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))