirement system are exempt upon the filing of a claim. Prior to payment, all such benefits, other than those due from the United States, are exempt without making a claim whether or not the judgment debtor be a resident of the state, unless the benefits are sought to be applied to the satisfaction of a resident of the state, unless the benefits are sought to be applied to the satisfaction of a judgment for child or spousal support.

In a judgment for child or spousal support, the court may determine the extent of the exemption pursuant to CCP 703.070. If the amount sought to be applied is payable periodically, the amount is subject to an earnings

assignment order for support or any other applicable procedure, but the amount to be withheld shall not exceed the amount permitted on an earnings withholding order for support.

(CCP 704.110)

• • 6-30/218.00 Tools and Equipment of Trade

Upon making a claim, tools, implements, instruments, materials, uniforms, furnishings, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

- Judgment debtor - $8,725 (CCP 704.060(a)(1))
- Spouse of the judgment debtor - $8,725 (CCP 704.060(a)(2))
- Judgment debtor and spouse in the same trade - $17,450 (CCP 704.060(a)(3))
- A motor vehicle is not exempt unless 6-30/213.00 Motor Vehicle applies (CCP 704.060(c))
- A commercial motor vehicle for the judgment debtor - $4,850 (CCP 704.060(d)(1))
- A commercial motor vehicle if the debtor and the spouse in the same trade - $9,700 (CCP 704.060(d)(2))

If the property is sold at an execution sale, or if it has been lost, damaged, or destroyed, the proceeds of the execution sale or of insurance or other indemnification are exempt for a period of 90 days after the proceeds are actually received by the judgment debtor or the judgment debtor's spouse. (CCP 704.060(b))

• • 6-30/219.00 Trust Funds

Trust funds held for the benefit of someone other than the defendant/judgment debtor are exempt without making a claim. (FIN 12300.3)

• • 6-30/220.00 Unemployment Benefits

Contributions by workers and employers payable to the Unemployment Compensation Disability Fund or the Unemployment Fund are exempt without making a claim. (CCP 704.120(a))

Prior to payment, amounts held for payment to the judgment debtor which represent the following benefits are exempt without making a claim. (CCP 704.120(b)(1-5) After payment, the amounts are exempt upon filing a claim.

(CCP 704.120(c)) The creditor may seek child support payments for unemployment benefits through the local child support agency. (CCP 704.120(d))

In a judgment for child support, the court may determine the amount of the exemption pursuant to CCP 703.070. If the amount sought to be applied to the judgment is payable periodically, the amount payable is subject to a wage assignment for support or to any other applicable enforcement procedure, but the amount to be withheld shall be 25 percent of the amount of each periodic payment, or such lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest whole dollar. (CCP 704.120(e))

• • 6-30/221.00 Vacation Credits of Public Employee

Prior to payment, all vacation credits of a public employee are exempt without making a claim. Amounts paid periodically or as a lump sum representing vacation credits are subject to any earnings withholding order or any earnings assignment order for support and are exempt to the same extent as earnings of a judgment debtor. (CCP 704.113)

• • 6-30/222.00 Workersâ€™ Compensation Claim or Award

Except as provided in LAB 4900 et seq., prior to payment a workers' compensation claim or award is exempt without making a claim. After payment, the award is exempt except where sought to be applied to the satisfaction of a judgment for support.

In a judgment for support, the judgment creditor may seek to apply the temporary disability benefit payments to satisfy the support judgment by an assignment of earnings for support or any other applicable enforcement procedure. The amount to be withheld shall be 25 percent of the amount of each periodic payment or any lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest dollar.

(CCP 704.160)

• 6-30/300.00 Court of Jurisdiction

In general, a case is a limited liability case if the amount in controversy is $25,000 or less. A claim of exemption under a state warrant for collection shall be heard and determined in the county where the property levied upon is located. (CCP 85, 86, 688.010, 688.030)

• • 6-30/310.00 Time Computation

When computing the time within which a claim of exemption must be filed, the time

is extended if the last day falls on a Saturday, Sunday, or other holiday. To compute the number of days before a hearing date, exclude the hearing date and count backwards. (CCP 12, 12a, 12b, 12c)

• • • 6-30/310.10 Holidays

Holidays are designated by California law. However, there may be times the courts may or may not recognize a designated holiday. Care should be made to review holidays when determining time computations. The following are known court holidays:

- Every Sunday (GC 6700(a)(1))
- Every Saturday (CCP 135)
- New Year's Day
- The third Monday in January, known as "Dr. Martin Luther King, Jr. Day"
- February 12th, known as "Lincoln's Birthday"
- The third Monday in February known as "President's Day"
- March 31st, known as "Cesar Chavez Day"
- The last Monday in May known as "Memorial Day"
- July 4th known as "Independence Day"
- The first Monday in September known as "Labor Day"
- The second Monday in October known as "Columbus Day"
- November 11th, known as "Veterans Day"
- The fourth Thursday in November known as "Thanksgiving Day"
- The Friday following Thanksgiving known as "Day After Thanksgiving"
- December 25th known as "Christmas Day"

If the holiday lands on a Saturday, the holiday is recognized on the previous Friday. If the holiday lands on a Sunday, the holiday is recognized on the following Monday. Other holidays may be appointed by the President for a public fast, thanksgiving, or holiday. (CCP 135) The Governor may also appoint any day as a holiday. (CCP 6700(a)(16)(A))

• • • 6-30/310.20 Closure

If a public office is closed for business the whole of a business day, other than a branch office, it shall be considered a holiday. (CCP 12b)

• • • 6-30/310.30 Court Extended Time

• • • 6-30/310.40 Service by Mail

Except as otherwise provided, the service by mail of a writ, notice, order, or other paper is extended by five days (inside California), ten days (outside California) or twenty days (outside the United States.) (CCP 684.120)

• • 6-30/320.00 Time for Filing Claim of Exemption

• • • 6-30/320.10 Writ of Attachment

• • • • 6-30/320.11 After Hearing Writ

If the right to attach order is issued after a noticed hearing, or if after issuance of a writ of attachment additional writs are issued after a noticed hearing, any claim of exemption by the defendant is required to be made at the hearing. The claim of exemption must be filed in the court and served on the plaintiff at least five days prior to the hearing. If the defendant fails to file the claim, he may not later claim an exemption. (CCP 484.340(d))

• • • • 6-30/320.12 Ex Parte Writ

If the right to attach order is issued ex parte, or if after issuance of a writ of attachment additional writs are issued ex parte, any claim of exemption is required to be made within 30 days after the levying officer serves the defendant the notice of attachment describing such property. (CCP 484.530)

• • • • 6-30/320.13 Real Property

A claim of exemption for real property may be filed at any time prior to judgment. (CCP 487.030)

• • • • 6-30/320.14 Estate of a Decedent

After a levy on the interest of the defendant in personal property in the estate of a decedent and delivery of the property to the levying officer, a claim of exemption may be filed within 10 days after the officer serves the notice describing the property on the defendant. (CCP 488.485)

• • • • 6-30/320.15 Farm Products or Inventory

After a levy on farm products or inventory of a going business in the possession or

control of the defendant, if the defendant is a natural person and the writ was issued ex parte, a claim of exemption may be made at any time. (CCP 488.395(d))

• • • • 6-30/320.16 Change of Circumstances

If the right to an exemption is the result of a change in circumstances after a previous denial of the claim or the expiration of the time for claiming the exemption, a claim may be made at any time. (CCP 482.100)

• • 6-30/330.00 Filing Claim

The defendant may a claim of exemption with the levying officer within 30 days after the levying officer serves the notice of attachment or the defendant. (CCP 484.530)

The defendant may claim an exemption based on the need to support the defendant or the defendant's family by filing a notice of motion directly with the court. The hearing is set within five days and the plaintiff must have notice not less than three days before the hearing. This procedure is an optional procedure that may be used in lieu of the normal claim of exemption procedure in other cases. The defendant should be made aware of this optional procedure, particularly where a keeper is installed. (CCP 482.100(c))

• • • 6-30/330.10 Received by Levying Officer

If a paper is required or permitted to be filed with the levying officer, it is considered filed when actually received by the levying officer. (CCP 681.040)

• 6-30/340.00 Writ of Execution

• • 6-30/340.10 Direct Deposit Public Benefits and Social Security Accounts

The special procedures for a claim of exemption set forth in Direct Deposit Public Benefits and Social Security Accounts do not require the filing of a claim of exemption, but mandate the memorandum of garnishee be operative as a claim of exemption. (CCP 704.080)

In such case, even though the garnishee is required to file the answer with the levying officer within 10 business days after the levy, the levying officer should treat

the answer as timely for the purpose of complying with the claim of exemption procedures regardless of when received.

• • 6-30/340.20 Dwelling

If a dwelling is levied upon which is personal property or is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy, a claim of exemption shall be made. (CCP 704.740)

• • 6-30/340.30 Earnings Withholding Order

A Claim of Exemption (WG-006) based on the debtor's needs to support debtor or the debtor's family (CCP 706.051(b)) may be filed at any time after an earnings withholding order has been served on the debtor's employer. (CCP 706.105)

• • • 6-30/340.31 Earnings Withholding Order for Support or Taxes

A Claim of Exemption cannot be filed if the Earnings Withholding Order was issued for support or taxes. (CCP 706.105(k)) The judgment debtor must seek relief under support by requesting a review by the local child support agency. (CCP 706.030(b)(5)) The judgment debtor may also file a motion directly with the court. (CCP 706.030(b)(6)) In the case of withholding for taxes, the time for the debtor to request a review is prior to the issuance of the Earnings Withholding Order for Taxes. (CCP 706.072 (b)(2) and (c))

• • 6-30/340.40 Interest in Estate of a Decedent

After a levy on the interest of the defendant in personal property in the estate of a decedent and delivery of the property to the levying officer, a claim of exemption may be filed within 10 days after the officer serves the notice describing the property on the defendant. (CCP 700.200(c))

• • 6-30/340.50 All Other Property

A Claim of Exemption (EJ-160) may be filed with the levying officer, either in person or by mail, a claim of exemption together with a copy of the claim. If the claimant is personally served, the claim shall be made within 15 days after the date the notice of levy on the property claimed to be exempt is served on the judgment debtor. If the claimant is served by mail, the claim shall be made within 20 days after the date the notice of levy on the property claimed to be exempt is served on the judgment debtor. If the claim is filed by mail and assigned a tracking number by the United States Postal Service or another common carrier, the filing shall be deemed complete on the date

the claim is postmarked. If the claim is filed by mail and not assigned a tracking number, the filing shall be deemed complete on the date the claim is received by the levying officer. (CCP 703.520(a))

• 6-30/350.00 Filing of Claim

• • 6-30/350.10 Earnings Withholding Order

The original Claim of Exemption (WG-006) and a Financial Statement (WG-007) is filed with the levying officer. Two copies of the forms are necessary although at least one must be provided when the debtor files the claim. (CCP 706.105(b)) The original forms are sent to the court if a hearing is to take place. One copy is to be mailed to the judgment creditor; one copy is for the levying officer file. No other forms may be used. (CCP 706.120) The forms shall be available through the levying officer at no charge. (CCP 706.129)

The claim must be executed under oath, indicate how much the debtor believes should be withheld each pay period, and give the debtor's present mailing address. (CCP 706.123)

The financial statement shall be executed under oath by the judgment debtor and, if the debtor is married, the spouse of the debtor, unless the spouses are living separate and apart. (CCP 703.530(c)) The statement shall include all the following information:

- Name of the debtor's spouse (CCP 703.530(b)(1))
- Name, age, and relationship of all persons who are dependent for support on the debtor or the debtor's spouse (CCP 703.530(b)(2)))
- All sources and the amounts of earnings and other income of the judgment debtor and the spouse and dependents of the judgment debtor (CCP 703.530(b)(3))
- A list of the assets of the judgment debtor and the spouse and dependents of the judgment debtor and the value of such assets (CCP 703.530(b)(4))
- All outstanding obligations of the judgment debtor and the spouse and dependents of the judgment debtor (CCP 703.530(b)(5))

• • 6-30/350.20 Direct Deposit Public Benefits and Social Security Payments

Upon receipt of a memorandum of garnishee from a financial institution which states that a deposit account levied upon is one in which payments authorized by the Social Security Administration or a public agency for public benefits are directly deposited by the United States government or a public agency and the balance of the account exceeds the amount that is exempt without making a claim, the levying officer shall treat the memorandum as a claim of exemption. (CCP 704.080)

• • 6-30/350.30 All Other Property

The original Claim of Exemption (EJ-160) is filed with the levying officer. Two copies of the forms are necessary although at least one must be provided when the debtor files the claim. (CCP 703.520(a)) The original form is sent to the court if a hearing is to take place. One copy is to be mailed to the judgment creditor; one copy is for the levying officer file.

The claim must include all of the following:

- Executed under oath (CCP 703.520(b))
- The name of the claimant and the mailing address where service of a notice of opposition to the claim may be made upon the claimant (CCP 703.520(b)(1))
- The name and last known address of the judgment debtor if the claimant is not the judgment debtor (CCP 703.520(b)(2))
- A description of the property claimed to be exempt (CCP 703.520(b)(3))
    - If an exemption is a motor vehicle or tools and equipment of trade (CCP 704.010, 704.060) the claimant shall describe all other property of the same type, including exempt proceeds of the property of the same type, owned by the judgment debtor alone or in combination with others on the date of levy and identify the property, whether or not levied upon, to which the exemption is to be applied.
    - If an exemption is a loan value of unmatured life insurance policies (CCP 704.100(b)), the claimant shall state the nature and amount of all other property of the same type owned by the judgment debtor or the spouse of the judgment debtor alone or in combination with others on the date of levy.
- Specify the code section upon which the claim is based (CCP 703.520(b)(5))
- A statement of the facts necessary to support the claim (CCP 703.520(b)(6))

A Financial Statement (EG-165) is required if the claimed exemption is based on a provision exempting property to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.

The financial statement shall be executed under oath by the judgment debtor and, if the debtor is married, the spouse of the debtor, unless the spouses are living separate and apart. (CCP 703.530(c)) The statement shall include all the following information:

- Name of the debtor's spouse (CCP 703.530(b)(1))
- Name, age, and relationship of all persons who are dependent for support on the debtor or the debtor's spouse (CCP 703.530(b)(2)))
- All sources and the amounts of earnings and other income of the judgment debtor and the spouse and dependents of the judgment debtor (CCP 703.530(b)(3))
- A list of the assets of the judgment debtor and the spouse and dependents of the judgment debtor and the value of such assets (CCP 703.530(b)(4))
- All outstanding obligations of the judgment debtor and the spouse and dependents of the judgment debtor (CCP 703.530(b)(5))

• 6-30/360.00 Notice to Creditor

• • 6-30/360.10 Earnings Withholding Order

Upon the filing of a claim of exemption, the levying officer shall promptly send to the judgment creditor at the address stated in the application for earnings withholding order, by first-class mail, postage prepaid, all of the following:

- A copy of the Claim of Exemption (WG-006) (CCP 706.105(c)(1))
- A copy of the Financial Statement (WG-007) (CCP 706.105(c)(2))
- A notice of claim of exemption. The notice shall state that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption (CCP 706.105(c)(3))

• • 6-30/360.20 Direct Deposit Public Benefits and Social Security Payments

Upon receipt of a Memorandum of Garnishee from a financial institution stating that funds in the account in excess of the amount exempt without making a claim are being held pursuant to levy, the levying officer shall promptly serve the notice on the judgment creditor either personally or by mail.

- A copy of the Memorandum of Garnishee from the financial institution indicating the Direct Deposit Public Benefits and Social Security Payments

- A notice of claim of exemption. The notice shall state that the claim of exemption has been filed and that the earnings withholding order will be terminated, or modified to reflect the amount of earnings claimed to be exempt in the claim of exemption, unless a notice of opposition to the claim of exemption is filed with the levying officer by the judgment creditor within 10 days after the date of the mailing of the notice of claim of exemption (CCP 706.105(c)(3)) The time allowed shall be 10 days and is extended by the appropriate number of days pursuant to CCP 684.120 in a case where service on the judgment creditor is by mail.

• • 6-30/360.30 All Other Property

Upon the filing of a claim of exemption, the levying officer shall promptly serve the judgment creditor, either personally or by mail, both a copy of the Claim of Exemption including any required financial statement and a Notice of Claim of Exemption. The Notice of Claim of Exemption shall state that the property will be released if the levying officer does not receive a copy of the Notice of Opposition to the Claim of Exemption and a copy of the Notice of Motion for an Order Determining Claim of Exemption within the time allowed as specified in the Notice. (CCP 703.540) The time allowed shall be 10 days and is extended by the appropriate number of days pursuant to CCP 684.120 in a case where service on the judgment creditor is by mail.

• 6-30/370.00 Release if No Notice of Opposition or Notice of Hearing

The levying officer must release wages or other property of the debtor when there is an untimely filing of the Notice of Opposition to the Claim of Exemption or the Notice of Hearing and, if there is an untimely filing of either the Notice of Opposition to the Claim of Exemption of the Notice hearing, there can be no claim of exemption hearing. (Westervelt v. Robertson, 122 CA 3rd Supp. 1)

• • 6-30/370.10 Earnings Withholding Order

To contest a claim of exemption based on the debtor's needs to support the debtor or the debtor's family (CCP 706.051), a judgment creditor shall file with the levying officer a Notice of Opposition to Claim of Exemption (WG-009) within the 10 days of levying officer notification of the claim of exemption. (CCP 706.105(d)). The creditor must file a Notice of Hearing on Claim of Exemption (WG-010) with the court within and notify the levying officer and the judgment debtor within the 10-day period. (CCP 706.105(e))

The hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed unless continued by the court for good cause. Both the levying officer and the debtor must be given at least 15 days notice of the hearing. After receiving the notice of hearing and before the date set for the hearing the levying officer shall file the Claim of Exemption and the Notice of Opposition to

Claim of Exemption (and Financial Statement) with the court. (CCP 706.105(e))

If the levying officer does not receive a Notice of Opposition to Claim of Exemption and a Notice of Hearing on Claim of Exemption within the required 10 days, the levying officer shall serve on the employer a Notice of Modification/Termination of Earnings Withholding Order to the extent of the claim advising the employer. (CCP 706.105(f)(1), (f)(2))

Time is not extended for mailing. The specific provision takes precedence over the general provisions. (California Law Revision Commission comments to the Enforcement of Judgment Law, October 1980)

• • 6-30/370.20 Direct Deposit Social Security Payment

If the judgment creditor desires to claim the amount which exceeds the automatic exemption is not exempt, the judgment creditor must file with the court a Notice of Opposition to Claim of Exemption (EJ-170) and a Notice of Hearing on Claim of Exemption (EJ-175) and file copies thereof with the levying officer within 5 days after the levying officer served the notice from the financial institution on the judgment creditor. (CCP 704.080(e)(1)) The 5 days is extended by the appropriate number of days pursuant to CCP 684.120 in a case where service on the judgment creditor is by mail.

If the levying officer does not receive copies of the required documents timely, the officer shall release the deposit account and shall notify the financial institution. (CCP 704.080(e)(2))

• • 6-30/370.30 All Other Property

To oppose a claim of exemption, the judgment creditor must file a Notice of Opposition to Claim of Exemption (EJ-170) and a Notice of Hearing on Claim of Exemption (EJ-175) with the court, and file copies of both notices with the levying officer within 15 days after the levying officer served the Notice of Claim of Exemption. (CCP 703.550(a)) The appropriate extension of time pursuant to CCP 684.120 if the judgment creditor was served by mail.

The Notice of Opposition to Claim of Exemption (EJ-170) shall the following:

- executed under oath (CCP 703.560)
- An allegation either
  - The property is not exempt under the provision of this chapter or other statute relied upon (CCP 703.560(a)(1)) or
  - The equity in the property claimed to be exempt is in excess of the amount provided in the applicable exemption (CCP 703.560(a)(2))

- A statement of the facts necessary to support the allegation (CCP 703.560(b))

If the notices and copies are timely filed, the levying officer shall promptly file the claim of exemption (and Financial Statement if required) with the court. If either or both notices and copies are not timely filed, the levying officer shall immediately release the property to the extent it is claimed to be exempt. (CCP 703.550(a))

• 6-30/400.00 Status of Levy Pending Hearing

Except as otherwise provided by statute, the levying officer shall not release, sell, or otherwise dispose of' the property until final determination of the exemption. The court may, however, make such orders for the disposition of property while the proceedings are pending as may be proper under the circumstances of the case. (CCP 703.610)

• 6-30/500.00 Hearing and Judgment

The hearing on the motion shall be held not later than 30 days from the date the notice of motion was filed, unless continued by the court for good cause. (CCP 703.570, 706.105) The Claim of Exemption and Notice of Opposition to the Claim of exemption constitute the pleadings, subject to the power of the court to permit amendments in the interest of Justice. (Lentfoehr v. Lentfoehr, 134 CA 2d Supp. 905; CCP 703.580) The court gives judgment determining whether the claim shall be allowed or not, in whole or in part, and makes all proper orders for the disposition of such property or its proceeds. (CCP 703.580, 706.105)

Unless otherwise ordered by the court, if an exemption is not determined within the time provided by CCP 703.570 or 706.105, or the Hearing off calendar, the levy should be released to the extent the property was claimed to be exempt. (CCP 703.580(f))

• 6-30/600.00 Order Determining Claim of Exemption

• • 6-30/610.00 Earnings Withholding Order

If, after hearing, the court orders that the earnings withholding order be modified or terminated, the clerk shall promptly transmit a certified copy of the order to the levying office. (CCP 706.105(g)) The court may order that the earnings withholding order be terminated as of a date that precedes the date of hearing. The court should also determine the disposition of withheld funds in the possession of the levying officer and the effective date of the disposition.

Based on the order, the levying officer shall promptly serve on the employer of the judgment debtor a Notice of Termination or Modification of Earnings Withholding Order (WG-012).

If the court terminates the Earnings Withholding Order, unless otherwise ordered by the court or if there is a material change of circumstances, the judgment creditor may not apply for another Earnings Withholding Order directed to the same employer for the same judgment debtor for period of 100 days from the date or service or 60 days after the date of the termination order, whichever is later. (CCP 706.105(h))

• • 6-30/620.00 Direct Deposit Social Security Payment

The court shall determine whether or not the amount of the deposit account is exempt in whole or in part and shall make an appropriate order for its prompt disposition. After the hearing, the court shall immediately transmit a certified copy of the order of the court to the financial institution and to the levying officer. (CCP 704.080(e)(6))

The statute does not provide any action to be taken by the levying officer. However, based on the order, the levying officer should promptly serve on the financial institution a release, partial release, or a Notice to Comply.

• • 6-30/630.00 All Other Property

After the hearing, the court clerk shall promptly transmit a certified copy of the order to the levying officer. Based on the order, the levying officer shall release the property or apply the property to the satisfaction of the money judgment. (CCP 703.580(e))

• 6-30/700.00 Appeal on Order Determining Claim of Exemption

• • 6-30/710.00 Earnings Withholding Order

An order denying a claim of exemption is appealable by the judgment debtor. An appeal by the judgment creditor does not stay the order from taking effect. (CCP 706.105(j))

• • 6-30/720.00 Direct Deposit Social Security Payment

If the court determines that all or part of the excess funds are exempt. The transfer or release shall be effected within three business days of the receipt of the certified copy of the court order by the financial institution. (CCP 704.080(e)(6))

If the judgment debtor claims an exemption of the excess funds, the normal appeal procedures apply. refer to 6-30/730.00 Other Property.

• • 6-30/730.00 All Other Property

Except as otherwise provided by statute or ordered by the court, the levying officer shall not release, sell, or otherwise dispose of the property for which an exemption is claimed until an appeal is waived, the time to file an appeal has expired, or the exemption is finally determined. (CCP 706.610(a))

• • 6-30/740.00 Appeal Period

A Notice of appeal for an unlimited civil cases must be filed in court 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))
- 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(B))
- 180 days after entry of judgment (CRC 8.104(C))

A Notice of appeal for a limited civil cases must be filed in court 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))
- 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(B))
- 90 days after the entry of judgment (CRC 8.822(C))

• 6-26/100.00 Writ of Sale

A judgment for sale of real or personal property may be enforced by a writ of sale issued pursuant to CCP

712.010. (CCP 716.010)

• • 6-26/110.00 Mortgage Enforceable by Foreclosure

The ordinary mortgage on real property must be enforced by obtaining a decree of foreclosure of the mortgage. (CCP 726) Mechanic's liens on real property must be enforced by foreclosure the same as on a mortgage. (Laubisch v. Roberdo, 43 CA 2d 702)

• • 6-26/120.00 Mortgage with Power of Sale

Trust deeds and mortgages with power of sale upon real property may be enforced through foreclosure suit. (CCP 725a)

• • 6-26/130.00 Judicial Enforcement of Security Interest in Property

A security interest in personal property (chattel mortgage, conditional sale, etc.) may be enforced through judicial procedure. (COMM Chapter 6 – Default)

• • 6-26/140.00 Writ of Sale as Writ of Execution to Collect Money

Unless the court specifically orders the method, manner, or extent of enforcement of a money judgment included in the judgment for sale, a writ of sale may be enforced as a writ of execution to satisfy any money judgment included in the judgment. If amounts due under the judgment are not satisfied pursuant to the writ of sale, the judgment creditor may use a writ of execution to satisfy any money judgment included in the judgment after the writ of sale has been returned or 180 days after its issuance, whichever is earlier. If the judgment creditor does not desire issuance of a writ of sale (because the secured obligation has been voluntarily satisfied, or other reason), a writ of execution may be issued to satisfy any money judgment included in the judgment. Whether or not a writ has been issued, enforced, or returned, the judgment creditor may use any remedies available under writs of execution to satisfy any money judgment included in the judgment. (CCP 712.040)
