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))