

JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-038 For business meeting on: March 11, 2022

Title

Civil Practice and Procedure: Adjustments to Dollar Amounts of Exemptions

Rules, Forms, Standards, or Statutes Affected Adopt form EJ-186 and revise form EJ-156

Recommended by

Judicial Council staff Anne Ronan, Supervising Attorney Legal Services Agenda Item Type Action Required

Effective Date April 1, 2022

Date of Report February 15, 2022

Contact James Barolo, 415-865-8928 james.barolo@jud.ca.gov

Executive Summary

Judicial Council staff recommend that the Judicial Council take the following actions required by statute to reflect changes in the California Consumer Price Index in relation to the enforcement of judgements: (1) adopt *Current Dollar Amounts Under Code of Civil Procedure Section* 699.730(b) (form EJ-186), and revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), which include the three-year adjustments to the dollar amounts in provisions relating to enforcement of judgments, as required by Code of Civil Procedure section 703.150; and (2) approve for submission to the Legislature the report on potential adjustments to the dollar amounts of homestead exemptions, as required by Code of Civil Procedure section 703.150(c).

Recommendation

Judicial Council staff recommend that the Judicial Council take the following actions:

 Adopt *Current Dollar Amounts Under Code of Civil Procedure Section 699.730(b)* (form EJ-186), effective April 1, 2022, which contains revised figures adjusted to reflect changes in the Consumer Price Index;

- 2. Revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), effective April 1, 2022, which contains revised figures adjusted to reflect changes in the Consumer Price Index;
- 3. Approve, effective March 30, 2022, the report to the Legislature on potential adjustments to the dollar amounts of homestead exemptions from enforcement of civil judgments, in conformance with Code of Civil Procedure section 703.150(c); and
- 4. Direct Judicial Council staff to submit the report to the Legislature.

The new and revised forms are at pages 5–7, and the report is attached as Attachment A.

Relevant Previous Council Action

In 2004, the Judicial Council authorized the Administrative Office of the Courts¹ to prepare a list of the amounts of certain exemptions from enforcement of judgments and to periodically update the list as required by Code of Civil Procedure² section 703.150(d) and (e) to reflect changes in the California Consumer Price Index for All Urban Consumers (CCPI). (See Link A.) Pursuant to this authorization, a list entitled *Current Dollar Amounts of Exemptions From Enforcement of Judgments* was prepared and posted on the California Courts website in April 2004. The list contained the dollar amounts of exemptions effective as of April 1, 2004, and indicated that further adjustments would be made every three years. As statutorily mandated, the exemption amounts on the list were adjusted in 2007, 2010, 2013, 2016, and 2019. The council, rather than the Administrative Director, began approving the revisions to the form in 2013.

The requirement that the council report on potential adjustments to the homestead exemption based on changes in the CCPI (see § 703.150(c)) is a more recent addition to that statute. This is the fourth report to the Legislature prepared under that provision.

Analysis/Rationale

Exemptions to enforcement of judgments

Section 703.150(f) requires the Judicial Council to adjust the dollar amounts of several exemptions from the enforcement of judgment provided in sections 703.140(b) (for cases under title 11 of the United States Code) and 704.010 et seq. (for other cases) every three years based on changes to the CCPI during that period, and to publish the adjusted amounts together with the next scheduled date of adjustment. (See § 703.150(a), (b).) The list of the dollar amounts of exemptions needs to be adjusted again at this time.

¹ See Judicial Council of Cal., Advisory Com. Rep., *Exemptions From the Enforcement of Judgments* (Apr. 12, 2004), and minutes of the April 23, 2004, Judicial Council meeting, item 1, <u>www.courts.ca.gov/documents/age0404.pdf</u>.

² Unless otherwise noted, all statutory references hereafter are to the Code of Civil Procedure.

Based on the recently published 2021 CCPI figures³ and using the formula attached to this report, staff have calculated the adjusted dollar amounts of the exemptions effective April 1, 2022, and revised the *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156) to show the adjusted amounts.⁴

In 2010, the Legislature amended the provisions on exemptions to address potential adjustments to the dollar amount of homestead exemptions provided in section 704.730(a). (See § 703.150(d).) The council is not to make these adjustments, but only to calculate what they would be under the same formula used for adjusting the other exemptions (i.e., based on the change in the CCPI over the past three years) and to provide that information to the Legislature, beginning on April 1, 2013, and at three-year intervals thereafter. (*Ibid.*)

Since the Judicial Council last reported on potential adjustments to dollar amounts of homestead exemption in 2019, the Legislature amended section 704.730. (Assem. Bill 1885; Stats. 2020, ch. 94.) The Legislature substantially increased the amounts of the homestead exemption effective January 1, 2021, and included in the amended statute provisions by which the amounts of the exemption automatically adjust every year based on changes in the California Consumer Price Index, starting January 1, 2022. (Code Civ. Proc. § 704.730(b).)

Although the adjustments have now been made automatic, the Legislature did not, when amending section 704.730, eliminate the provision for triannual reports for potential adjustments. In addition, should the Legislature continue to want the council to calculate and report on such adjustments, however, it is unclear how to calculate the requested dollar amounts, because, as explained in the report to the Legislature (Attachment A), the formula for annual adjustment in section 704.730(b) regarding homestead exemptions is different than the formula for triannual adjustments for other exemptions set forth in section 703.150(e). The report therefore provides the percentage change that would be applied under section 703.150(e), but does not attempt to generate specific dollar amounts. A copy of the formula used to generate the percentage is attached to the report to the Legislature.

Dollar amounts under section 699.730

Recently, the Legislature added a new set of figures to the list of dollar amounts that the council is to adjust and publish every three years under section 703.150(e) and (f): the figures contained in paragraph (7) of subdivision (b) of section 699.730. That code section provides that the principal place of residence of a judgment debtor is not subject to sale under execution of a judgment lien based on a consumer debt unless the debt was secured by the property at the time it was incurred. (See Code Civ. Proc., § 699.730(a).) However, the protections in section

³ The California Department of Industrial Relations has published the figures on its website, at <u>www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF</u>.

⁴ The current version of form EJ-156 was correctly revised in 2019, although it appears that the "Formula for adjusting exemption amounts on form EJ-156" attached to the 2019 report to the council at page 8 contained some minor typographical errors. Despite the errors on that sheet, the correct numbers were used to adjust the dollar amounts on form EJ-156, and it is those figures that are being adjusted in the proposed revision.

699.730(a) do not apply to certain types of unpaid debts, including debts, other than student loan debt, owed to a financial institution at the time of the execution of a judgment lien, if certain requirements based on dollar amounts are met. (See Code Civ. Proc., § 699.730(b)(7).)

Just as for the exemption amounts, the statute requires that the council adjust the dollar amounts in section 690.730(b)(7) every three years, starting April 1, 2022, based on changes to the CCPI during that period, and to publish the adjusted amounts together with the next scheduled date of adjustment. (See § 703.150(c), (e) & (f).) Because these figures do not represent amounts of income or assets that are exempt from enforcement of judgment, but are instead amounts of a particular type of debt or judgment that cannot serve as the basis for the sale of a principal place of residence, the adjusted figures cannot simply be added to the existing form. Instead, staff is recommending a new, similar form, *Current Dollar Amounts Under Code of Civil Procedure Section 699.730(b)* (form EJ-186). The proposed form contains the statutorily required adjustment for April 1, 2022, which staff calculated using the formula attached to this report.

Policy implications

There are no policy implications to these recommendations; they are simply actions required by statute.

Comments

This proposal was not circulated for comment because the changes to the dollar amounts are technical, required by statute, and not subject to discretion.

Alternatives considered

No alternatives to publishing adjusted dollar amounts were considered in light of the statutory mandate that the council adjust the figures every three years beginning in 2004.

Fiscal and Operational Impacts

The implications for this proposal for the trial courts should be minimal. Forms EJ-156 and EJ-186 are informational only and are not filed with or completed by the courts. No costs or operational impacts are associated with the approval of the report to the Legislature.

Attachments and Links

- 1. Forms EJ-156 and EJ-186, at pages 5–7
- 2. Formula for adjusting dollar amounts, at page 8
- 3. Attachment A: Report required under Code of Civil Procedure section 703.150(c)
- 4. Link A: 2021 California Consumer Price Index for All Urban Consumers, Department of Industrial Relations, <u>www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF</u>

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, 2022. 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(e).)

<u>Code Civ. Proc., § 703.140(b)</u>	Type of Property	Amount of Exemption
DRAFT (1) 2/12/2022 Not approved by the Judicial Council	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	\$ 31,950
(2)	The debtor's interest in one or more motor vehicles	\$ 6,375
(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)	\$ 800
(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	\$ 1,900
(5)	The debtor's aggregate interest, plus any unused amount of the exemption provided under paragraph (1), in any property	\$ 1,700
(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	\$ 9,525
(8)	The debtor's aggregate interest in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent	\$ 17,075
(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	<mark>\$ 31,950</mark>

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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 704.010 et seq.

The following lists the current dollar amounts of exemptions from enforcement of judgment under title 9, 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 July 1, 2021, and unless otherwise provided by statute after that date, will be adjusted annually effective July 1 by the Department of Social Services under Welfare and Institutions Code section 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, 2022. 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(e).)

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)	\$ <mark>3,625</mark>
704.030	Material to be applied to repair or maintenance of residence	\$ 3,825
704.040	Jewelry, heirlooms, art	\$ 9,525
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)	\$ <mark>9,525</mark>
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)	\$ <mark>19,050</mark>
704.220	Deposit account, generally (exemption without claim; amount per judgment debtor, section 704.220(a),(e)) ¹	\$ 1,826*
704.080	Deposit account with direct payment of social security or public benefits (exemption without claim, section 704.080(b)) ²	
	 Public benefits, one depositor is designated payee 	\$ <mark>1,900</mark>
	 Social security benefits, one depositor is designated payee 	\$ <mark>3,825</mark>
	 Public benefits, two or more depositors are designated payees ³ 	\$ <mark>2,825</mark>
	 Social security benefits, two or more depositors are designated payees³ 	\$ 5,725
704.090	Inmate trust account	\$ 1,900
	Inmate trust account (restitution fine or order)	\$ 325 ⁴
704.100	Aggregate loan value of unmatured life insurance policies	\$ <mark>15,250</mark>

1 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).)

2 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).)

³ 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).)

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

CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS

Save this form

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CURRENT DOLLAR AMOUNTS UNDER CODE OF CIVIL PROCEDURE SECTION 699.730(b)

The following lists the dollar amounts set forth in section 699.730(b)(7) of the Code of Civil Procedure, adjusted pursuant to section 703.150.

The principal place of residence of a judgment debtor is not subject to sale under execution of a judgment lien based on a consumer debt unless the debt was secured by the property at the time it was incurred. (See Code Civ. Proc., § 699.730(a).) However, the provisions in section 699.730(a) do not apply to certain types of unpaid debts, including debts other than student loan debt, owed to a financial institution at the time of the execution of a judgment lien, if certain requirements based on dollar amounts are met. (See Code Civ. Proc. § 699.730(b)(7).)

The amounts stated here are effective April 1, 2022. 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(e).)

Section 699.730(b)(7)(A)(i)	The amount of the original judgment on which the lien is based, when entered, was greater than \$81,850
Section 699.730(b)(7)(A)(ii)	The amount owed on the outstanding judgment at the time of the execution on the judgment lien is greater than \$81,850

DRAFT 2/12/2022 Not approved by the Judicial Council

Calculation of Dollar Amounts Under Code of Civil Procedure Sections 699.730, 703.140(b), and 704.010 et seq. (Adjusted April 1, 2022)

The adjustments to the current dollar amounts of the exemptions provided in Code of Civil Procedure sections 703.140(b) and 704.010 et seq., in *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), and to *Current Dollar Amounts Under Code of Civil Procedure Section 699.730(b)* (form EJ-186) are calculated as follows:

Formula

Under Code of Civil Procedure section 703.150(a), (b), (c), and (e), the adjustments to the dollar amount of the exemptions in sections 703.140(b) and 704.010 et seq. are calculated as follows:



This is similar to the method of calculation employed by the Judicial Conference of the United States in calculating adjustments to the federal bankruptcy exemptions, but it uses the California Consumer Price Index instead of the federal equivalent.

Definition

"CCPI" means the California Consumer Price Index for All Urban Consumers published by the Department of Industrial Relations, Division of Labor Statistics.

Calculation (as of April 1, 2022)

The calculation for the adjusted dollar amounts in Code of Civil Procedure sections 699.730, 703.140(b), and 704.010 et seq. is based on the following formula:



The adjustments of the dollar amounts of each of the individual exemptions is calculated by increasing the amounts of the individual exemptions by 9.123 percent, with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(e).)



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MR. MARTIN HOSHINO Administrative Director Judicial Council

JUDICIAL COUNCIL OF CALIFORNIA

March 30, 2022

Ms. Cara L. Jenkins Legislative Counsel 1021 O Street, Suite 3210 Sacramento, California 95814

Ms. Erika Contreras Secretary of the Senate State Capitol, Room 3044 Sacramento, California 95814

Ms. Sue Parker Chief Clerk of the Assembly State Capitol, Room 319 Sacramento, California 95814

Re: Report required under Code of Civil Procedure section 703.150(c)

Dear Ms. Jenkins, Ms. Contreras, and Ms. Parker:

The Judicial Council respectfully submits this report as required by Code of Civil Procedure section 703.150(d). That statute provides that at threeyear intervals beginning on April 1, 2013, the Judicial Council shall submit to the Legislature the amount by which the dollar amounts of the homestead exemptions in effect immediately before that date as provided in section 704.730(a) may be increased under the formula set forth in section 703.150(e), should the Legislature approve such an adjustment. The council notes, however, that it is no longer clear how to make that calculation and, even if it were, the adjusted dollar amounts no longer seem to be needed in light of recent legislation that provides for automatic adjustments of the homestead exemption amounts.

Since the Judicial Council last reported on potential adjustments to dollar amounts of homestead exemptions in 2019, the Legislature amended section 704.730. (See Assem. Bill 1885; Stats. 2020, ch. 94.) The Legislature substantially increased the amounts of the homestead

exemption effective January 1, 2021, and included in the amended statute provisions by which the amounts of the exemption automatically adjust every year based on changes in the California Consumer Price Index, starting January 1, 2022. (Code Civ. Proc. § 704.730(b).)

Although the adjustments have now been made automatic, the Legislature did not, when amending section 704.730, eliminate the provision for triannual reports for potential adjustments. If the Legislature should continue to want the council to calculate and report on such adjustments, however, it is unclear how to calculate the requested dollar amounts, because the formula for annual adjustments in section 704.730(b) regarding homestead exemptions is different than the formula for triannual adjustments for other exemptions set forth in section 703.150(e).

- Section 703.150(e) requires the Judicial Council to calculate an adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers (CCPI) for the *prior three-year period* ending December 31, to the dollar amount of exemptions "in effect immediately before" April 1 of every third year.
- Section 704.730(b) provides that, as of January 1, 2022, the amount of the homestead exemptions shall adjust *annually* based on the change in the annual CCPI for the prior *fiscal* year, published by the Department of Industrial Relations.

To adjust the dollar amounts of the homestead exemptions in effect immediately before April 1, 2022 (as required under section 703.150(e)), the council must first determine what those amounts are. Although section 704.730(b) provides that the amounts adjusted as of January 1, 2022 are based on the change in CCPI over the prior *fiscal* year, it is unclear what that change is. The Department of Industrial Relations updates the CCPI every two months, and provides an annual average for the calendar year, but does not publish a fiscal year CCPI. There is no definition of fiscal year in the Code of Civil Procedure; there is one in the Government Code, with the fiscal year beginning July 1 through June 30. However, because the Department of Industrial Relations does not publish a CCPI amount for July (it only publishes amounts for even numbered months), even using that definition does not clarify exactly how to calculate the adjusted amount. The dollar amounts of the homestead exemptions in section 704.730 could, as of January 1, 2022, be adjusted by 4.4% or 4.7%, or something else altogether, depending on what figures from the Department of Industrial Relations are considered to constitute CCPI for the prior fiscal year.¹

¹ Assuming the fiscal year is from July 1 to June 30, the change could be measured using the change in the figures published for June 2020 and June 2021 (4.4%) or for August 2020 (the first CCPI published in that fiscal year) and August 2021 (4.7%). Other options exist, such as the change in figures published for August 2020 and June 2021 (the last CCPI during that fiscal year, but only 11 months later, with a 3.9% change). Calculating an annual CPI for

Moreover, once the current homestead exemption amounts are calculated, applying the adjustments required in section 703.150 would result in duplicative adjustments because, unlike the other exemptions to which that section applies, the homestead exemptions have already been increased twice during the three-year period that is considered under 703.150, with one of the increases based directly on changes in CCPI within that period.

For the above reasons, the council has not included specific dollar amounts in this report. However, the council reports that, should the Legislature decide to adjust the current homestead exemptions in section 704.730 based on the provisions for adjusting exemption amounts under section 703.150(e), the current dollar amounts of the homestead exemptions would be increased by 9.123%. The calculation for making the adjustments is attached.

If you have any questions related to this report, please contact Deborah Brown, Chief Counsel, at 415-865-7667, <u>deborah.brown@jud.ca.gov</u>.

Sincerely,

Martin Hoshino Administrative Director Judicial Council of California

MH/AMR Attachment Links: Code Civ. Proc., § 703.150: <u>https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=703.150</u> <u>.&lawCode=CCP</u> Code Civ. Proc., § 704.730: <u>https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=704.730</u> <u>.&lawCode=CCP</u>

each of those periods (which is not a figure published by Department of Industrial Relations), and comparing it to an annual CPI from the prior fiscal year, could result in yet different percentages.

Eric Dang, Counsel, Office of Senate President pro Tempore Toni G. Atkins cc: Alf Brandt, Senior Counsel, Office of Assembly Speaker Anthony Rendon Shaun Naidu, Policy Consultant, Office of Assembly Speaker Anthony Rendon Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office Gabriel Petek, Legislative Analyst, Legislative Analyst's Office Jessie Romine, Budget Analyst, Department of Finance Margie Estrada, Chief Counsel, Senate Judiciary Committee Mary Kennedy, Chief Counsel, Senate Public Safety Committee Eric Csizmar, Consultant, Senate Republican Policy Office Morgan Branch, Consultant, Senate Republican Policy Office Alison Merrilees, Chief Counsel, Assembly Judiciary Committee Sandy Uribe, Chief Counsel, Assembly Public Safety Committee Jennifer Kim, Consultant, Assembly Budget Committee Lyndsay Mitchell, Consultant, Assembly Republican Office of Policy & Budget Gary Olson, Consultant, Assembly Republican Office of Policy & Budget Daryl Thomas, Consultant, Assembly Republican Office of Policy & Budget Amy Leach, Minute Clerk, Office of Assembly Chief Clerk Cory T. Jasperson, Director, Governmental Affairs, Judicial Council Jenniffer Herman, Administrative Coordinator, Governmental Affairs, Judicial Council

Attachment 1

Calculation of Potential Increases to Dollar Amounts Under Code of Civil Procedure Section 704.730 (for April 1, 2022)

Formula

Under Code of Civil Procedure section 703.150(d) and (e), the potential adjustments to the dollar amount of the exemptions in sections 704.730 would be calculated as follows:



Definition

"CCPI" means the California Consumer Price Index for All Urban Consumers published by the Department of Industrial Relations, Division of Labor Statistics.

Calculation (as of April 1, 2022)

The calculation for potential adjustments to the dollar amounts in Code of Civil Procedure sections 704.730 et seq. is based on the following formula:



The adjusted amounts for each of the exemption amounts in section 703.740 would be calculated by increasing the individual dollar amounts by 9.123 percent with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(e).)