

**University of West Los Angeles
School of Paralegal Studies Course 232
Remedies and Enforcement of Judgments
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Session Seven Materials

PROVISIONAL REMEDIES

I. Introduction

- A. Prejudgment Remedies include: Attachment, Claim & Delivery, and Receivership
- B. These are temporary remedies
- C. These remedies are only available to parties who are litigating an underlying dispute

II. Attachment

- A. Attachment allows *commercial* creditors to create judicial liens on debtor's property before judgment
 - 1. The creditor must establish *prima facie* claims
 - 2. The court must make preliminary determinations on the merit of plaintiff's case
- B. Attachment creates a lien and establishes the creditor's priority
- C. Attachment encourages settlement and bankruptcy filing before 90 day seasoning period
- D. Attachment hearing can be called on only 15 days' notice, but is expensive
- E. California courts only have jurisdiction to attach property located within California
- F. Property exempt from enforcement of judgments is exempt from Attachment, and so is property necessary for the natural debtor's support. Exemptions liberally applied
- G. Attachment proceedings are independent of the underlying case, and can proceed even where the case is stayed pending arbitration
- H. Declarations and factual affidavits are common in Attachment litigation and require original writing each time

III. Claim and Delivery [Replevin] - Covered in Session 6 Restitution

- A. Moving party seeks possession of tangible personal property before judgment
- B. Court can require a bond
- C. Claim and Delivery is characterized as a legal remedy

IV. Receiverships

- A. Moving party seeks appointment of an officer and personal representative of the court, to take possession and preserve specific property that is subject of pending litigation or to enforce a judgment
- B. Receiverships are characterized as an equitable remedy
- C. Receiverships are expensive, and are paid out of property in which the parties have an interest.
 - 1. Receiverships are not substitute executives; they must be given extensive instructions.
 - 2. Bonds, accountants, other counsel often are needed, too
 - 3. Moving party must be prepared to front expenses to receiver to get started.
- D. Procedure
 - 1. Moving party must make evidentiary showing and has the burden of proof
 - 2. Competent, admissible evidence is required in support of the motion
 - 3. The moving party must make a factual showing that meets statutory requirements
 - 4. All equitable defenses and principles apply
- E. Administration by Receiver
 - 1. The receiver is an agent of the court, not of the parties, and acts as a neutral
 - 2. The receiver has the authority to do only specified tasks and no more without obtaining instructions from the court, upon a noticed hearing
 - 3. The court may authorize a receiver to sell assets, make contracts, borrow money, hire counsel, open bank accounts, etc.
 - 4. The receiver must inventory the property he or she has taken possession of
 - 5. The receiver must provide monthly reports to the parties that includes a narrative report of events, a financial report, and a statement of all fees paid to the receiver and expenses of the receiver. Note that the court does not normally get these reports.

ENFORCEMENT OF JUDGMENTS

I. Introduction

- A. Enforcement of Judgments Law [EJL]
- B. Entry of Judgment
- C. Amount Recoverable Under Judgment: principal, interest, costs of enforcement
- D. Time for Enforcement; Deadlines and Renewal Procedures
 - 1. Ten Year Rule - Power to Enforce will End, absent a Renewal
 - 2. Renewal adds ten years from the date of the renewal
 - 3. Judgment Lien on Real Property can be extended 10 years as well
 - 4. Judgment Lien on Personal Property lasts five years and can't be renewed
- E. Independent Legal Action on the Judgment - a new lawsuit - form pleadings
- F. Design a Plan to follow in order to Enforce a Judgment
 - 1. Locate Assets [this should have been done a long time before a judgment]
 - 2. Impose Judicial Liens as fast as possible
 - 3. Use different methods to pursue various assets
 - 4. Obtain possession of assets before a judgment - see Attachment, Claim and Delivery [replevin]
- G. Methods of Enforcement of Judgment
 - 1. Judgment Liens on Real and Personal Property
 - 2. Writ of Execution
 - 3. Wage Garnishment
 - 4. Writ of Possession or Sale - take possession of property to satisfy a non-money judgment, e.g. Unlawful Detainer, personal property judgment

II. Property Exempt from Enforcement of Judgments

- A. Exemptions are Strictly Statutory and are Liberally Interpreted
- B. With certain exceptions, these Exemptions also apply to spousal and child support
- C. Bankruptcy Code also allows Exemptions, which may be elected by those who go Bankrupt in CA - the regular exemptions have a much bigger homestead exemption

- D. Traceable exempt funds remain exempt for 90 days. The debtor should spend the money on new exempt items to avoid levy. Lowest Intermediate Balance determines exemption.
- E. Procedures for Claiming Exemptions
 - 1. Some property is exempt without making a claim, e.g. Social Security payments up to \$3000.
 - 2. Other exemptions are claimed by serving two copies of a Claim of Exemption on the Levying Officer.
 - 3. If any asset is seized wrongfully, the debtor may claim an exemption after the fact.
- F. Specific Property Exempt from Enforcement [only if a timely claim is filed]
 - 1. Motor Vehicle Equity of \$1,900 - no claim needed if only one car
 - 2. Household Furnishings and Personal Effects

III. Judgment Liens on Real Property

- A. Introduction
 - 1. JLRP establishes and preserves the judgment creditor's priority
 - 2. All real property interests are affected, even those after-acquired
 - 3. JLRP is fast and cheap - and more likely to become 'seasoned'
 - 4. JLRP freezes the homestead exemption at the level on the date of JLRP
 - 5. Rental payment rights - can be attached, but not subject to JLRP
- B. How to get a Judgment Lien on Real Property
 - 1. Record an Abstract of Judgment or, sometimes, a Certified Copy of the Judgment
 - 2. Do this in every county in which the debtor owns or expects to obtain property
 - 3. Notice given to debtor by the County Recorder or by counsel to creditor
- C. Amount of Lien: generally, it is the full amount due under the judgment
- D. Duration of Lien: 10 years, subject to renewal for successive ten year terms
- E. Priority: First in Time is First in Right
- F. Voluntary Release or Subordination
- G. Satisfaction of Judgment

IV. Judgment Liens on Personal Property

A. Introduction

1. JLPP establishes priority of creditor, but can't be foreclosed on
2. JLPP is prepared by counsel, unlike judgment lien or writ of execution, both of which require some action by court personnel
3. Lien continues after most transfers to BFP's.
4. Cheap: \$20 filing fee

B. Types of Property Subject to JLPP

1. Accounts Receivable
2. Chattel Paper
3. Equipment
4. Farm Products
5. Inventory with a unit value of \$500 or more
6. After-Acquired Property is subject to a prior JLPP

C. Property Not Subject to JLPP

1. Vehicles, Vessels and Mobile Homes
2. Retail Inventories with a unit value under \$500
3. Property converted into "Fixtures"

D. Creation of JLPP: Notice of Judgment Lien

1. The form includes information about the case and amount due
2. Signed under penalty of perjury by counsel or by creditor
3. Service on judgment debtor required by failure to serve does not invalidate JLPP

E. Duration of JLPP: 5 years, and it *cannot be renewed*.

F. Extinguishing JLPP as a matter of record - must file satisfaction with Secretary of State

V. Writ of Execution

A. Introduction

1. This is the most common and the most harsh method of enforcement
2. It is the only method of enforcing money judgments in the Federal court system
3. Writ of Execution can trigger a settlement or a bankruptcy filing

B. Advantages

1. Most non-exempt property interests are subject to a Writ of Execution
2. The levying officer takes property into custody - actually or constructively
3. The property seized is sold at an execution sale

C. Disadvantages

1. Generous Exemptions
2. Expensive - and maybe the sale won't be too fruitful
3. Creditor must identify debtor's assets

D. Creation of a Writ of Execution

1. There is a standard form; the Writ is a court process directed to the Levying Officer and issued by the clerk of the court that issued the judgment
2. The Writ can be enforced only within the territorial boundaries of California, and must be issued on a county-by-county basis.
3. Only a "money judgment" entered or registered in California is enforceable this way
4. Judgments for possession or sale of property are enforced by 'Writs for Possession or Sale' - which are substantially the same as Writs of Execution.

E. Property not subject to Writ of Execution - incomplete list

1. Alcoholic beverage license
2. Partnership or other business interest held by debtor - but assets can be seized under certain circumstances
3. Non-vested property interests

F. Levy of Writ of Execution

1. Once the writ is issued, it must be delivered to the levying officer with instructions
2. The instructions must identify the people and property that are subject to the process, often provided on a standard form.
3. If the instructions call for property to be seized, a deposit for storage is required

4. The levying officer must return to court and file a report, with an outside limit of two years from the date the writ was issued.

G. Methods of Levy

1. Physical Seizure of property held by the debtor
2. Garnishment of property held by third parties - but not wages, see WGL
3. Recording a copy of the writ and notice of levy
4. Delivery of a copy of the writ to the levying officer

VI. Wage Garnishment

A. Introduction

1. The WGL is the exclusive way to compel a debtor's employer to help enforce a non-support judgment by garnishing wages owed a judgment debtor
2. Advantages - assured payment, plus pressure on debtor to settle
3. Disadvantages - slow payment, increased chance of bankruptcy filing

B. "Employee" is somebody who works for another and who does not control what work is done and how it is done. An incorporated professional works for the corporation.

C. Federal and State government employees are subject to the WGL.

D. "Earnings" means all compensation paid to the employee, including sick pay as it is paid out, but not pension or retirement payments.