6-31/000.00 Third Party Claim

• 6-31/100.00 Third Party Claim

California Code of Civil Procedure, Title 9, Division 4 Third Party Claims and Related Procedures, sets out in detail the procedures for filing the claim, releasing or continuing the levy, obtaining a court hearing, and final disposition of the property. This is an ancillary proceeding created by statute.

In addition to levies under execution, the procedures in are applicable to levies under a writ of attachment (CCP 488.110), claim and delivery (CCP 514.050), or innkeepers' liens (CC 1861.25)

• • 6-31/110.00 Definitions

• • • 6-31/110.10 Creditor

Creditor means the judgment creditor or, in the case of a levy under a writ of attachment or prejudgment writ of possession of personal property, the plaintiff. (CCP 720.020)

• • • 6-31/110.20 Debtor

Debtor means the judgment debtor or, in the case of a levy under a writ of attachment or prejudgment writ of possession of personal property, the defendant. (CCP 720.030)

• • • 6-31/110.30 Third Party

Third Party means a person who is not a party to a contract or a transaction (lawsuit), but may have an involvement.

• • • 6-31/110.40 Personal Property

Personal property shall be deemed references to fixtures. (CCP 720.210(b))

• • 6-31/120.00 Purpose of Third Party Claim Procedures

One of the main purposes of the third party claim procedures is to give protection to the officer making the levy from claims for damages by third parties. (Sunset Realty Co. v. Dadmun, 34 CA 2d Supp. 733; Cory v. Cooper, 117 CA 495)

As against the levying officer, a third party claiming ownership of personal property who has failed to give

the required notice is precluded from recovery by the provisions of the section which makes service of a third party claim a condition precedent to recovery. (Cortelyou v. Baker, 182 CA 168) In a case in which a third party claim was made more than eight months after the levy, the court stated, "This fact would in any event absolve the sheriff from liability for the detention of the property for a period prior to the notice of claim." (Mutch v. Long Beach Improvement Co., 47 CA 267)

• • 6-31/130.00 Duty to Notify

Under most circumstances the levying officer has no duty to either ascertain or notify third persons of a levy against property in which they may possess a security interest or lien. However, the officer does have a duty to identify and notify such persons after certain levies against vehicles, vessels, manufactured homes, mobile homes, and commercial coaches.

Where an officer has lawfully seized property under a writ, he is not liable to a third party claimant if he has in all respects complied with the statute. After the plaintiff has furnished the required undertaking, the officer is relieved from liability for continuing to hold attached property or from selling under execution. (Cory v. Cooper, 117 CA 495; Rowland v. Bruton, 125 CA 697)

• • 6-31/140.00 Persons Who May Claim

A person, not a party to an action, who claims ownership or the right to possession of real or personal property, or claims a security interest or lien in personal property or fixtures, may file a third party claim. The lien, security or other interest claimed must be superior to the creditor's lien on the property. (CCP 720.110, 720.210)

A third party claim may not be made by a person who is a party to the action. The legislature has provided that the third party claim procedure be available to third persons whose property has been attached so that an immediate determination respecting title to the property can be made. In such a case, the plaintiff has no claim against the third person which would support attachment of the third person's property, and in such circumstances the attachment itself is improper if the third person's claim is proven. (Commercial and Farmers National Bank v Hetrick (Paris Jet, Inc., third party), 64 CA 3d 158 – case available through CMB Operations)

• • 6-31/150.00 Failure to Make a Claim

Claim of Ownership or Right to Possession

Any interest of the third person in the property levied upon is not affected by the third person's failure to file a third party claim. (CCP 720.150(b))

Claim of Security Interest or Lien

The interest of a secured party or lienholder in the property levied upon is not affected by the failure of the secured party or lienholder to file a third-party claim. (CCP 720.250(b))

• 6-31/200.00 Property Subject to Claim

Claim of Ownership or Right to Possession

A third person may claim real property levied on under a writ of attachment or a writ of execution and personal property levied on under a writ of attachment, a writ of execution, a prejudgment or postjudgment writ of possession, or a writ of sale. (CCP 720.110)

Claim of Security Interest or Lien

A third person may claim personal property, including fixtures, levied on under a writ of attachment, a writ of execution, a prejudgment or post-judgment writ of possession or a writ of sale. (CCP 720.210)

• • 6-31/210.00 Creditorâ€™s Demand for Third Party Claim

The judgment creditor may make a demand for a third party claim by a secured party or lienholder. (CCP 720.510) The creditor must file the demand, along with a copy, with the levying officer after the levy on the personal property but before the property is sold or the proceeds are paid to the creditor. (CCP 720.520(a))

The demand shall contain all the following:

1. The name and address of the secured party or lienholder (CCP 720.530(a))
2. The name and address of the creditor (CCP 720.530(b))
3. A detailed description of the personal property levied upon and the date of levy (CCP 720.530(c))
4. A statement that if the secured party or lienholder does not file a third party claim within 30 days after service of the demand, the secured party or lienholder shall be deemed to have waived any priority the security interest or lien may have over the creditor's lien on the property levied upon unless the property levied upon is released from the creditor's lien (CCP 720.530(d))
5. A statement that if any priority of the security interest or lien is waived, the secured party or lienholder may have a right to share in any excess proceeds of an execution sale of the property as provided in CCP 701.810 (CCP 720.530(e))

Promptly after receiving the demand, and a copy thereof, the levying officer shall personally serve the original demand on the secured party or lienholder. If, because of the service address, the demand must be served by another levying officer, such levying officer's costs shall be paid out of the costs prepaid to the levying officer who levied on the property. The levying officer's certificate of service of the demand shall be promptly filed with the court after the service is completed.

Unless otherwise required to release or the third party claim is sooner filed, the levying officer may not sell or otherwise dispose of the personal property described in the demand before expiration of 30 days after service of the demand on the secured party or lienholder. (CCP 720.540)

• • 6-31/220.00 Failure to File Third Party Claim After Demand

If the secured party or lienholder does not file a third party claim with the levying officer within 30 days after personal service of the demand, such person shall be deemed to have waived any priority the security interest or lien may have over the creditor's lien on the personal property levied upon and the property may be applied toward the satisfaction of the judgment free of the security interest or lien. If the creditor's lien on the property is subsequently released, the security interest or lien is restored to its former position of priority.

• 6-31/300.00 Filing Procedures

• • 6-31/310.00 Filing a Third Party Claim

A person making a third party claim must file the claim with the levying officer, together with two copies of the claim, after levy on the property but before the levying officer has either sold the property, delivered possession of the property to the creditor, or paid proceeds of collection to the creditor. (CCP 720.120, 720.220)

The third party claim shall be executed under oath and have attached thereto a copy of any writing, including any security agreement or financing statement, upon which the claim is based. At a hearing on the third party claim, the court may exclude from evidence any writing of which a copy was not attached to the third party claim.

• • • 6-31/310.10 Claim of Ownership or Right to Possession

The third party claim shall contain all of the following (CCP 720.130):

1. The name of the third person and an address in this state where service by mail may be made on the third person.
2. A description of the property in which an interest is claimed.
3. A description of the interest claimed, including a statement of the facts upon which the claim is based.
4. An estimate of the market value of the interest claimed.

- A copy of any writing upon which the claim is based shall be attached to the third-party claim. At a hearing on the third-party claim, the court in its discretion may exclude from evidence any writing a copy of which was not attached to the third-party claim.

• • • 6-31/310.20 Claim of Security Interest or Lien

The third party claim shall contain all of the following (CCP 720.230):

1. The name of the secured party or lienholder and an address in this state where service by mail may be made on the secured party or lienholder.
2. A description of the personal property in which a security interest or lien is claimed.
3. A detailed description of the security interest or lien claimed, including a statement of the facts upon which it is based.
4. A statement of the total amount of sums due or to accrue under the security interest or lien and the applicable rate of interest on amounts due.

- In the case of a security interest, a copy of the security agreement and any financing statement shall be attached to the third-party claim. In the case of a lien, a copy of any writing upon which the claim is based shall be attached to the third-party claim. At a hearing on the third-party claim, the court in its discretion may exclude from evidence any writing a copy of which was not attached to the third-party claim.

• • • 6-31/310.30 Levying Officer Prohibition

Except as otherwise provided by statute, if a third party claim is timely filed, the levying officer may not sell the property, deliver possession of the property to the creditor, or pay proceeds of collection to the creditor. (CCP 720.150, 720.250)

• • • 6-31/310.40 Undertaking to Release Filed by Third Party

A third person may file an undertaking to release property in all cases in which a third party claim can properly be filed. However, an undertaking cannot be filed where property is levied upon pursuant to a prejudgment or post-judgment writ of possession. (CCP 720.610)

The third person shall file the undertaking, together with two copies thereof, with the levying officer either at the same time the third party claim is filed or subsequent thereto, at any time before the levying officer sells the property, delivers the property to the creditor, or pays the proceeds of collection to the creditor. (CCP 720.620)

The undertaking to release property shall contain a description of the property to be released and describe the interest of the third party. (CCP 720.630(a))

The third person's undertaking shall be made in favor of the creditor and provide that, if the court finds the debtor to have an interest in the property levied upon, the third person shall pay to the creditor the lesser of the following:

- amount required to satisfy the judgment (CCP 720.630(b)(1))
- a sum equal to the market value of the debtor's interest in the property(CCP 720.630(b)(2))

The amount of the third person's undertaking can be greater, but otherwise shall be the lessor of either:

- Twice the market value of the property to be released (CCP 720.630(c)(1))
- Twice the amount of the creditor's lien on the property (CCP 720.630(c)(2))

If the creditor has already filed an undertaking in response to the third person's claim, the undertaking shall be in the amount of the creditor's undertaking. (CCP 720.630(d))

• • 6-31/320.00 Service of the Third Party Claim and/or Undertaking on the Creditor and Debtor

The copies of the third-party claim and undertaking shall be served, either personally or by mail, by the levying officer on the creditor and debtor. If copies of the third party claim have not already been served on the creditor and debtor, the service of the undertaking shall be made at the time of service of those documents. (CCP 720.140(a), 720.240(a), 720.640(b))

• • • 6-31/320.10 Duty to Serve Third Party Claim

The levying officer may serve the copy of the third-party claim and the statement and notice pursuant to this section notwithstanding any defect, informality, or insufficiency of the claim. (CCP 720.140(d), 720.240(d))

These provisions extend to the levying officer "…, the same benefit given him by the statute…in case a good and sufficient claim is made." (Cory v. Cooper, 117 CA 495, 502)

• • • 6-31/320.20 Claim of Ownership or Right to Possession

Within five days after the third-party claim is filed with the levying officer, the levying officer shall provide the creditor (CCP 720.140(a)):

1. A copy of the third-party claim (CCP 720.140(a)(1))
2. A statement whether the third person has filed an undertaking to release the property pursuant to Chapter 6 (CCP 720.140(a)(2))
3. If the third person has filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor objects to the undertaking (CCP 720.140(a)(3))
    a. The levying officer shall provide a copy of the undertaking (CCP 720.640(a))
4. If the third person has not filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor files with the levying officer an undertaking under CCP 720.160 (CCP 720.140(a)(4))

The time allowed the creditor for objecting to the third person's undertaking to release the property or for filing an undertaking is 10 days after notice is served. (CCP 720.140(b)) If the notice is served by mail, the appropriate time is extended:

- Five days if the place of address is within the State of California (CCP 684.120(b)(1))
- Ten days if the place of address is outside the State of California but within the United States (CCP 684.120(b)(2))
- Twenty days if the place of address is outside the United States (CCP 684.120(b)(3))

Within the time allowed for service on the creditor, the levying officer shall provide all of the above to the debtor. (CCP 720.140(c))

• • • 6-31/320.30 Claim of Security Interest or Lien

Within five days after the third-party claim is filed with the levying officer, the levying officer shall provide the creditor (CCP 720.240(a)):

1. A copy of the third-party claim (CCP 720.240(a)(1)
2. A statement whether the third person has filed an undertaking to release the property pursuant to Chapter 6 (CCP 720.240(a)(2))
3. If the third person has filed an undertaking to release the property, a notice that the property will be

released unless, within the time allowed as specified in the notice, the creditor objects to the undertaking (CCP 720.240(a)(3))
   a. The levying officer shall provide a copy of the undertaking (CCP 720.640(a))

4. If the third person has not filed an undertaking to release the property, a notice that the property will be released unless, within the time allowed as specified in the notice, the creditor does one of the following: (CCP 720.240(a)(4))
   a. Files with the levying officer an undertaking that satisfies the requirements of Section 720.260 (CCP 720.240(a)(4)(A))and shall:
      i. File with the levying officer a statement executed under oath that the security interest is invalid, that the security interest is not entitled to priority over the creditor's lien, or that the amount demanded in the claim exceeds the amount to which the secured party is entitled, for the reasons specified therein (CCP 720.280(a))
      ii. Serve a copy of the statement on the secured party. Service shall be made personally or by mail (CCP 720.280(b))
      iii. Serve a copy of the statement on the debtor. Service shall be made personally or by mail (CCP 720.280(c))
   b. Deposits with the levying officer the amount claimed plus interest at the applicable rate to the estimated date of tender to the secured party or lienholder (CCP 720.240(a)(4)(B))

The time allowed the creditor for objecting to the third person's undertaking to release the property or for filing an undertaking is 10 days after notice is served. (CCP 720.240(b)) If the notice is served by mail, the appropriate time is extended:

- Five days if the place of address is within the State of California (CCP 684.120(b)(1))
- Ten days if the place of address is outside the State of California but within the United States (CCP 684.120(b)(2))
- Twenty days if the place of address is outside the United States (CCP 684.120(b)(3))

Within the time allowed for service on the creditor, the levying officer shall provide all of the above to the debtor. (CCP 720.240(c))

• 6-31/400.00 Continuation of the Levy

Claim for Ownership or Possession

In the case of a third party claim for ownership or possession, if the creditor files with the levying officer an undertaking within the time allowed, the levying officer shall execute the writ in the manner provided by law unless the third person files an undertaking to release the property. (CCP 720.160(a)(1))

Claim of Security Interest or Lien

In the case of a third party claim of security interest or lien, the levying officer shall execute the writ in the manner provided by law unless the third person files an undertaking to release the property. (CCP

720.260(a)(1)) if the creditor files with the levying officer within the time allowed all of the following:

- an undertaking (CCP 720.280) and
- a statement executed under oath that the security interest is invalid, that the security interest is not entitled to priority over the creditor's lien, or that the amount demanded in the claim exceeds the amount to which the secured party is entitled, for the reasons specified therein (CCP 720.280(a))

or

- Deposits with the levying officer the amount claimed plus interest at the applicable rate to the estimated date of tender to the secured party or lienholder (CCP 720.240(a)(4)(B))

• 6-31/500.00 Release of Property

• • 6-31/510.00 Undertaking to Release Filed by Third Party

Unless the levying officer receives a copy of a notice of motion objecting to the undertaking within the time for making the objection, the property shall be released. (CCP 720.660)

• • 6-31/520.00 Undertaking to Release Not Filed by Third Party

In a case where the third person has not filed with the levying officer an undertaking to release the property, if the creditor does not within the time allowed file an undertaking with the levying officer (or file a notice if the creditor is a public entity), the levying officer shall release the property unless it is to be held under another lien or unless otherwise ordered by the court. (CCP 720.170(a))

• • 6-31/530.00 Party To Whom Property is Released

Personal property in the custody of the levying officer shall be released to the person from whom it was taken unless otherwise ordered by the court. (CCP 699.060(b))

• 6-31/600.00 Creditorâ€™s Undertaking

The creditor's undertaking indemnifying the third party shall be executed by two or more sufficient personal sureties or by one sufficient admitted surety insurer or by any combination of sufficient personal sureties and

admitted surety insurers. (CCP 995.310)

• • 6-31/610.00 Claim for Ownership or Possession

A creditor's undertaking is filed with the levying officer and shall:

- Be $10,000 or twice the amount of the execution lien (CCP 720.160(b))
  - The amount may also be larger
- Be made in favor of the third person (CCP 720.160(c)(1))
- Indemnify the third person against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings (CCP 720.160(c)(2))
- Be conditioned on final judgment that the third person owns or has the right of possession of the property (CCP 720.160(c)(3))
- State the address at which the creditor may be served with notices, papers, and other documents (CCP 995.320(a)(2))

• • 6-31/620.00 Claim of Security Interest or Lien

A creditor's undertaking is filed with the levying officer and shall be:

- $10,000 or twice the amount of the execution lien (CCP 720.260(b))
  - The amount may also be larger
- Made in favor of the third person (CCP 720.260(c)(1))
- indemnify the third person against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings (CCP 720.260(c)(2))
- conditioned on final judgment that the third person owns or has the right of possession of the property (CCP 720.260(c)(3))
- State the address at which the creditor may be served with notices, papers, and other documents (CCP 995.320(a)(2))

The creditor may also deposit with the levying officer the amount claimed plus interest at the applicable rate to the estimated date of tender to the secured party or lienholder under (CCP 720.240(a)(4)(B)). (CCP 720.260(a))

• • 6-31/630.00 Public Entity Exemption

A public entity is exempt from filing a bond or undertaking. (CCP 995.220) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed. (CCP 720.160(d), 720.260(d))

• • 6-31/640.00 Personal Sureties

A personal surety on a bond is sufficient if all conditions are satisfied:

- The surety is a person other than the principal. No officer of the court or member of the State Bar shall act as a surety (CCP 995.510(a)(1))
- The surety is a resident, and either an owner of real property or householder, within the state(CCP 995.510(a)(2))
- The surety is worth the amount of the bond in real or personal property, or both, situated in this state, over and above all debts and liabilities, exclusive of property exempt from enforcement of a money judgment (CCP 995.510(a)(3))

If the undertaking be given by individual or personal sureties, it must be accompanied by an affidavit of qualifications of each surety containing the surety. (CCP 995.520(a))

The affidavit shall contain all of the following:

- The name, occupation, residence address, and business address (if any) of the surety (CCP 995.520(b)(1))
- A statement that the surety is a resident, and either an owner of real property or householder, within the state (CCP 995.520(b)(2))
- A statement that the surety is worth the amount of the bond in real or personal property, or both, situated in this state, over and above all debts and liabilities, exclusive of property exempt from enforcement of a money judgment (CCP 995.520(b)(3))

If the bind exceeds $5,000, the affidavit shall also include:

- A description sufficient for identification of real and personal property of the surety situated in this state and the nature of the surety's interest therein that qualifies the surety on the bond (CCP 995.520(c)(1))
- The surety's best estimate of the fair market value of each item of property (CCP 995.520(c)(2))
- A statement of any charge or lien and its amount, known to the surety, whether of public record or not,

against any item of property (CCP 995.520(c)(3))
- Any other impediment or cloud known to the surety on the free right of possession, use, benefit, or enjoyment of the property (CCP 995.520(c)(4))

If the amount of the bond exceeds $10,000 and is executed by more than two sureties, the affidavit may state that the surety is worth less than the amount of the bond and the bond may stipulate that the liability of the surety is limited to the worth of the surety stated in the affidavit, so long as the aggregate worth of all sureties executing the bond is twice the amount of the bond. (CCP 995.520(d))

• • 6-31/650.00 Cash Deposit

In lieu of an undertaking, the creditor may deposit cash, bearer bonds and bearer notes of the United States or of the State of California, or other certificates as specified. (CCP 995.710)

• 6-31/700.00 Objections to Undertakings

The beneficiary may object to an undertaking based upon insufficiency of the sureties or the amount thereof. (CCP 995.920)

An objection to an undertaking must be:

- Made in writing (CCP 995.930(a))
- Made by noticed motion (CCP 995.930(a))
- Shall specify the precise grounds for the objection
  - If a ground for the objection is that the amount of the bond is insufficient, the notice of motion shall state the reason for the insufficiency and shall include an estimate of the amount that would be sufficient (CCP 995.930(a))
  - If a ground for the objection is that the value of property or an interest in property on which the amount of the bond is based exceeds the value estimated in the bond, the objection shall state the beneficiary's estimate of the market value of the property or interest in property (CCP 995.940(a))
- Made within 10 days after service of a copy of the undertaking on the beneficiary* (CCP 995.930(b))

*If the service was done by mail, the appropriate time for objecting is extended:

- Five days if the place of address is within the State of California (CCP 684.120(b)(1))
- Ten days if the place of address is outside the State of California but within the United States (CCP 684.120(b)(2))
- Twenty days if the place of address is outside the United States (CCP 684.120(b)(3))

• • 6-31/710.00 No Objection Made

If no objection is made within the time allowed, the beneficiary is deemed to have waived all objections except upon showing cause for failing to timely object. (CCP 995.930(c))

• 6-31/800.00 Hearing on Third Party Claim and/or Undertaking

Within 15 days, after a third party claim is filed with the levying officer, or after an undertaking is posted in favor of the creditor by the third party to release, either the creditor or the third person may petition the court for a hearing to determine the validity of the third party claim and the proper disposition of the property that is the subject of the claim. (CCP 720.310(a)) The proper court to hear the claim is the court which issued the writ. (CCP 680.160) A claim filed after a levy under a state warrant of collection may be heard in the superior court where the property levied on is located. (CCP 688.030(c))

Unless continued for good cause, the hearing shall be held within 20 days after the petition is filed, and may be held whether or not an undertaking has been filed. If a deposit has been made to pay off a third party claiming a security interest or lien, no hearing is held. (CCP 720.310)

At least 15 calendar days prior to the hearing, the petitioner shall serve and file notice of the time and place of the hearing, either personally or by mail, on the creditor or third person (whichever is not the petitioner) and the debtor, and file a copy of the notice with the levying officer. (CCP 720.320, 1005(a)(7))

• • 6-31/810.00 Hearing Upon Objection

Unless the parties otherwise agree, the hearing on an objection shall be held not less than two or more than five days after service of the notice of motion. (CCP 995.950(a))

• • 6-31/820.00 Levying Officer Duties

Promptly after receipt of the notice of hearing, the levying officer shall file with the court the third party claim, any statement filed with the third party claim, any undertaking filed by the creditor or third person, and any notice in lieu of an undertaking filed by a public entity. (CCP 720.330)

• • 6-31/830.00 Stay

After the filing of a third party claim, upon motion of the creditor, debtor, or third person, the court may make an order staying the sale of the property under a writ or enjoining any transfer or other disposition of the property levied upon under a writ until proceedings for the determination of the rights of a third person can be commenced and prosecuted to termination. (CCP 720.380)

Unless the levying officer is served with a court order, the right to a hearing, or fact that one is pending, has no effect on property being held under the levy. The property should be sold, delivered, or released based on whether or not proper undertakings have been filed, and justification of sureties has been completed or waived. However, it would be prudent to continue to hold the property upon receipt of a court order determining the claim or sufficiency of the undertaking.

• • 6-31/840.00 No Dismissal Without Consent

If the petition for a hearing was made by the third person, neither the petition nor the proceedings pursuant thereto may be dismissed without the consent of the creditor. If the petition for a hearing was made by the creditor, neither the petition nor the proceedings pursuant thereto may be dismissed without the consent of the third person. (CCP 720.370)

• • 6-31/850.00 Court Determination

At the conclusion of the hearing, the court shall give judgment determining the validity of the third party claim and may order the disposition of the property or its proceeds in accordance with the respective interests of the parties. (CCP 720.390) The judgment is conclusive between the parties to the proceeding

If it is determined in the hearing on the third party claim that the debtor has an interest in the property that may be levied upon or otherwise applied to the satisfaction of the judgment, and the property has been released for failure of the creditor to file an undertaking or because the third person filed an undertaking to release, the property may be again levied upon or otherwise sought to be applied to the satisfaction of the judgment. (CCP 720.430)

If the property in the possession of the levying officer is ordered released by the court, follow the procedures in 6-31/530.00 Party To Whom Property is Released, unless otherwise ordered by the court.

• • 6-31/860.00 Appeal of Judgment

An appeal may be taken in the manner provided for appeals from the court in which the proceeding takes place. (CCP 720.420)

• • -31/900.00 Undertaking Disposition Upon Return of Writ

If an undertaking filed with the levying officer remains in the officer’s possession at the time the writ is to be returned, the levying officer shall file the undertaking with the court at the time the writ is returned.

(CCP 720.800)