

# 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-150**

|  |  |  |  |
|--|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address):<br><small>After recording, return to:</small>   |  |  |  |
| TEL. NO. _____ FAX NO. (optional) _____<br>EMAIL ADDRESS (optional) _____<br><input type="checkbox"/> ATTORNEY FOR <input type="checkbox"/> ORIGINAL JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD |  |  |  |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____<br>STREET ADDRESS _____<br>MAILING ADDRESS _____<br>CITY AND ZIP CODE _____  |  |  |  |
| DEBITOR NAME _____<br>PLAINTIFF/PETITIONER: _____  |  | <small>FOR RECORDER'S USE ONLY</small><br>LEVYING OFFICER (Name and address) _____<br><br>LEVYING OFFICER FILE NO.: _____<br><br>COURT CASE NO.: _____ |  |
| DEFENDANT/RESPONDENT: _____  |  |  |  |
| <b>NOTICE OF LEVY</b><br>under Writ of <input type="checkbox"/> Execution (Money Judgment)<br><input type="checkbox"/> Sale  |  |  |  |

- TO THE PERSON NOTIFIED (name):**
- The judgment creditor seeks to levy upon property in which the judgment debtor has an interest and apply it to the satisfaction of a judgment as follows:
    - Judgment debtor (name) \_\_\_\_\_
    - The property to be levied upon is described  in the accompanying writ of possession or writ of sale.  as follows: \_\_\_\_\_
  - The judgment is for (check one):  
 wages owed.  child/spousal support.  other.
  - The amount necessary to satisfy the judgment creditor's judgment writ is
    - Total amount due (less partial satisfactions) from line 1B of writ (form EJ-130) ..... \$ \_\_\_\_\_
    - Levy fee ..... \$ \_\_\_\_\_
    - Sheriff's disbursement fee ..... \$ \_\_\_\_\_
    - Recoverable costs ..... \$ \_\_\_\_\_
    - Total (a through d) ..... \$ \_\_\_\_\_
    - Daily interest from line 1Ba of writ (form EJ-130) ..... \$ \_\_\_\_\_
  - You are notified as:
    - a judgment debtor.
    - a person other than the judgment debtor (state capacity in which person is notified): \_\_\_\_\_

**(Read information for Judgment Debtor or information for Person Other Than Judgment Debtor on page two.)**

Notice of Levy was:

|  |   |
|--|---|
| <input type="checkbox"/> mailed on (date) _____    | <input type="checkbox"/> posted on (date) _____   |
| <input type="checkbox"/> delivered on (date) _____ | <input type="checkbox"/> filed on (date) _____    |
|  | <input type="checkbox"/> recorded on (date) _____ |

Date: \_\_\_\_\_

(TYPE OR PRINT NAME) \_\_\_\_\_ (SIGNATURE)  
 Levying officer  Registered process server

|                     |                                  |                        |
|---------------------|----------------------------------|------------------------|
| <b>SHORT TITLE:</b> | <b>LEVYING OFFICER FILE NO.:</b> | <b>COURT CASE NO.:</b> |
|---------------------|----------------------------------|------------------------|

- INFORMATION FOR JUDGMENT DEBTOR -**
- The levying officer is required to take custody of the property described in item 1 in your possession or under your control.
  - There are automatic exemptions that financial institutions should apply to a deposit account before providing funds to the levying officer. See below for more information.
  - You may claim any available exemption for your property. A list of exemptions can be found on form EJ-155. **If you wish to claim an exemption for personal property, you must do so within 15 days after this notice was delivered to you or 20 days after this notice was mailed to you by filing a claim of exemption and one copy with the levying officer as provided in section 703.520 of the Code of Civil Procedure.** The date of filing is calculated as the date the claim is received by the levying officer, or the date of the postmark if the claim is mailed and assigned a tracking number by the U.S. Postal Service or another common carrier. **If you do not claim an exemption, you may lose it and the property is subject to enforcement of a money judgment. If you wish to seek the advice of an attorney, you should do so immediately so that a claim of exemption can be filed on time.**
  - You are not entitled to claim an exemption for property that is levied upon under a judgment for sale of property. This property is described in the accompanying writ of sale. You may, however, claim available exemptions for property levied upon to satisfy damages or costs awarded in such a judgment.
  - You may obtain the release of your property by paying the amount of a money judgment with interest and costs remaining unpaid.
  - If your property is levied upon under a writ of execution or to satisfy damages and costs under a writ of possession or sale, the property may be sold at an execution sale, perhaps at a price substantially below its value. Notice of sale will be given to you. Notice of sale of real property (other than a leasehold estate with an unexpired term of less than two years) may not be given until at least 120 days after this notice is served on you. This grace period is intended to give you an opportunity to settle with the judgment creditor, to obtain a satisfactory buyer for the property, or to encourage other potential buyers to attend the execution sale.
  - All sales at an execution sale are final; there is no right of redemption.

- INFORMATION FOR PERSON OTHER THAN JUDGMENT DEBTOR -**
- If the property levied upon is in your possession or under your control and you do not claim the right to possession or a security interest, you must deliver the property to the levying officer. If you do not deny an obligation levied upon or do not claim a priority over the judgment creditor's lien, you must pay to the levying officer the amount that is due and payable and that becomes due and payable during the period of the execution lien, which lasts two years from the date of issuance of the writ of execution. You must execute and deliver any documents needed to transfer the property.
  - If you are a financial institution, you are required to apply applicable exemptions to deposit accounts. See below.
  - You must complete the accompanying Memorandum of Garnishee within 10 days.
  - If you claim ownership or the right to possession of real or personal property levied upon or if you claim a security interest in or lien on personal property levied upon, you may make a third-party claim and obtain the release of the property under sections 720.010-720.800 of the Code of Civil Procedure.
  - Make checks payable to the levying officer shown on page 1.**

- INFORMATION ABOUT DEPOSIT ACCOUNTS -**
- If the levy is **not** to satisfy a judgment for wages owed, child or spousal support, or liability to the state government, financial institutions must automatically exempt money in a deposit account up to a certain dollar amount, under section 704.220 of the Code of Civil Procedure, with no claim of exemption required. See form EJ-158 for the exemption amount.
  - Other automatic exemptions may apply to deposit accounts, such as exemptions for directly deposited social security or public benefits under section 704.080. (See form EJ-158 for the exemption amounts.) Generally, the financial institution should apply the larger set of exemptions that apply to an account. See section 704.220(b).
  - If a judgment debtor has multiple accounts in one or more financial institutions, either the judgment creditor or judgment debtor may file an application in the superior court identified on the front of this form for an order as to which account the exemption should apply. (See section 704.220(e).) To get such an order, file an *Ex Parte Application for Order on Deposit Account Exemption* (form EJ-157) as soon as possible. (See EJ-157-INFO for instructions.) If the judgment debtor has more than one account in a financial institution, that institution may decide how and to which account to apply the exemption, unless it is served with a court order directing how to apply the exemption.

**EJ-130**

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

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

9.  Writ of Possession/Writ of Sale information on next page.  
 10.  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)(9)) \$ _____                             |  |
| 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.

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_ Deputy

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

**EJ-130**

|  |              |
|--|--------------|
| Plaintiff/Petitioner:<br>Defendant/Respondent: | CASE NUMBER: |
|--|--------------|

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 909-994)  
 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<br>Defendant/Respondent | EJ-130<br>CASE NUMBER |
|--|-----------------------|

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)<br><br>TELEPHONE NO.:<br>E-MAIL ADDRESS:<br>ATTORNEY FOR (Name):<br><br>FAX NO.: | LEVYING OFFICER (Name and Address) |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF<br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME:                                      |                                    |
| PLAINTIFF/PETITIONER:<br>DEFENDANT/RESPONDENT:  | LEVYING OFFICER FILE NO.:          |
| <b>MEMORANDUM OF GARNISHEE<br/>(Attachment-Enforcement of Judgment)</b>   | 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: |
|--------------|---------------------------|--------------|

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

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



**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 § 22896 | Social Security Benefits  | 42 USC § 4407        |
| 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                                  |                      | Riots   | 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                                      |                      | Damages (See Personal Injury and Wrongful Death)                          | Govt C § 31452       |
| Pension Plans (and Death Benefits):                 |                      | Deposit Accounts:   |                      |
| Private   | CCP § 704.115        | Deposit Accounts (generally)  | CCP § 704.220        |
| Public  | CCP § 704.110        |   |                      |
| Public Assistance                                   | CCP § 704.170        |   |                      |
| Welf & I C § 17429                                  |                      |   |                      |

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Code of Civil Procedure, §§ 691.100(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 (Reserve)                            | CCP § 704.225      | 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  | CCP § 704.100        |
| 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 (See Public Assistance)                        |                    | Death Benefits   | CCP § 704.110        |
| File Service Retiree                                  | CCP § 704.110      | Pension  | CCP § 704.110        |
|   | Gov. C § 32210     | Retirement Benefits  | CCP § 704.110        |
| Fraternity Organizations                              |                    | Vacation Credits   | CCP § 704.113        |
| Funds and Benefits                                    | CCP § 704.130      | Railroad Retirement Benefits   | 45 USC § 231a        |
| Fuel for Residence                                    | CCP § 704.020      | Railroad Unemployment Insurance  | 45 USC § 352(a)      |
| Furniture   | CCP § 704.020      | Relocation Benefits and Contributions:                                   |                      |
| General Assignment for Benefit of Creditors           | CCP § 1301         | Private  | CCP § 704.115        |
| Health Aids   | CCP § 704.050      | Public   | CCP § 704.110        |
| Health Insurance Benefits                             | CCP § 704.130      |  | Ins. C § 10499.5     |
| Home:   |                    | Segregated Benefit Funds   | Ins. C § 10499.6     |
| Building Materials                                    | CCP § 704.030      | Service Members Property   | 50 USC § 552(b)      |
| Dwelling House  | CCP § 704.740      | Social Security  | 42 USC § 407         |
| Homestead   | CCP § 704.720      | Social Security Direct Deposit Account                                   | CCP § 704.000        |
| Householder   | CCP § 704.710      | Strike Benefits  | CCP § 704.120        |
| Mobility  | CCP § 704.710      |  | 42 USC § 13830(a)    |
| Homestead   | CCP § 704.720      | Supplemental Security Income   | 42 USC § 407         |
| 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 § 704.113        |
| Insurance Proceeds:                                   |                    | Veterans Benefits  | 38 USC § 5301        |
| Motor Vehicle   | CCP § 704.010      | Veterans Medal of Honor Benefits   | 38 USC § 1562        |
| Ignition System                                       |                    | Wages  | CCP § 704.070        |
| Retirement Benefits                                   | CCP § 704.110      | Waiver Payments  | CCP § 704.170        |
| 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 § 704.100        |
|   |                    | Wrongful Death Actions or Damages  | CCP § 704.150        |
| Licenses  | CCP § 704.110      |  |                      |
|   | Gov. C § 8959.3    |  |                      |
| 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           |

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

EJ-166

**EXEMPTIONS UNDER SECTION 704.010 et seq.**

The following lists the current dollar amounts of exemptions from enforcement of judgment under title 8, division 2, chapter 4, article 3 (commencing with section 704.010) of the Code of Civil Procedure.

The amount of the automatic exemption for a deposit account under section 704.220(a) is effective September 1, 2020, and unless otherwise provided by statute after that date, will be adjusted annually effective July 1 by the Department of Social Services under Welf. & Inst. Code, § 11453 to reflect the minimum basic standard of care for a family of four as established by § 11452.\*

The other amounts are all 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 amounts 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. Section | Type of Property   | Amount of Exemption |
|-------------------------|--|---------------------|
| 704.010                 | Motor vehicle (any combination of aggregate equity, proceeds of execution sale, and proceeds of insurance or other indemnification for loss, damage, or destruction) | \$ 3,325            |
| 704.030                 | Material to be applied to repair or maintenance of residence   | \$ 3,500            |
| 704.040                 | Jewelry, heirlooms, art  | \$ 8,725            |
| 704.060                 | Personal property used in debtor's or debtor's spouse's trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed \$4,850)      | \$ 8,725            |
| 704.060                 | Personal property used in debtor's and spouse's common trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed \$9,700)       | \$ 17,450           |
| 704.220                 | Deposit account, generally (exemption without claim; amount per judgment debtor, section 704.220(a),(e)) <sup>1</sup>  | \$ 1,788*           |
| 704.080                 | Deposit account with direct payment of social security or public benefits (exemption without claim, section 704.080(b)) <sup>2</sup>                                 |                     |
|                         | • Public benefits, one depositor is designated payee   | \$ 1,750            |
|                         | • Social security benefits, one depositor is designated payee  | \$ 3,500            |
|                         | • Public benefits, two or more depositors are designated payees <sup>3</sup>   | \$ 2,600            |
|                         | • Social security benefits, two or more depositors are designated payees <sup>3</sup>  | \$ 5,250            |
| 704.090                 | Inmate trust account   | \$ 1,750            |
|                         | Inmate trust account (restitution fine or order)   | \$ 325 <sup>4</sup> |
| 704.100                 | Aggregate loan value of unmaturred life insurance policies   | \$ 13,975           |

<sup>1</sup> This exemption does not preclude or reduce other exemptions for deposit accounts. However, if the exemption amount for the deposit account applicable under other automatic exemptions such as those applicable for direct deposit of social security benefits or public benefits is greater under the other exemptions, then those apply instead of this one. (Code Civ. Proc., § 704.220(b).)

<sup>2</sup> The amount of a deposit account with direct deposited funds that exceeds exemption amounts shown is also exempt to the extent it consists of payments of public benefits or social security benefits. (Code Civ. Proc., § 704.080(c).)

<sup>3</sup> If only one joint payee is a beneficiary of the payment, the exemption is in the amount available to a single designated payee. (Code Civ. Proc., § 704.080(b)(3) and (4).)

<sup>4</sup> This amount is not subject to adjustments under Code Civ. Proc., § 703.150.



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|   |          |                |                    |
|---|----------|----------------|--------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY:   |          | STATE BAR NO.: | FOR COURT USE ONLY |
| NAME:   |          |                |                    |
| FIRM NAME:  |          |                |                    |
| STREET ADDRESS:   |          |                |                    |
| CITY:   | STATE:   | ZIP CODE:      |                    |
| TELEPHONE NO.:  | FAX NO.: |                |                    |
| E-MAIL ADDRESS:   |          |                |                    |
| ATTORNEY FOR (NAME):  |          |                |                    |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF   |          |                |                    |
| STREET ADDRESS:   |          |                |                    |
| MAILING ADDRESS:  |          |                |                    |
| CITY AND ZIP CODE:  |          |                |                    |
| BRANCH NAME:  |          |                |                    |
| PLAINTIFF   |          |                |                    |
| DEFENDANT   |          |                |                    |
| APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION  |          |                | CASE NUMBER:       |
| <input type="checkbox"/> ENFORCEMENT OF JUDGMENT <input type="checkbox"/> ATTACHMENT (Third Person) |          |                |                    |
| <input type="checkbox"/> Judgment Debtor <input type="checkbox"/> Third Person                      |          |                |                    |

- ORDER TO APPEAR FOR EXAMINATION**
- TO (name)
  - YOU ARE ORDERED TO APPEAR personally before this court, or before a referee appointed by the court, to
    - furnish information to aid in enforcement of a money judgment against you
    - answer concerning property of the judgment debtor in your possession or control or concerning a debt you owe the judgment debtor
    - answer concerning property of the defendant in your possession or control or concerning a debt you owe the defendant that is subject to attachment.

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept. or Div.: \_\_\_\_\_ Rm.: \_\_\_\_\_  
Address of court  is shown above  is \_\_\_\_\_

3. This order may be served by a sheriff, marshal, registered process server, or the following specially appointed person (name):

Date: \_\_\_\_\_

JURSE

**This order must be served not less than 10 days before the date set for the examination.**

**IMPORTANT NOTICES ON REVERSE**

- APPLICATION FOR ORDER TO APPEAR FOR EXAMINATION**
- Original judgment creditor  Assignee of record  Plaintiff who has a right to attach order (applies for an order requiring (name) to appear and furnish information to aid in enforcement of the money judgment or to answer concerning property or debt.
  - The person to be examined is
    - the judgment debtor.
    - a third person (1) who has possession or control of property belonging to the judgment debtor or the defendant or (2) who owes the judgment debtor or the defendant more than \$250. An affidavit supporting this application under Code of Civil Procedure section 491.110 or 708.120 is attached.
  - The person to be examined resides or has a place of business in this county or within 150 miles of the place of examination.
  - This court is **not** the court in which the money judgment is entered or (attachment only) the court that issued the writ of attachment. An affidavit supporting an application under Code of Civil Procedure section 491.150 or 708.160 is attached.
  - The judgment debtor has been examined within the past 120 days. An affidavit showing good cause for another examination is attached.

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 OF DECLARANT)

(Continued on reverse)

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

Code of Civil Procedure  
 §§ 491.110, 708.110, 708.120, 708.150, 708.160  
 www.cjb.com www.ccb.org

**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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# 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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