

# HERA

housing and  
economic  
rights advocates

**To: File**

**From: HERA**

**Date: October 2, 2013**

**Re: Income and Assets Exempt from Collection in CA**

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When a debtor defaults and a creditor obtains a judgment against them, the judgment creditor may employ various methods to collect on the judgment. Some common forms of collection include bank account levies, wage garnishment, and asset liquidation.

Nevertheless, California law does provide varying levels of protection for debtors. Depending on a debtor's source of income and what types of assets she possesses, she may be protected from enforcement on a money judgment. This is because certain sources of income and assets are considered exempt from lien or levy under California law.

Typically speaking, bank accounts of a judgment debtor are not exempt from collection. Moreover, the bank accounts of the debtor's spouse may also be levied if a court order is obtained.<sup>1</sup> If the account is used for the deposit of public benefits though, the funds within it may be protected.<sup>2</sup>

Secondly, although wage garnishment for debt repayment is generally applicable to regular sources of income from employment, only a portion of it can be levied against. In California, 75% of a debtor's income is exempt from wage garnishment.<sup>3</sup> The remaining 25% is available for collection.<sup>4</sup> As in the case of bank account levies, wage garnishment for a debtor's spouse is also applicable under the provision of a court order.<sup>5</sup>

Employment income, real property, and bank accounts are the most common assets pursued by judgment creditors, but other assets are legally available for collection. Based on a debtor's level of assets, he or she may also possess property that is exempt from levy on a judgment. While items such as a car are not fully exempt, collectors may only be entitled to a portion of the total sum generated from its sale. In cases when the total aggregate value is below the protected threshold, then the given item would be considered fully exempt from debt collection.

For a more detailed list of common questions about what types of assets may be exempt from collection as of January 1, 2013, please see the table at the end of this memo.

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<sup>1</sup> *see* Cal. Code Civ. Proc. §700.160

<sup>2</sup> *see* Cal. Code Civ. Proc. §704.080

<sup>3</sup> *see* Cal. Code Civ. Proc. §704.070

<sup>4</sup> *see* Cal. Code Civ. Proc. §704.070

<sup>5</sup> *see* Cal. Code Civ. Proc. §706.109

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An additional note of interest may be California’s automatic homestead exemption. In the case of an involuntary/forced sale, a debtor’s principal residence may not be sold to satisfy a judgment lien if the amount of equity interest in the home is less than the exemption amount.<sup>6</sup> If, however, a debtor possesses sufficient equity in his or her home, an involuntary sale may occur.

Thus, although the automatic homestead exemption does not necessarily prevent debtors from being forced to sell their homes, it can protect the remaining equity in a house. The exemption amounts are as follows: \$75,000 for a single debtor, \$100,000 for a family, and \$175,000 for those over the age of 65, disabled, or with extremely low levels of income.<sup>7</sup>

In the case of a forced sale, before a creditor receives any money, the proceeds must first be distributed to any mortgage holders, with any remaining equity up to the exemption amount being given to the debtor.<sup>8</sup> Therefore, along with the various secondary expenses that must be incurred during an attempted involuntary sale, California’s homestead exemption may deter creditors from forcing debtors to sell their residences.

Conversely, if debtors do decide to voluntarily sell their home, they may consider the use of California’s declared homestead exemption. Unlike the automatic homestead exemption, the declared homestead exemption requires homeowners to legally record a “declared homestead.” Once this is completed, homeowners become entitled to the same exemption amounts afforded to debtors in an involuntary sale for up to six months—as long as the homestead is declared before a creditor’s judgment lien attaches.<sup>9</sup> During this time period, debtors may choose to reinvest their protected proceeds in another house that may then be filed as a new “declared homestead.”

It is important to note that both the automatic and declared homestead exemptions only extend to cases where a creditor seeks repayment for an otherwise unsecured debt.<sup>10</sup>

### Table for Common Income / Property Exemptions

| TYPE OF PROPERTY                                      | REGULAR EXEMPTION             | RELEVANT CA CODE OF CIV. PROC.*** |
|---|-------------------------------|-----------------------------------|
| Motor Vehicles  | \$2,900 total in all vehicles | Cal. Code Civ. Proc. §704.010     |
| Household Goods, Appliances, Clothes & Personal Items | Reasonable & Necessary*       | Cal. Code Civ. Proc. §704.020     |

<sup>6</sup> see Cal. Code Civ. Proc. §704.740

<sup>7</sup> see Cal. Code Civ. Proc. §704.730(a)

<sup>8</sup> see Cal. Code Civ. Proc. §704.850

<sup>9</sup> see Cal. Code Civ. Proc. §704.960

<sup>10</sup> see *In re Morse*, 11 Cal. 4th 184, 217 (1995); see also *Behniwal v. Mix*, 147 Cal. App. 4th 621, 640 (2007)

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|---|---|---|
| Material to repair or improve residence   | \$3,050   | Cal. Code Civ. Proc. §704.030               |
| Jewelry, Heirlooms, Works of Art  | \$7,625   | Cal. Code Civ. Proc. §704.040               |
| Prosthetics & other Health Aids   | Reasonable & Necessary*   | Cal. Code Civ. Proc. §704.050               |
| Tools of the Trade, including books, instruments and commercial vehicles                  | \$7,625 / \$15,250 if including spouse (of which \$4,850 / \$9,700 is capped for commercial vehicles) | Cal. Code Civ. Proc. §704.060               |
| Wages earned (can include spousal income if court order rec'd)                            | 75% of last month's wages   | Cal. Code Civ. Proc. §704.070               |
| Bank Accounts Used for Social Security Benefits   | \$3,050 if single debtor – \$4,575 if joint   | Cal. Code Civ. Proc. §704.080(b)(2), (b)(4) |
| Bank Accounts Used for Public Benefits  | \$1,525 if single debtor – \$2,275 if joint   | Cal. Code Civ. Proc. §704.080(b)(1), (b)(3) |
| Prisoner Trust Account  | \$1,525   | Cal. Code Civ. Proc. §704.090               |
| Life Insurance Loan Values  | \$12,200  | Cal. Code Civ. Proc. §704.100(b)            |
| Life Insurance Benefits (Incl. endowments & annuities)                                    | Reasonable & Necessary  | Cal. Code Civ. Proc. §704.100(c)            |
| Public Retirement Benefits  | All   | Cal. Code Civ. Proc. §704.110(b)            |
| Vacation Credits  | All Public Employees Only   | Cal. Code Civ. Proc. §704.113               |
| Private Retirement Benefits   | All   | Cal. Code Civ. Proc. §704.115(b)            |
| Unemployment Benefits   | All   | Cal. Code Civ. Proc. §704.120               |
| Health/Disability Ins. Benefits   | All   | Cal. Code Civ. Proc. §704.130               |
| Personal Injury Cause of Action   | All   | Cal. Code Civ. Proc. §704.140(a)            |
| Personal Injury Payments after Judgment or Settlement (unless payments made periodically) | Reasonable & Necessary*   | Cal. Code Civ. Proc. §704.140(b)            |

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| Wrongful Death Cause of Action   | All  | Cal. Code Civ. Proc. §704.150(a)    |
| Benefits from Wrongful Death Lawsuit   | Reasonable & Necessary*                                      | Cal. Code Civ. Proc. §704.150(b)    |
| Worker's Compensation Benefits   | All  | Cal. Code Civ. Proc. §704.160       |
| Welfare Payments or Charitable Aid   | All  | Cal. Code Civ. Proc. §704.170       |
| Relocation Benefits  | All  | Cal. Code Civ. Proc. §704.180       |
| Principal Residence (including mobile homes, houseboats & all outbuildings on same property) | \$75,000 – Single Debtor                                     | Cal. Code Civ. Proc. §704.730(a)(1) |
|  | \$100,000 – Family   | Cal. Code Civ. Proc. §704.730(a)(2) |
|  | \$175,000 – 65 years or Disabled or 55 years with low income | Cal. Code Civ. Proc. §704.730(a)(3) |
| Cemetery Plot  | All for debtor & spouse                                      | Cal. Code Civ. Proc. §704.200(c)    |

\* For alternate bankruptcy exemptions under Title 11 see California Code of Civil Procedure §703.140.<sup>11</sup>

\*\* For a full list of what types of property and income are exempt from the enforcement of judgments, see Form EJ-155 from the Judicial Council of California.<sup>12</sup>

\*\*\*Pursuant to Cal. Code Civ. Proc. § 703.150, the Judicial Council makes adjustments to exemption figures once every three years. For the most recent changes, see Form EJ-156 from the Judicial Council of California.<sup>13</sup>

\*\*\*\* Debtors may also consider California's Statute of Limitations for debt collection. After four years, debts for written contracts may be considered uncollectible.<sup>14</sup>

<sup>11</sup> Cal. Code Civ. Proc. §703.140

<sup>12</sup> California Judicial Council Form EJ-155 (Revised January 1, 2005)

<sup>13</sup> California Judicial Council Form EJ-156 (Revised April 26, 2013)

<sup>14</sup> Cal. Code Civ. Proc. §337

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