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)