

RESOLUTION 11-08-2003

DIGEST

Levy on Writ of Execution: Service on Any Office or Branch

Amends Code of Civil Procedure section 684.110 to allow service of a writ of execution on any office or branch of the entity holding the property at issue.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

None known.

Reasons:

This resolution amends Code of Civil Procedure section 684.110 to allow service of a writ of execution on any office or branch of the entity holding the property at issue. This resolution should be disapproved because modern banking practices make the definitions of “any office or branch” and “other person in charge” too uncertain.

The proponent has stated that this resolution covers writs of “attachment.” These are governed by Code of Civil Procedure section 481.110 et seq. and have completely different provisions for levies of writs. Even if intended to cover writs of execution, however, the resolution creates uncertainties that could greatly prejudice third parties.

Currently, section 684.110 provides that writs of execution must be served on the office or branch of the financial institution (or similar entity) that has “actual possession” of the property levied upon or that carries the account levied upon. This resolution seeks to allow writs to be served on “any office or branch.” The proponent asserts that because branches within an institution are very interconnected, this should not be a problem. Section 684.110, however, covers not only large banking chains, but also title insurers and underwriters. In all three categories, small, poorly connected chains still exist. Even within the large chains of highly interconnected branches, relaxed service requirements could lead to problems. For example, a writ could be served on a bank kiosk in a grocery store. Under those circumstances, there is no adequate assurance that the writ will come to the attention of a person of appropriate authority and responsibility. Because the entity receiving the writ is potentially liable for failure to honor it (see Code Civ. Proc., § 701.010 et seq.), simple fairness dictates that the writ be delivered to the employee who is able to comply with it.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 684.110 to read as follows:

- 1 §684.110
- 2 (a) Subject to subdivisions (b), (c), and (d), if a writ, notice, order, or other paper is required
- 3 to be personally served under this title, service shall be made in the same manner as a summons is
- 4 served under Chapter 4 (commencing with Section 413.10) of Title 5.
- 5 (b) If the paper is required to be personally served under this title and service on an attorney
- 6 is required under Article 1 (commencing with Section 684.010), service shall be made on the
- 7 attorney in the manner provided in Section 684.040.
- 8 (c) If the service is on (1) a financial institution, (2) a title insurer (as defined Section
- 9 12340.4 of the Insurance Code) or underwritten title company (as defined in Section 12340.5 of the

10 Insurance Code), or (3) an industrial loan company (as defined in Section 18003 of the Financial
11 Code), service shall be made at the any office or branch ~~that has actual possession of the property~~
12 ~~levied upon or at which a deposit account levied upon is carried and shall be made~~ upon the officer,
13 manager, or other person in charge of the office or branch at the time of service.
14 (d) Subject to subdivision (c), if a levy is made by personally serving a copy of the writ and
15 notice ~~of levy~~ on a third person, service on the third person shall be made in the same manner as a
16 summons may be served under Section 415.10 or 415.20.
17

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: Requires service of a writ of attachment on an account, deposit, or escrow at the branch where the property, account or deposit is carried, i.e., wherever it was opened.

This Resolution: Brings the levy procedure into the 21st century by eliminating the antiquated requirement of levies only at the location where the debtor's escrow, account, or deposit was opened.

The Problem: The existing procedure for service of writs of attachment, notices, orders, etc. on financial institutions, title companies and loan companies was created at a time when the physical locations of these financial institutions were few. Today, money is often electronic and financial institution locations are countless, rendering the requirement that a creditor figure out and then levy wherever the debtor's account or deposit was opened an unnecessary, and sometimes impossible, burden. Virtually all financial institutions interconnect their branches electronically, making the burden on the institution de minimus. A debtor should not be allowed to hide the ball by squirreling assets away in a far flung branch of a giant bank, credit union or other financial institution.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Gina Dronet, 1585 Coast Walk, La Jolla, CA 92037, voice (858) 454-0577, gd@san.rr.com

RESPONSIBLE FLOOR DELEGATE: Christopher Larsen