



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-193

For business meeting on September 25, 2020

Title

Civil Practice and Procedure: Corrected Writ
of Execution Form

Agenda Item Type

Information Only

Date of Report

September 3, 2020

Submitted by

Judicial Council staff

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Executive Summary

The Judicial Council, at the recommendation of the Civil and Small Claims Advisory Committee recently revised four enforcement of judgment forms and approved four new forms to implement the provisions of Senate Bill 616, which amended several laws regarding exemptions to enforcement of civil money judgments. The revised and new forms are effective September 1, 2020. One of the forms approved by the council—*Writ of Execution* (form EJ-130)—included an inadvertent error, changing text in an item that should not have been changed. The Executive and Planning Committee approved, on behalf of the Judicial Council, correcting that item, so that the form would be correct when it became effective on September 1, 2020.

Relevant Previous Council Action

The Judicial Council first approved *Writ of Execution* (form EJ-130) in January 1978. The form has been revised several times since then, most recently at the May 2020 council meeting in order to implement the provisions of Senate Bill 616, with the revised form to be effective September 1, 2021.

Analysis/Rationale

Among other things, Senate Bill 616 created a new automatic exemption for deposit accounts generally, which is applicable to all judgments except those for wages owed, child or spousal

support, or liability to the state government.¹ In order to ensure that financial institutions are aware of whether a levy is based on a judgment to which this exemption does or does not apply, the new law also amends Code of Civil Procedure section 699.520 to mandate that the content of a writ of execution include information as to whether the underlying judgment is for wages owed or child or spousal support. That information was added to the *Writ of Execution* (form EJ-130) approved by the council in May.

With the addition of a new item to the form, several other items on the form (from item 22 through the end) needed to be renumbered and some cross-references needed to be changed to reflect the new numbering. A few other minor copy-editing changes were made as well. All of the intentional changes were described in the report to the council for the May action.² Unfortunately, in renumbering the items an unintentional change was inadvertently made: the first line of newly renumbered item 25 regarding writs of possession was replaced with a copy of the first line from item 21 regarding additional judgment debtors. The revised form fixes this, returning the text of the first line of item 25 to what it was before the May revisions. At the same time, a cross-reference on the last line of the item was corrected.

The proposed revision was not circulated for comment before because the correction was simply a reversion to the text in the current form, and so unlikely to create controversy. (See Cal. Rules of Court, rule 10.22(d)(2).)

Staff considered waiting to bring this correction to the September council meeting. However, if the form was not corrected sooner, there would be no form available for executing writs of possession as of September 1, 2020. For that reason, earlier action was required. As authorized by California Rules of Court, rule 10.11(a), the Executive and Planning Committee, acting on behalf of the council, approved the revision to form EJ-130 at its September 27, 2020 meeting.

Fiscal Impact and Policy Implications

Because the proposal is intended only to correct the inadvertent change to item 25 on form EJ-130, there are no policy implications relating to this proposal. Correction of the form so close to its effective date may have some operational impacts on the courts. But because the recently revised form that was set to go into effect on September 1 was incorrect, it had to be corrected as soon as possible.

Attachments and Links

1. Form EJ-130, at pages 4–6
2. Link A: Sen. Bill 616,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB616

¹ Code Civ. Proc., § 704.220(c).

² See Judicial Council of Cal., Advisory Com. Rep., *Civil Practice and Procedure: Enforcement of Judgment Forms—Exemptions* (April 20, 2020), at pages 5 and 9,
<https://jcc.legistar.com/View.ashx?M=F&ID=8265089&GUID=6EC572EC-72D4-4961-944D-CC5756FEB873>

3. Link B: Judicial Council of Cal., Advisory Com. Rep., *Civil Practice and Procedure: Enforcement of Judgment Forms—Exemptions* (April 20, 2020), at pages 5 and 9, <https://jcc.legistar.com/View.ashx?M=F&ID=8265089&GUID=6EC572EC-72D4-4961-944D-CC5756FEB873>

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): <input type="checkbox"/> ATTORNEY FOR <input type="checkbox"/> ORIGINAL JUDGMENT CREDITOR <input type="checkbox"/> ASSIGNEE OF RECORD	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	CASE NUMBER: _____
WRIT OF <input type="checkbox"/> EXECUTION (Money Judgment) <input type="checkbox"/> POSSESSION OF <input type="checkbox"/> Personal Property <input type="checkbox"/> SALE <input type="checkbox"/> Real Property	<input type="checkbox"/> Limited Civil Case (including Small Claims) <input type="checkbox"/> Unlimited Civil Case (including Family and Probate)

1. To the Sheriff or Marshal of the County of:

You are directed to enforce the judgment described below with daily interest and your costs as provided by law.

2. To any registered process server: You are authorized to serve this writ only in accordance with CCP 699.080 or CCP 715.040.

3. (Name):

is the ☐ original judgment creditor ☐ assignee of record whose address is shown on this form above the court's name.

4. Judgment debtor (name, type of legal entity if not a natural person, and last known address):

9. ☐ Writ of Possession/Writ of Sale information on next page.

10. ☐ This writ is issued on a sister-state judgment.

For items 11–17, see form MC-012 and form MC-013-INFO.

11. Total judgment (as entered or renewed) \$ _____

12. Costs after judgment (CCP 685.090) \$ _____

13. Subtotal (add 11 and 12) \$ _____

14. Credits to principal (after credit to interest) \$ _____

15. Principal remaining due (subtract 14 from 13) \$ _____

16. Accrued interest remaining due per CCP 685.050(b) (not on GC 6103.5 fees) \$ _____

17. Fee for issuance of writ (per GC 70626(a)(l)) \$ _____

18. **Total amount due** (add 15, 16, and 17) \$ _____

19. Levying officer:

a. Add daily interest from date of writ (at the legal rate on 15) (not on GC 6103.5 fees) \$ _____

b. Pay directly to court costs included in 11 and 17 (GC 6103.5, 68637; CCP 699.520(j)) \$ _____

20. ☐ The amounts called for in items 11–19 are different for each debtor. These amounts are stated for each debtor on Attachment 20.

5. Judgment entered on (date):

(See type of judgment in item 22.)

6. ☐ Judgment renewed on (dates):

7. Notice of sale under this writ:

a. ☐ has not been requested.

b. ☐ has been requested (see next page).

8. ☐ Joint debtor information on next page.

[SEAL]

Date: _____ Clerk, by _____, Deputy

NOTICE TO PERSON SERVED: SEE PAGE 3 FOR IMPORTANT INFORMATION.

Plaintiff/Petitioner:

CASE NUMBER:

Defendant/Respondent:

21. ☐ Additional judgment debtor(s) (name, type of legal entity if not a natural person, and last known address):

22. The judgment is for (check one):

- a. ☐ wages owed.
 b. ☐ child support or spousal support.
 c. ☐ other.

23. ☐ Notice of sale has been requested by (name and address):

24. ☐ Joint debtor was declared bound by the judgment (CCP 989-994)

- | | |
|--|--|
| a. on (date): | a. on (date): |
| b. name, type of legal entity if not a natural person, and last known address of joint debtor: | b. name, type of legal entity if not a natural person, and last known address of joint debtor: |

- c. ☐ Additional costs against certain joint debtors are itemized: ☐ below ☐ on Attachment 24c.

25. ☐ (Writ of Possession or Writ of Sale) **Judgment** was entered for the following:

- a. ☐ Possession of real property: The complaint was filed on (date):
 (Check (1) or (2). Check (3) if applicable. Complete (4) if (2) or (3) have been checked.)
- (1) ☐ The *Prejudgment Claim of Right to Possession* was served in compliance with CCP 415.46. The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.
- (2) ☐ The *Prejudgment Claim of Right to Possession* was NOT served in compliance with CCP 415.46.
- (3) ☐ The unlawful detainer resulted from a foreclosure sale of a rental housing unit. (An occupant not named in the judgment may file a *Claim of Right to Possession* at any time up to and including the time the levying officer returns to effect eviction, regardless of whether a *Prejudgment Claim of Right to Possession* was served.) (See CCP 415.46 and 1174.3(a)(2).)
- (4) If the unlawful detainer resulted from a foreclosure (item 25a(3)), or if the *Prejudgment Claim of Right to Possession* was not served in compliance with CCP 415.46 (item 25a(2)), answer the following:
- (a) The daily rental value on the date the complaint was filed was \$
- (b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify):

Item 25 continued on next page

Plaintiff/Petitioner: Defendant/Respondent:	CASE NUMBER:
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25. b. ☐ Possession of personal property.
☐ If delivery cannot be had, then for the value (*itemize in 25e*) specified in the judgment or supplemental order.
- c. ☐ Sale of personal property.
- d. ☐ Sale of real property.
- e. The property is described ☐ below ☐ on Attachment 25e.

NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying *Notice of Levy* (form EJ-150).

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will demand that you turn over the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

EXCEPTION IF RENTAL HOUSING UNIT WAS FORECLOSED. If the residential property that you are renting was sold in a foreclosure, you have additional time before you must vacate the premises. If you have a lease for a fixed term, such as for a year, you may remain in the property until the term is up. If you have a periodic lease or tenancy, such as from month-to-month, you may remain in the property for 90 days after receiving a notice to quit. A blank form *Claim of Right to Possession and Notice of Hearing* (form CP10) accompanies this writ. You may claim your right to remain on the property by filling it out and giving it to the sheriff or levying officer.

EXCEPTION IF YOU WERE NOT SERVED WITH A FORM CALLED PREJUDGMENT CLAIM OF RIGHT TO POSSESSION. If you were not named in the judgment for possession and you occupied the premises on the date on which the unlawful detainer case was filed, you may object to the enforcement of the judgment against you. You must complete the form *Claim of Right to Possession and Notice of Hearing* (form CP10) and give it to the sheriff or levying officer. A blank form accompanies this writ. You have this right whether or not the property you are renting was sold in a foreclosure.