

Judgment Enforcement Issues for Trust and Estate Practitioners

(“That Isn’t a Good Idea and I Can’t Help You with That”)

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But I don't defend debtors and I don't collect from the dead. Do “Judgment Enforcement” Issues Affect Me?

- **Planning** in anticipation of death, incapacity, and transferring wealth to the next generation.
- Advising clients in the process of **administering** property held in a fiduciary capacity (i.e., decedent's estates, trusts, conservatorships, and guardianships).
- But also:
 - *Running a business.*
 - *Investing in a business.*
 - *Engaging in daily life.*
 - *Taking care of someone else.*
 - *Handling ordinary civil and family law litigation.*

Background

- The phrase “Creditors’ Rights” refers to the legal means and procedures by which money or property is collected to satisfy debt or judgment.
- “Debt” is something, typically money, that is owed or due to another, and is incurred generally and regularly on a daily basis.
- **CONSUMERS**
 - Credit cards, mortgages, student loans...
 - Voluntary – retail transaction for food, clothing, shelter, education, insurance
 - Involuntary – accidents, medical, taxes, family obligations (dependents, spouses, etc.)
- **NON-CONSUMER (BUSINESS/COMMERCIAL)**
 - Business transactions
 - Investors

Complicating Factors

- Secured Debts
- Non-money obligations
- Taxes
- Federal obligations
- Other priority obligations (spousal support (alimony), child support, etc.)
- Consumer Rights
- Student loans
- Regulated industries
- Changes in the law

Overview of Debt Collection (Pre-Lawsuit)

- **Secured Debt Collection (foreclosure)**
 - Non-judicial versus judicial
 - Recourse versus non-recourse
- **Unsecured Debt Collection**
 - Regular invoicing and written demands for payment; “Dunning” letters (*from the verb "dun," meaning to "make persistent demands upon another for payment of a debt"*)
 - Heavily regulated at state and federal levels
 - Differences between CONSUMER versus NON-CONSUMER debt collection practices
- **Result is either collection, or not...**

Overview of Civil Remedies for Debt Collection

- **Lawsuit (civil)**
 - Formal action filed in a court of competent subject matter jurisdiction, with personal jurisdiction over the debtor-defendant, seeking to validate the debt and convert it to an enforceable judgment
- **Pre-Judgment (attachment)**
 - Pre-judgment remedies enable creditors to preserve the value of potential judgments after a lawsuit is filed but before it has been concluded by preventing a debt from transferring, encumbering, dissipating, or concealing assets which would otherwise be available to satisfy a later judgment. The attachment remedy allows certain types of creditors holding fixed or ascertainable unsecured non-consumer claims, or claims secured only by personal property, to create judicial liens encumbering a debtor's property.
 - Resulting judgment and execution relates back in time to the date of the creation of an attachment lien.
 - California's Attachment Law. See Code of Civ. Proc. §§481.010-493.060.
- **Judgment**
 - The final judicial decision defining the rights and obligations as between the creditor and debtor.

Judgment Enforcement (California)

- California's **Enforcement of Judgments Law (EJL)** is Title 9, Part 2 of the Code of Civil Procedure, enacted at Code of Civ. Proc. §§680.010-724.260.
 - See Code of Civ. Proc. §680.010 ("*This title shall be known and may be cited as the Enforcement of Judgments Law.*").
- A "**judgment**" is a decree or decision of a court or judge. See Code of Civ. Proc. 680.230.
- "**Money judgment**" means that part of a judgment that "requires the payment of money." Code of Civ. Proc. §680.270.

What is the “Goal” of Judgment Enforcement?

- ***The goal is payment, i.e., collecting the debt or amount owed.***
 - Unsecured creditors, with rare exception, are not permitted self-help remedies.
 - There is no longer any “debtor’s prison.”
 - Judgment is simply the means to the end, and judgment enforcement is the process of doing so.
 - Warning -- the state and federal governments often use different rules.
- **Satisfaction of Judgment** – the creditor obligated to extinguish the judgment through formal process (usually an affidavit filed with the court which entered judgment, i.e., "Satisfaction") when a money judgment is paid.
- **Interest, costs, attorneys’ fees, etc.**

Judgment Enforcement - Definitions

- **WHO** IS INVOLVED:

- “**Judgment Creditor**” means the person in whose favor a judgment is rendered or, if there is an assignee of record, means the assignee of record. Code of Civ. Proc. §680.240
- “**Judgment Debtor**” means the person against whom a judgment is rendered. Code of Civ. Proc. §680.250

Judgment Enforcement - Definitions

- **WHAT** IS INVOLVED:

- "Except as otherwise provided by law, **all property of the judgment debtor** is subject to enforcement of a money judgment." Code of Civ. Proc. §695.010(a).
 - However, certain types of property are not subject to execution:
 - Alcoholic beverage license
 - Interests in a partnership or membership in an LLC
 - Franchises granted by public entities
 - Assets held in trust, conservatorship, etc.
 - Rather than being subject to execution, other legal procedures are available to the judgment creditor to obtain appropriate relief and apply some or all of the judgment debtor's interest or property towards satisfaction of the judgment, i.e., charging order(s), appointment of receiver, etc.

Judgment Enforcement - Procedures

- **WHAT** IS DONE:
 - "**Execution**" is the process by which money judgments are enforced. Code of Civ. Proc. §699.010.
 - Generally, the execution process provides for the "**levy**" (seizure) of assets by delivery of **Writ of Execution** by court-appointed levying officers, whether in the hands of a judgment debtor or someone else, and for selling or disposing of the same, so as to apply the money or proceeds towards payment and satisfaction of the balance due on the judgment. See Code of Civ. Proc. §§699.010-701.830.
 - "Except as otherwise provided by law, all property that is subject to enforcement of a money judgment pursuant to [Code of Civ. §695.010, above] is subject to levy under a writ of execution to satisfy a money judgment." Code of Civ. Proc. §699.710.

Judgment Enforcement - Procedures

- **HOW** IS IT DONE:
 - Obtain and record **judicial liens**
 - Abstract of Judgment
 - **Levy** under Writ of Execution
 - Garnishment
 - Examination under oath [i.e., **Order to Appear** for Examination to aid in enforcement of judgment (“**ORAP**”)]
 - Turnover orders, charging orders, and assignment orders
 - Receivers
 - Written discovery

EJ-130

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (P/P/R): <input type="checkbox"/> ATTORNEY FOR: <input type="checkbox"/> ORIGINAL JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD	STATE BAR NO.: FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: <input type="checkbox"/> EXECUTION (Money Judgment) WRIT OF <input type="checkbox"/> POSSESSION OF <input type="checkbox"/> Personal Property <input type="checkbox"/> SALE <input type="checkbox"/> Real Property	CASE NUMBER: <input type="checkbox"/> Limited Civil Case (including Small Claims) <input type="checkbox"/> Unlimited Civil Case (including Family and Probate)

1. To the Sheriff or Marshal of the County of _____
 You are directed to enforce the judgment described below with daily interest and your costs as provided by law.

2. To any registered process server: You are authorized to serve this writ only in accordance with CCP 699.080 or CCP 715.040.

3. (Name) _____
 is the original judgment creditor assignee of record whose address is shown on this form above the court's name.

4. Judgment debtor (name, type of legal entity if not a natural person, and last known address): _____
 Writ of Possession/Writ of Sale information on next page.
 This writ is issued on a sister-state judgment.
For items 11-17, see form MC-012 and form MC-013-INFO.

11. Total judgment (as entered or renewed) \$ _____
12. Costs after judgment (CCP 685.090) \$ _____
13. Subtotal (add 11 and 12) \$ _____
14. Credits to principal (after credit to interest) \$ _____
15. Principal remaining due (subtract 14 from 13) \$ _____
16. Accrued interest remaining due per CCP 685.050(b) (not on GC 6103.5 fees) \$ _____
17. Fee for issuance of writ (per GC 70626(a)(1)) \$ _____
18. Total amount due (add 15, 16, and 17) \$ _____

19. Levying officer:
 a. Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) _____ \$
 b. Pay directly to court costs included in 11 and 17 (CC 6103.5, 69837, CCP 699.520(j)) _____ \$

20. The amounts called for in items 11-19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

5. Judgment entered on (date) _____
 (See type of judgment in item 22.)

6. Judgment renewed on (date) _____

7. Notice of sale under this writ:
 a. has not been requested.
 b. has been requested (see next page).

8. Joint debtor information on next page

BEHALF OF _____
 Date: _____ Clerk, by _____ Deputy

NOTICE TO PERSON SERVED: SEE PAGE 3 FOR IMPORTANT INFORMATION.

EJ-130

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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21. Additional judgment debtor(s) (name, type of legal entity if not a natural person, and last known address):

22. The judgment is for (check one):
 a. wages owed.
 b. child support or spousal support.
 c. other.

23. Notice of sale has been requested by (name and address):

24. Joint debtor was declared bound by the judgment (CCP 989-994)
 a. on (date) _____ a. on (date) _____
 b. name, type of legal entity if not a natural person, and last known address of joint debtor: _____ b. name, type of legal entity if not a natural person, and last known address of joint debtor: _____

c. Additional costs against certain joint debtors are itemized below on Attachment 24c.

25. (Writ of Possession or Writ of Sale) Judgment was entered for the following:
 a. Possession of real property. The complaint was filed on (date) _____
 (Check (1) or (2). Check (3) if applicable. Complete (4) if (2) or (3) have been checked.)

(1) The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.

(2) The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.

(3) The unlawful detainer resulted from a foreclosure sale of a rental housing unit. (An occupant not named in the judgment may file a Claim of Right to Possession at any time up to and including the time the levying officer returns to effect eviction, regardless of whether a Prejudgment Claim of Right to Possession was served.) (See CCP 415.46 and 1174.3(a)(2).)

(4) If the unlawful detainer resulted from a foreclosure (item 25a(3)), or if the Prejudgment Claim of Right to Possession was not served in compliance with CCP 415.46 (item 25a(2)), answer the following:
 (a) The daily rental value on the date the complaint was filed was \$ _____
 (b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify): _____

Plaintiff/Petitioner Defendant/Respondent	EJ-130 CASE NUMBER
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25. b. Possession of personal property.
 If delivery cannot be had, then for the value (itemize in 25e) specified in the judgment or supplemental order.
c. Sale of personal property.
d. Sale of real property.
e. The property is described below on Attachment 25c.

NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will demand that you turn over the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED. If the residential property that you are renting was sold in a foreclosure, you have additional time before you must vacate the premises. If you have a lease for a fixed term, such as for a year, you may remain in the property until the term is up. If you have a periodic lease or tenancy, such as from month-to-month, you may remain in the property for 90 days after receiving a notice to quit. A blank form *Claim of Right to Possession and Notice of Hearing* (form CP10) accompanies this writ. You may claim your right to remain on the property by filing it out and giving it to the sheriff or levying officer.

EXCEPTION IF YOU WERE NOT SERVED WITH A FORM CALLED PREJUDGMENT CLAIM OF RIGHT TO POSSESSION. If you were not named in the judgment for possession and you occupied the premises on the date on which the unlawful detainer case was filed, you may object to the enforcement of the judgment against you. You must complete the form *Claim of Right to Possession and Notice of Hearing* (form CP10) and give it to the sheriff or levying officer. A blank form accompanies this writ. You have this right whether or not the property you are renting was sold in a foreclosure.

AT-167/EJ-162

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (Name): FAX NO.:	LEVYING OFFICER (Name and Address)
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	LEVYING OFFICER FILE NO.:
MEMORANDUM OF GARNISHEE (Attachment-Enforcement of Judgment)	COURT CASE NO.:

NOTICE TO PERSON SERVED WITH WRIT AND NOTICE OF LEVY OR NOTICE OF ATTACHMENT: This memorandum must be completed and mailed or delivered to the levying officer within 10 days after service on you of the writ and notice of levy or attachment unless you have fully complied with the levy. Failure to complete and return this memorandum may render you liable for the costs and attorney fees incurred in obtaining the required information.
 — RETURN ALL COPIES OF THIS MEMORANDUM TO THE LEVYING OFFICER —

This memorandum does not apply to garnishment of earnings.

- a. Garnishee (name)
 b. Address.
- Judgment Creditor (name).
- (Check if applicable.) The garnishee holds neither any property nor any obligations in favor of the judgment debtor.
- If you will not deliver to the levying officer any property levied upon, describe the property and the reason for not delivering it.

- For writ of execution only.** Describe any property of the judgment debtor not levied upon that is in your possession or under your control.

(Continued on reverse)

Page 1 of 2

SHORT TITLE:	LEVYING OFFICER FILE NO.:	CASE NUMBER:
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AT-167/EJ-152

6. If you owe money to the judgment debtor which you will not pay to the levying officer, describe the amount and the terms of the obligation and the reason for not paying it to the levying officer:

7. Describe the amount and terms of any obligation owed to the judgment debtor that is levied upon but is not yet due and payable:

8. For writ of execution only. Describe the amount and terms of any obligation owed to the judgment debtor that is not levied upon:

9. Describe any claims and rights of other persons to the property or obligation levied upon that are known to you and the names and addresses of the other persons:

DECLARATION OF GARNISHEE

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) (SIGNATURE)

If you need more space to provide the information required by this memorandum, you may attach additional pages.
 Total number of pages attached:

AT-167/EJ-152 (Rev. July 1, 2013)

MEMORANDUM OF GARNISHEE
 (Attachment-Enforcement of Judgment)



Page 2 of 2

EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS

EJ-155

The following is a list of assets that may be exempt from levy in enforcing a judgment.

Exemptions are found in the United States Code (USC) and in the California codes, primarily in the Code of Civil Procedure (CCP). Because of periodic changes in the law, the list may not include all exemptions that apply in your case. The exemptions may not apply in full or under all circumstances. Some are not available after a certain period of time. You or your attorney should read the statutes.

If you believe the assets that are being levied on are exempt, file the claim of exemption form that you received with the Notice of Levy packet.

AMOUNT OF EXEMPTIONS: For the exemption amount, please refer to the code section listed below for each type of property. The current amounts of certain exemptions are listed in Current Dollar Amounts of Exemptions From Enforcement of Judgments (form EJ-156). The amounts of some of the exemptions are amended every three years and become effective immediately on April 1 under the provisions of Code of Civil Procedure section 703.150.

Type of Property	Code and Section	Type of Property	Code and Section
ABLE Accounts	Welf & I C § 4680(c)	Benefit Payments (cont.)	
Accounts (See Deposit Accounts)		Retirement Benefits	CCP § 704.180
Appliances	CCP § 704.020	Retirement Benefits and Contributions:	
Art and Heirlooms	CCP § 704.040	Private	CCP § 704.115
Automobiles	CCP § 704.010	Public	CCP § 704.110
BART District Benefits	CCP § 704.110	Segregated Benefit Funds	Inv C § 10.490.5
	Pub Util C § 23896	Social Security Benefits	42 USC § 407
Benefit Payments		State Benefits	CCP § 704.120
BART District Benefits	CCP § 704.110	Supplemental Security Income	42 USC § 1383
Charity	CCP § 704.170		42 USC § 407(b)
Civil Service Retirement Benefits (Federal)	5 USC § 8346	Transit District Retirement Benefits (Monocade and Contra Costa Counties)	CCP § 704.110
County Employees Retirement Benefits	CCP § 704.110		Pub Util C § 25337
Govt C § 31452		Unemployment Benefits and Contributions	CCP § 704.120
Disability Insurance Benefits	CCP § 704.130	Veterans Benefits	38 USC § 5201
Fee Service Retirement Benefits	CCP § 704.110	Veterans Medal of Honor Benefits	38 USC § 1562
Govt C § 32210		Veterans Payments	CCP § 704.170
Fraternal Organization Funds Benefits	CCP § 704.130	Workers Compensation	CCP § 704.160
CCP § 704.170		Boats	CCP § 704.060
Health Insurance Benefits	CCP § 704.130	Building Materials (Residential)	CCP § 704.020
Ingestion System Retirement Benefits	CCP § 704.110	Business	CCP § 695.060
Judges Survivors Benefits (Federal)	28 USC § 376(n)	Licenses	CCP § 699.720(x)(1)
Legislators Retirement Benefits	CCP § 704.110	Tools of Trade	CCP § 704.060
Govt C § 9353.3		Cars and Trucks (including proceeds)	CCP § 704.010
Life Insurance Benefits		Cash	CCP § 704.070
Group	CCP § 704.100	Cemeteries:	
Individual	CCP § 704.100	Land Proceeds	Health & SC § 7925
Lighthouse Keepers		Fidei	CCP § 704.200
Seafaring Spouse Benefits	33 USC § 775	Charity	CCP § 704.170
Longshore & Harbor Workers Compensation or Benefits	33 USC § 916	Claims, Actions & Awards:	
Military Benefits:		Personal Injury	CCP § 704.140
Retirement	10 USC § 1440	Worker's Compensation	CCP § 704.160
Survivors	10 USC § 1450	Wrongful Death	CCP § 704.180
Municipal Utility District Retirement Benefits	CCP § 704.110	Clawing	CCP § 704.600
Pub Util C § 12337		Contemplation Proceeds	CCP § 704.720(b)
Peace Officers Retirement Benefits	CCP § 704.110	County Employees Retirement Benefits	CCP § 704.110
Govt C § 31015		Govt C § 31452	
Pension Plans (and Death Benefits):		Damages (See Personal Injury and Wrongful Death)	
Private	CCP § 704.115	Deposit Accounts:	
Public	CCP § 704.110	Deposit Accounts (generally)	CCP § 704.220
Public Assistance	CCP § 704.170		
Welf & I C § 17429			

Form Adopted for Mandatory Use
 Judicial Council of California
 EJ-155 (Rev. September 1, 2009)



EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS

Page 1 of 2

Code of Civil Procedure,
 §§ 681.105(a), 700.010
 www.courtinfo.ca.gov

EXEMPTIONS FROM THE ENFORCEMENT OF JUDGMENTS
(Continued)

Type of Property	Code and Section	Type of Property	Code and Section
Deposit Accounts (cont.)		Military Personnel Property	50 USC § 3934
Deposit Accounts (Savings)	CCP § 704.025	Motor Vehicle (Including Proceeds)	CCP § 704.010
Economic Trust Funds	Fin. C § 17410		CCP § 704.060
Social Security Direct Deposits	CCP § 704.080	Municipal/Utility District Retirement Benefits	CCP § 704.110
Direct Deposit Account			Pub. Util. C § 12337
Social Security Supplemental Security Income	CCP § 704.080	Police Officers Retirement Benefits	CCP § 704.110
Public Benefits	CCP § 704.080		Gov. C § 31913
Disability Insurance Benefits	CCP § 704.130	Pension Plans:	
Dwelling House	CCP § 704.740	Private	CCP § 704.115
Earnings	CCP § 704.070	Public	CCP § 704.110
	CCP § 706.050	Personal Injuries	CCP § 704.020
	16 USC § 1673(a)	Personal Injury Actions or Damages	CCP § 704.140
Educational Grant	Ed. C § 21116	Prisoner's Funds	CCP § 704.090
Employment Bonds	Lab. C § 404	Property (Not Subject to Enforcement of Money Judgments)	CCP § 704.210
Federal Emergency Management Agency (FEMA) Funds	CCP § 704.230	Prosthetic and Orthopedic Devices	CCP § 704.050
Financial Assistance:		Provisions (for Residence)	CCP § 704.020
Charity	CCP § 704.170	Public Assistance	CCP § 704.170
Public Assistance	Weil & I C § 17409		Weil & I C § 17409
Student Aid	CCP § 704.190	Public Employees:	
Waiver (for Public Assistance)	CCP § 704.110	Death Benefits	CCP § 704.110
File Service Retirement	Gov. C § 32210	Pension	CCP § 704.110
Fraternity Organizations		Retirement Benefits	CCP § 704.110
Funds and Benefits	CCP § 704.130	Vacation Credits	CCP § 704.113
Fuel for Residence	CCP § 704.020	Railroad Retirement Benefits	45 USC § 231a
Furniture	CCP § 704.020	Railroad Unemployment Insurance	45 USC § 352(a)
General Assignment for Benefit of Creditors	CCP § 1301	Relocation Benefits and Contributions:	
Health Aids	CCP § 704.050	Private	CCP § 704.115
Health Insurance Benefits	CCP § 704.130	Public	CCP § 704.110
Home:			Inv. C § 10499.5
Building Materials	CCP § 704.030	Segregated Benefit Funds	Inv. C § 10499.6
Dwelling House	CCP § 704.740	ServiceMembers Property	50 USC § 552(b)
Homestead	CCP § 704.720	Social Security	42 USC § 407
Householder	CCP § 704.710	Social Security Direct Deposit Account	CCP § 704.080
Mobility	CCP § 704.710	Strike Benefits	CCP § 704.120
Homestead	CCP § 704.720	Supplemental Security Income	42 USC § 1382(c)
Household Furnishings	CCP § 704.730	Student Aid	CCP § 704.190
Insurance:		Tools of Trade	CCP § 704.090
Disability Insurance	CCP § 704.130	Transit District Retirement Benefits (Alameda and Contra Costa Counties)	CCP § 704.110
Federal Benefit Society	CCP § 704.110	Travelers Check Sales Proceeds	Pub. Util. C § 25337
Group Life	CCP § 704.100	Unemployment Benefits and Contributions	CCP § 704.120
Health Insurance Benefits	CCP § 704.130	Unions	CCP § 704.090
Individue	CCP § 704.100	Vacation Credits (Public Employees)	CCP § 704.110
Insurance Proceeds:		Veterans Benefits	38 USC § 5301
Motor Vehicle	CCP § 704.010	Veterans Medal of Honor Benefits	38 USC § 1562
Retirement Benefits	CCP § 704.110	Wages	CCP § 704.070
Judges Survivors Benefits (Federal)	CCP § 704.040	Workers Compensation	Weil & I C § 17409
Legators Retirement Benefits	20 USC § 376(e)	Workers Compensation Claims or Awards	CCP § 704.160
Licenses	CCP § 704.110	Wrongful Death Actions or Damages	CCP § 704.150
Lighthouse Keepers Surviving Spouses Benefit	33 USC § 775		
Longshore and Harbor Workers Compensation or Benefits	33 USC § 916		
Military Benefits:			
Retirement	10 USC § 1440		
Survivors	10 USC § 1450		

CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS
Code of Civil Procedure sections 703.140(b) and 704.010 et seq.

EXEMPTIONS UNDER SECTION 703.140(b)

The following lists the current dollar amounts of exemptions from enforcement of judgment under Code of Civil Procedure section 703.140(b) used in a case under title 11 of the United States Code (bankruptcy).

These amounts are effective April 1, 2019. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amount is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(d).)

Code Civ. Proc., § 703.140(b)	Type of Property	Amount of Exemption
(1)	The debtor's aggregate interest in real property or personal property that the debtor or a dependent of the debtor uses as a residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence,	\$ 29,275
(2)	The debtor's interest in one or more motor vehicles	\$ 5,850
(3)	The debtor's interest in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor (value is of any particular item)	\$ 725
(4)	The debtor's aggregate interest in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor	\$ 1,750
(5)	The debtor's aggregate interest, plus any unused amount of the exemption provided under paragraph (1), in any property	\$ 1,550
(6)	The debtor's aggregate interest in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor	\$ 8,725
(8)	The debtor's aggregate interest in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent	\$ 15,650
(11)(D)	The debtor's right to receive, or property traceable to, a payment on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent	\$ 29,275

Information for Judgment Creditor Regarding Service

If you want to be able to ask the court to enforce the order on the judgment debtor or any third party, you must have a copy of the order personally served on the judgment debtor by a sheriff, marshal, registered process server, or the person appointed in item 3 of the order at least 10 calendar days before the date of the hearing, and have a proof of service filed with the court.

IMPORTANT NOTICES ABOUT THE ORDER**APPEARANCE OF JUDGMENT DEBTOR (ENFORCEMENT OF JUDGMENT)**

NOTICE TO JUDGMENT DEBTOR If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

APPEARANCE OF A THIRD PERSON (ENFORCEMENT OF JUDGMENT)

(1) NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the judgment creditor in this proceeding.

(2) NOTICE TO JUDGMENT DEBTOR The person in whose favor the judgment was entered in this action claims that the person to be examined under this order has possession or control of property that is yours or owes you a debt. This property or debt is as follows (*describe the property or debt*):

If you claim that all or any portion of this property or debt is exempt from enforcement of the money judgment, you must file your exemption claim in writing with the court and have a copy personally served on the judgment creditor not later than three days before the date set for the examination. You must appear at the time and place set for the examination to establish your claim of exemption or your exemption may be waived.

APPEARANCE OF A THIRD PERSON (ATTACHMENT)

NOTICE TO PERSON SERVED If you fail to appear at the time and place specified in this order, you may be subject to arrest and punishment for contempt of court, and the court may make an order requiring you to pay the reasonable attorney fees incurred by the plaintiff in this proceeding.

APPEARANCE OF A CORPORATION, PARTNERSHIP, ASSOCIATION, TRUST, OR OTHER ORGANIZATION

It is your duty to designate one or more of the following to appear and be examined: officers, directors, managing agents, or other persons who are familiar with your property and debts.



Request for Accommodations. Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before your hearing. Contact the clerk's office for *Request for Accommodation* (form MC-410). (Civil Code, § 54.8.)

AT-138/EJ-125 (Rev. January 1, 2015)

**APPLICATION AND ORDER FOR
APPEARANCE AND EXAMINATION
(Attachment—Enforcement of Judgment)**

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Page 2 of 2

Judgment Enforcement - Procedures

- **Special Judgment Enforcement Procedures:**

- Revocable trusts:

- interest of a judgment debtor-beneficiary in a trust may be subject to enforcement of a money judgment through the procedures set forth in Code of Civ. Proc. §709.010.
 - Direct levy (seizure) under Writ of Execution of assets in trust is prohibited. Instead, the beneficial interest of the judgment debtor in a trust may be subject to enforcement of judgment pursuant only by way of a petition to the court. The judgment debtor's interest in the trust may be applied to the satisfaction of the money judgment by such means as the court, in its discretion, determines are proper, including but not limited to imposition of a lien on or sale of the judgment debtor's interest, collection of trust income, and liquidation and transfer of trust property by the trustee.

- Conservatorship estates:

- "Property in a...conservatorship estate" is not subject to execution. Code of Civ. Proc. §699.720(b)(10). Instead, the creditor must file a petition directly with the court in which the proceedings are pending, requesting an order compelling the Conservator of the Estate to pay the debt. Code of Civ. Proc. §709.030. See *Neiman Marcus v. Tait* (1995) 33 Cal.App.4th 271.
 - The "petition" method is generally set forth in Prob. Code §§1400 et seq. and specifically detailed in the provisions of Prob. Code §§2400 et seq.

Fraudulent Transfers

- **The Law of Fraudulent Transfers (a.k.a. Fraudulent Conveyances, etc.)**

Various common law and statutory rules to set aside transactions or transfers of assets. The goal is to prevent debtors from giving away their assets before creditors can get to them, or to unfairly deprive creditors of an effective remedy under circumstances where the debtors still enjoy the benefits of ownership, possession, or control of those assets. There are 2 ‘flavors’:

- **Actual** – intent to evade, defraud, or harm a known or reasonably ascertainable creditor.
 - Direct proof does not usually exist; usual proved by circumstantial evidence (“*Badges of Fraud*”).
 - To/from insiders/family members, retention of control after transfer, knowledge of creditor, extent of the assets transferred (some or all of the debtor’s assets), secrecy and concealment, etc.
- **Constructive** (Constructively Fraudulent) – does NOT require proof of specific intent.
 - The economics of the transaction determine that the debtor is left insolvent (unable to satisfy creditor obligations) and did not receive reasonably equivalent value in return.

- Effective 2016 – California’s “**Uniform Voidable Transactions Act**” enacted at Civ. Code §§3439 et seq.

Fraudulent Transfers

- **The scope of California's Uniform Voidable Transactions Act is broad.**
- As provided in Civ. Code §3439.01:
 - **“Asset”** means property of a debtor.
 - **“Claim”** means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
 - **“Property”** means anything that may be the subject of ownership.
 - **“Transfer”** means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

Fraudulent Transfers

- **This is not just a California matter - every state has similar laws.**
- **And, of course, there is also federal law, i.e., bankruptcy.**
 - United States Bankruptcy Code, 11 U.S.C. §548.
 - In bankruptcy proceedings, a trustee is appointed to administer the debtor's estate in a fair and orderly manner.
 - The bankruptcy 'estate' is comprised of those assets of the debtor in which creditors have or should have an interest.
 - The bankruptcy trustee is given the power to set aside ("avoid") certain transfers of the debtor's assets out of the estate that occurred before the initiation of the bankruptcy and that unfairly placed assets beyond the creditor's reach, including both actual and constructively fraudulent transfers.

Ethical Issue

- California Rules of Professional Conduct [CPRC] Rule 8.4:

It is **professional misconduct for a lawyer to:**

(c) engage in conduct **involving dishonesty, fraud, deceit,** or reckless or intentional misrepresentation.

(d) engage in conduct that is **prejudicial to the administration of justice.**

- CPRC Rule 1.2.1:

(a) A lawyer ***shall not counsel a client to engage, or assist a client in conduct*** that the lawyer knows is criminal, fraudulent, or a violation of any law, rule, or ruling of a tribunal.

(b) Notwithstanding paragraph (a), a lawyer may: (1) discuss the legal consequences of any proposed course of conduct with a client; and (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of a law, rule, or ruling of a tribunal.

Ethical Issue

- **A California attorney may neither suggest to a client that a fraudulent transfer would be a good thing, nor assist the client with that fraudulent transfer.**
 - Comment [2] to CPRC Rule 1.2.1
 - The rules apply even if the client is already engaged in the process of making a fraudulent transfer before seeking legal advice from the attorney.
 - Although the CPRC is newly-amended (2018), this standard is not.
 - *Townsend v. State Bar* (1948) 32 Cal.2d 592
 - California attorney was suspended for 3 years for advising client to transfer assets to mother to avoid the collection of a debt.

Other Concerns

- ***What is the worst that can happen? The transfer is merely avoided (set aside), right?***
- Making a fraudulent transfer in California is a **crime**. See Pen. Code §§154, 155 & 531.
- **Loss of Attorney-Client Communication Privilege**
 - **“Crime-Fraud Exception”** - Evid. Code §956
 - There is no attorney-client communication privilege “if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.” *General Dynamics Corp. v. Superior Court* (1994) 7 Cal.4th 1164, 1191.
 - Important to note is that “it is the intent of the client upon which attention must be focused and not that of the lawyers.” *State Farm Fire & Casualty Co. v. Superior Court* (1997) 54 Cal.App.4th 625, 645.
 - **Same under federal law.** *Clarke v. United States* (1933) 289 U.S. 1, 15 (a client who consults with an attorney for advice in the commission of a fraud is not privileged under the attorney-client communications privilege).
 - **Hence, an attorney may be compelled to obtain confidential communications between debtors and their attorneys that would ordinarily be privileged.**

Trust and Estate Practitioners

- Estate planning techniques traditionally used by experienced practitioners that are not, solely in and of themselves, improper or illegal:
 - Planning for death and incapacity.
 - Releases, disclaimers, and exercises of powers.
 - Creating structures to hold assets and receive income in tax-advantage manner.
 - Creating business entities in debtor-friendly jurisdictions.
 - Planning for contingencies in the event of economic decline or other failure.
 - Planning for business succession.
 - Appointing fiduciaries to hold assets for privacy protection.
 - Converting assets not exempt from the enforcement of judgment to those that are exempt.
 - Transferring assets to other jurisdictions for convenience, ease of administration, reduction in tax obligations, etc.

Crossing the Line

- ***In re Cutuli* (2013) 2013 Bankr.LEXIS 3843, 2013 WL 5236711**
 - Dispute arose from partners end of their business relationship (a Napa Valley, California winery). Litigation ensued, and one partner obtained a \$6 million dollar judgment against the other.
 - After substantial efforts were undertaken to evade the judgment by the judgment debtor and her fiancé (thereafter her spouse).
 - Eventually the judgment debtor and her spouse relocated to Florida and filed for bankruptcy protection.
 - Although it was the clients that intended to hinder judgment enforcement, the various courts involved in these proceedings after entry of the state court judgment identified that the aggressive steps taken to evade satisfaction of the judgment were undertaken with the assistance of attorneys.

Crossing the Line

- ***In re Cutuli* – what happened?**

- Although this was a U.S. Bankruptcy Court decision, it reviewed the underlying judgment as well as the extensive post-judgment proceedings that took place in the California courts.
- The bankruptcy judge noted that the California courts made extensive factual findings that the debtor and others, including her spouse, were engaged in a “far-reaching scheme to defraud creditors including findings of ‘actual’ or ‘intentional’ as well as ‘constructive’ fraud.”
 - They hired attorneys who assisted in transactions that appeared to be aggressive estate and financial planning transactions. This involved transactions such as transferring valuable assets for nominal amounts, encumbering valuable property with mortgages that were beyond the Debtors’ ability to repay, hiding assets in shell entities formed in debtor friendly jurisdictions, putting money offshore, gifting valuable property without consideration, etc.
 - They hired a law firm that marketed itself as asset protection experts. Those lawyers recommended the formation of Wyoming LLC’s as well as offshore bank accounts in the Isle of Man.
 - Interestingly, the Debtors were already in the process of seeking offshore bank accounts and forming shell entities in debtor-friendly environments when they decided to engage these lawyers.

Crossing the Line

- ***In re Cutuli* – what happened?**

- The issue was brought to a head by the bankruptcy trustee's subpoena *duces tecum* to the attorneys that asked for production of records including communications between the debtor and her attorneys. The attorneys objected and claimed, among other things, the protections of the attorney-client communication privilege. Redacted information was provided to the bankruptcy judge in order to determine whether the privilege should apply to prohibit production of records requested in the subpoena, for which the judge noted:

“Electronic communications located at the direction of the bankruptcy trustee included emails between [DEBTORS and LAW FIRM] purporting to relate to ‘offshore info’ and ‘information on the WY LLC in regards (sic) to asset protection.’ Other emails request contact information for other attorneys in other states. Additionally, the unredacted portions of documents submitted by [LAW FIRM] in their opposition reference ‘investments,’ ‘funding,’ ‘trusts,’ a ‘portfolio,’ various ‘assignments,’ ‘Acts’ and numerous entries that the Court believes relate to the management of assets and perhaps the creation of one or more LLCs or other corporate structures.”

- The attorneys lost and production of the records was compelled.

Crossing the Line

- ***In re Cutuli* – lessons learned:**

(quotes from last page of decision)

- Federal law applied but the judge relied upon underlying California trial court rulings.
- “Whether [LAW FIRM] was aware of the reasons the [DEBTORS] used their services is not relevant to the application of the crime-fraud exception and this Court makes no finding on that issue. **The fact that [LAW FIRM’s] services were used during (and prior to) a scheme involving the commission of multiple acts of fraud related to the information obtained through said services is sufficient.** Therefore, the Court overrules [LAW FIRM’s] objections to the subpoena under the crime-fraud exception to the attorney-client privilege.”
- **“Bankruptcy courts have held that merely raising an inference that transfers may have been fraudulent is sufficient to invoke the crime-fraud exception to the attorney-client privilege.”**

Disciplinary Matters

- ***Matter of Morris (2013) 2013 Calif.Op.LEXIS 17, 2013 WL 6598701***
 - Decision of the Review Department of the State Bar Court. After learning about a default judgment entered against his client, a California corporation, the attorney created promissory note and recorded a deed of trust against the corporation's only asset to secure his past and future attorney fees and also recorded a second deed of trust on behalf of the corporation's sole shareholder to secure alleged unpaid loans despite never confirming the validity of the purported obligations.
 - In a lawsuit brought by the judgment creditor, the trial court ruled that both deeds of trust were voidable as fraudulent conveyances because they were created to encumber the property to hinder and delay the collection of the default judgment. *The trial court found that the facts and circumstances put the attorney on notice that the shareholder was acting to deliberately evade paying the judgment.* In affirming the trial court, the Court of Appeal observed that this case presented the "paradigm illustration of a fraudulent conveyance."
 - ***The problem was, primarily, the client's intent rather than the attorney's intent.*** But the State Bar charged the attorney with committing acts involving moral turpitude by abusing the legal system to assist his client in hindering and delaying a creditor's collection of its judgment.
 - Result -- one (1) year suspension, additional one (1) year probation, and costs.

Similar Issues with Lawyers Assisting Clients

- ***Coppock v. State Bar* (1988) 44 Cal.3d 665**
 - California attorney suspended for 90 days permitting his attorney-client trust account to be used by a client to conceal funds from the client's creditors.
- ***Chen v. Berenjian* (2019) 33 Cal.App.5th 811**
 - A fraudulent transfer claim was accomplished when the transferee levied on the debtor's property after a sham lawsuit and a collusive judgment, was not subject to the absolute litigation privilege (Civ. Code §47(b)) because the gravamen of the action was not a communicative act but was the transferee's physical taking of the debtor's property.
- ***Aghaian v. Minassian* (2020) 59 Cal.App.5th 447**
 - Reversed trial court's sustaining of the defendants' demurrers to causes of action for fraudulent transfer and aiding and abetting a fraudulent transfer accomplished by, not a communicative act, but rather levy under writ of execution arising from a collusive judgment taken on a sham lawsuit. The definition of "transfer" is broad enough to include transfers of assets by means of executing on a judgment obtained by fraud or collusion.

CONCLUSION

- Property cannot be the subject of a fraudulent transfer to the extent that it is generally exempt under applicable law. Consequently, it is not improper to engage in legitimate planning that, among other things, converts nonexempt assets into exempt assets.
- However, greed is a powerful, natural human desire that causes one to act to preserve value, income, and property. The law of fraudulent transfers is designed for the protection of creditors of persons who make such transfers with either an intent to hinder or evade the creditors or when doing so is constructively fraudulent.
- So...

CONCLUSION

- The client's temptation may infect the practitioner, who must be wary of "crossing the line" and assisting in a crime or fraud.
- Doing so can risk disciplinary action, and the evidentiary privileges otherwise generally afforded to attorneys will not shelter communications where the attorney is assisting in those efforts.
- ***And, as seen, this may be the result even when the attorney does not have a subjective intent to engage in crime or fraud.***
- Trust & Estate practitioners should be aware of these limitations and, possibly, adjust their procedures accordingly.

“That isn’t a good idea, and I can’t help you with that.”

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