California Statutory Collection Laws and Other Creditor Remedies

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1. <u>California Statutory Collection Laws</u>

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.” (CCP Section 695.020(b))

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. (CCP Sections 695.210 and 695.221) 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 entry of the judgment. (CCP Section 683.020) Judgments may be renewed for additional terms of 10 years. (CCP Section 683.110(a) and 683.120(b)).

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. (CCP Section 697.050)

A judgment lien on real property is created when the judgment is recorded in the county where the debtor owns real property. (CCP Section 697.310(a)). 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. (CCP Section 697.310(b).

A judgment lien on personal property is created when notice is filed with the California Secretary of State and continues for 5 years. (CCP Section 697.510)

In addition to collecting through the lien process, a creditor can collect through the writ of execution. (CCP Sections 699.010 through 699.090) A writ of execution is issued by the clerk of the court where the creditor obtained its judgment. (CCP Section 699.510) The writ of execution 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 the 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. (CCP Section 699.710) This includes real property, but the levy must first be recorded in the county where the real property is located. (CCP Section 700.015(a)) 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. (CCP Section 669.720)

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. (CCP Section 701.510) 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. (CCP Section 701.810) It is important to note that foreclosures of mortgages are subject to special rules. (See CCP Sections 725a-730.5)

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.

2. 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. (CCP Sections 708.020 and 708.030)

The creditor may also require the debtor to appear for a debtor exam before a court or a court appointed referee. (CCP Section 708.110) At a debtor exam, the debtor may be required to produce books and records, 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. (CCP Section 708.310) Notice of the charging order must be given to all partners or all members of the entity. (CCP Section 708.320)

A creditor may also levy on the debtor's wages through the means of a wage garnishment. (CCP Section 706.020-706.034) 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 disposable earnings for the week, and (b) thirty times the federal minimum wage. (15 U.S.C. 1673(a). The current federal minimum wage is $5.15 per hour. 29 U.S.C. 206(a)(1)) However, if the garnishment is to satisfy a support order, up to 50% of disposable earnings can be garnished. (15 U.S.C. 1673(c)).