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))