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## Collecting on Judgments

### A. California Statutory Collection Laws

Asset protection planning is premised on the creditor's ability to collect. After all, if the creditor has no right or power to collect on a judgment, there is no need for protective planning. This section will assume that a creditor has obtained a judgment against the debtor. What now? What can the creditor do to enforce that judgment, to collect on that judgment?

California collection statutes – those statutes that set forth a creditor's collection rights and powers, and explain the collection process, are set forth in Title 9 of the CCP, entitled "Enforcement of Judgments."

CCP Section 695.010(a) provides that all property owned by the debtor, subject to certain exceptions, is subject to enforcement of a judgment. Community property owned by a debtor's spouse is included within the "all property owned by the debtor."<sup>1</sup>

Additional costs and interest may be added to the judgment. As money comes in from the debtor to the creditor, it is first applied to satisfy any additional costs and interest, and only then, the principal balance of the judgment.<sup>2</sup> Interest accrues only on the original amount of the judgment unless judgments are periodically re-recorded, in which case interest compounds.

Judgments continue to exist for 10 years from the date of the entry of the judgment.<sup>3</sup> Judgments may be renewed for additional terms of 10 years.<sup>4</sup>

Judgments are usually collected through the lien mechanism. The creditor will place a lien on the debtor's real and personal property (by recording the judgment with the county recorder's office or entering it with the Secretary of State), and the lien will be satisfied when the property is sold by the debtor or foreclosed upon by the creditor. Once the underlying judgment is satisfied, the lien must be released.<sup>5</sup>

A judgment lien on real property is created when the judgment is recorded in the county where the debtor owns real property.<sup>6</sup> The judgment must be recorded in each county where the creditor wishes to create a lien against the debtor. The judgment lien continues to exist for 10 years from the date of the judgment, unless it is renewed.<sup>7</sup>

A judgment lien on personal property is created when notice is filed with the California Secretary of State and continues for 5 years.<sup>8</sup>

In addition to collecting through the lien process, a creditor can collect through the writ of execution.<sup>9</sup> A writ of execution is issued by the clerk of the court where the creditor obtained its judgment.<sup>10</sup> The writ of execution

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<sup>1</sup> CCP Section 695.020(b).

<sup>2</sup> CCP Sections 695.210 and 695.221.

<sup>3</sup> CCP Section 683.020.

<sup>4</sup> CCP Sections 683.110(a) and 683.120(b).

<sup>5</sup> CCP Section 697.050.

<sup>6</sup> CCP Section 697.310(a).

<sup>7</sup> CCP Section 697.310(b).

<sup>8</sup> CCP Section 697.510.

<sup>9</sup> CCP Sections 699.010 through 699.090.

<sup>10</sup> CCP Section 699.510.

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directs the county sheriff to secure the debtor's property in that county. Thus, the writ of execution is a levy. A separate writ of execution must be issued for each county where the creditor intends to levy on debtor's property. The writ of execution is effective for 180 days.

All property owned by the debtor that is subject to a judgment may be levied upon through the writ of execution process.<sup>11</sup> This includes real property, but the levy must first be recorded in the county where the real property is located.<sup>12</sup> There are several exceptions, which include the interest of a partner in a partnership or a member in a limited liability company, the loan value of a life insurance contract, and the interest of a beneficiary in a trust.<sup>13</sup>

Once the levied property is collected by the sheriff, whether real or personal, the property is sold at a foreclosure sale to the highest bidder, for cash or cashier's check.<sup>14</sup> For tax liens, the property cannot be sold until the bid amount exceeds the state tax lien on the property and the exemption amount for the claimed property. Once the property is sold at the foreclosure sale, the lien on such property is extinguished.

Following the foreclosure sale the sheriff remits the amount collected, less certain costs, to the creditor, unless the property was subject to other liens with a priority higher than the judgment creditor. In that case the creditors are paid off in the order of their priority, and any amount left over is remitted to the debtor.<sup>15</sup> It is important to note that foreclosures of mortgages are subject to special rules.<sup>16</sup>

In some circumstances, the creditor may attempt to obtain a turnover order – a court order directing the debtor to turn its assets (usually a specific asset) over to the creditor. The turnover order is an exception to the writ of execution and is not easy to obtain.

## ***B. Other Creditor Remedies***

At any time while the creditor has a judgment outstanding against the debtor, the creditor may serve upon the debtor written interrogatories demanding information from the debtor which will assist the creditor in satisfying the judgment. Similarly, the creditor may demand documents and records from the debtor which will assist in satisfying the judgment.<sup>17</sup>

The creditor may also require the debtor to appear for a debtor exam before a court or a court appointed referee.<sup>18</sup> At a debtor exam, the debtor may be required to produce books and records, tax returns, financial information, witnesses and answer a battery of questions about past employment history, ownership and transfers of assets and any other information that would assist the creditor in locating debtor's assets.

If a creditor has a judgment against a partner in a partnership or a member of a limited liability company, the creditor can apply for a court order charging the interest of the partner/member in the entity.<sup>19</sup> (See discussion of charging orders, below.) Notice of the charging order must be given to all partners or all members of the entity.<sup>20</sup>

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<sup>11</sup> CCP Section 699.710.

<sup>12</sup> CCP Section 700.015(a).

<sup>13</sup> CCP Section 699.720.

<sup>14</sup> CCP Section 701.510.

<sup>15</sup> CCP Section 701.810.

<sup>16</sup> See CCP Sections 725a-730.5.

<sup>17</sup> CCP Sections 708.020 and 708.030.

<sup>18</sup> CCP Section 708.110.

<sup>19</sup> CCP Section 708.310.

<sup>20</sup> CCP Section 708.320.

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A creditor may also levy on the debtor's wages through the means of a wage garnishment.<sup>21</sup> The creditor cannot garnish the entire wage of the debtor. Pursuant to federal law, followed in California, the maximum the creditor can garnish is the lesser of: (i) 25% of the debtor's disposable earnings for the week, or (ii) the difference between (a) disposable earnings for the week, and (b) thirty times the federal minimum wage.<sup>22</sup> However, if the garnishment is to satisfy a support order, up to 50% of disposable earnings can be garnished.<sup>23</sup>

## ***C. Exempt Property***

Certain property of a debtor is exempt from collection by a creditor. The exemptions apply only to natural persons, not to entities.<sup>24</sup> If spouses co-own property that is covered by an exemption, the spouses are entitled to one exemption amount, they are not allowed to double the exemption amount, regardless of how they own the property.<sup>25</sup>

For certain properties an exemption must be claimed by the debtor, for other, the exemption applies automatically. To claim an exemption, the debtor must claim the exemption with the sheriff that is attempting to levy on the debtor's property.

The following property is exempt:

- a. \$2,300 of equity in automobiles;<sup>26</sup>
- b. Household furnishings, appliances, provisions, clothing, and other personal effects if ordinarily and reasonably necessary to,<sup>27</sup> and personally used by the debtor and members of the debtor's family at their principal residence;<sup>28</sup>
- c. \$6,075 of jewelry, heirlooms, and works of art;<sup>29</sup>
- d. \$6,075 of tools of trade, including equipment, vehicles, books and other (amount is doubled if spouse is engaged in the same business);<sup>30</sup>
- e. \$9,700 of loan value of life insurance or annuity policy (face amount is exempt without having to make a claim);<sup>31</sup>
- f. Private retirement plans without a limitation, but IRAs and self-employed plans to the extent amount necessary to provide for the support of the debtor (discussed in more detail at the end of the outline);<sup>32</sup> and
- g. Certain claims for unemployment insurance, personal injury or workers insurance (without making a claim for exemption).

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<sup>21</sup> CCP Section 706.020-706.034.

<sup>22</sup> 15 U. S. C. 1673(a). The current federal minimum wage is \$5.15 per hour. 29 U. S. C. 206(a)(1).

<sup>23</sup> 15 U. S. C. 1673(c).

<sup>24</sup> CCP Section 703.020. This should be considered before a personal residence is transferred to a limited liability company, a limited partnership or an irrevocable trust.

<sup>25</sup> CCP Section 703.110.

<sup>26</sup> CCP Section 704.010.

<sup>27</sup> In determining whether an item is ordinarily and reasonably necessary, the court will take into account the extent to which the particular type of item is ordinarily found in a household, and whether the particular item has extraordinary value as compared to the value of items of the same type found in other households.

<sup>28</sup> CCP Section 704.020.

<sup>29</sup> CCP Section 704.040.

<sup>30</sup> CCP Section 704.060.

<sup>31</sup> CCP Section 704.100.

<sup>32</sup> CCP Section 704.115.

In addition to the above property, real property may be exempt to the extent the debtor has a homestead in the real property. Homestead real property is property which is the debtor's principal residence in which the debtor is residing at the time of the judgment and at the time of the collection. Homestead covers houses, condominiums, mobile homes, boats and other abodes of the debtor.<sup>33</sup>

The exempt amount of a homestead property is: (i) \$75,000 unless clauses (ii) or (iii) apply; (ii) \$100,000 if someone other than a debtor resides on the property and that other person does not have an ownership interest in the property, other than as a community property interest; or (iii) \$175,000 for those debtors who are over 65 or physically disabled.<sup>34</sup> Spouses are not allowed to double their homestead exemption.<sup>35</sup>

A court order is required for the sale of the property in which a debtor has a homestead. Consequently, a debtor is not required to file a homestead declaration to benefit from the homestead exemption. However, a homestead declaration may be filed to designate a specific property as a homestead, when two or more properties can be treated as the debtor's primary residence.

## ***D. Exemption Planning***

Exemption planning can be an important aspect of asset protection. Even if bankruptcy is contemplated, as discussed below, the debtor is allowed a choice of the exemptions provided by his or her state of residency and the bankruptcy code.<sup>36</sup> To be able to use a state's exemption statutes in the bankruptcy context, the debtor must have been domiciled in such state for at least 180 days. To be able to use an exemption for non-bankruptcy purposes, some states require residency, while others don't. This means that with respect to exemption planning debtors have an ability to shop for states with the best exemption scheme.

The two most significant exemptions are the homestead and life insurance exemptions.

Generally, a homestead exemption means that a creditor cannot force the sale of a property where the equity is protected by the homestead, and if the debtor sells the property, the sale proceeds are protected to the extent of the homestead.

In many states the homestead exemption greatly exceeds all other available exemptions. In California the homestead exemption can be \$75,000, \$100,000 or \$175,000, with most debtors falling in the \$100,000 range. While this exemption is generous compared to many other states, some states allow an even greater exemption.

For example, Arizona and Massachusetts allow a flat \$100,000 exemption, while Minnesota allows a \$200,000 exemption.<sup>37</sup> In Kansas, the exemption is unlimited for city lots not exceeding one acre (except for tax liabilities).<sup>38</sup>

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<sup>33</sup> CCP Section 704.710.

<sup>34</sup> CCP Section 704.730(a).

<sup>35</sup> CCP Section 704.730(b).

<sup>36</sup> Some states, including California, have opted out of this choice, which means that debtors in these states can only use the state's exemptions.

<sup>37</sup> Ariz. Rev. Statutes Section 33-1101(A) and (B); Mass. Gen. Laws ch. 188, Section 1; Minn. Stat. Section 510.02.

<sup>38</sup> Kan. Stat. Annotated Section 60-2301.

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The constitutions of Florida and Texas provide for unlimited homestead exemptions, although the size of the land is limited (Florida – 160 acres of rural land, and one-half acre of city land; Texas – 200 acres of rural land, and 10 acres of city land).<sup>39</sup>

It is important to remember that despite the amount of the homestead exemption, it does not exempt claims of all creditors. Certain creditors are not impacted by the homestead: the federal<sup>40</sup> and state governments for tax claims; alimony and child support claims; purchase money creditors who usually retain a security interest in the property; and debts for the improvement of the subject property.

In addition to the homestead exemption, many states grant a large exemption for life insurance. In California, there is no limitation on the face amount of insurance protected, but there is an \$8,000 limitation on cash surrender value. In several states there is no limitation on protection afforded to cash surrender value. For example, in Florida cash surrender value is protected without a limit if the policy is owned by a state resident.<sup>41</sup>

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<sup>39</sup> Fla. Const. Article X, Section 4(a)(1); Tex. Const. Article XVI, Section 51.

<sup>40</sup> The Service is allowed to force the sale of property to satisfy tax claims under Code Sections 6321 and 6331.

<sup>41</sup> Fla. Stat. Annotated Section 222.14.