

New Central Legal Process Laws

Affect Financial Institutions and Judgment Creditors

by MARK M. SCOTT

For years judgment creditors and financial institutions were statutorily engaged in a kind of blind man's bluff when it came to levying writs of execution on the judgment debtor's deposit accounts, safe deposit boxes, and other property held by the financial institution.

Under prior law, the judgment creditor was required to levy the writ of execution or other process at the branch where the judgment debtor physically maintained the account or property. Recent amendments to the California Code of Civil Procedure have effected a sea change in the rules, making it easier on all concerned but creating additional considerations that should not be ignored.

This article addresses California's new "central process" designation rules and the ramifications to affected financial institutions, judgment creditors, and judgment debtors.

The New Law Mandates Action and Creates Mechanisms

Effective January 1, 2013, banks, credit unions, and other financial institutions with more than nine branches or offices in California must designate one or more central locations to accept service of legal process within the state. Cal. Civ. Proc. Code § 684.115 (West 2013). The designation is optional for financial institutions with fewer than nine branches.

This designation is made by filing a notice with the California Department of Financial Institutions, which effective July 1, 2013 merged with the Department of Corporations to form

the newly created California Department of Business Oversight (the "Department"). The Department has a form that financial institutions can use to make the designation. The form can be obtained by emailing the Department at licensing@dbo.ca.gov. Modifications or deletions to a designation can also be made by emailing this address.

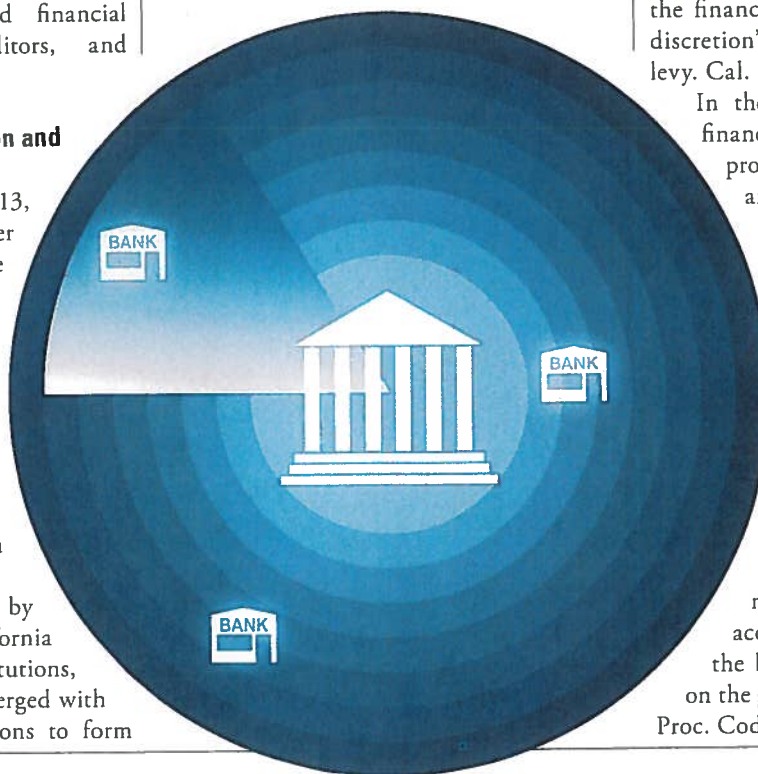
The Department is legally required to update its online records within ten business days following the filing of a request by a financial institution. Cal. Civ. Proc. Code § 684.115(e)(1). The Department maintains an online list of the designations at www.dbo.ca.gov. It will soon become second nature for judgment creditors to check this list before applying for writs of execution and instructing process servers.

The penalty for failing to designate a

central location will result in all of the required financial institution's branches or offices within California being deemed as "central locations" for service of process. Cal. Civ. Proc. Code § 684.115. This penalty makes it easier for a judgment creditor to effectuate a levy but makes it more difficult for a financial institution to streamline levy procedures and to avoid potential liability for mishandling a levy.

If a financial institution has designated a central location, the new law provides that all levies on that institution must be served on the central location regardless of where the account was opened or the property is located. Cal. Civ. Proc. Code § 684.115(c). Where a judgment creditor ignores a central process designation and instructs the levying officer to serve the branch where the account or property is located, the financial institution has the "absolute discretion" whether or not to honor the levy. Cal. Civ. Proc. Code § 684.115(f).

In the event of an invalid levy, the financial institution has options and protections. Without violating any obligation to its customer, the financial institution may honor the otherwise invalid service. Cal. Civ. Proc. Code § 684.115(e). Alternatively, the financial institution may respond to the levy by stating that "legal process was not properly served at the financial institution's designated location for receiving legal process and, therefore, was not processed." *Id.* Lastly, the financial institution may treat the levy as not reaching accounts or property actually held at the branch and need not report such on the garnishee memorandum. Cal. Civ. Proc. Code § 684.115(d).



Central process service covers three types of property: deposit accounts, safe deposit boxes, and property held by the financial institution at any branch located within California. Cal. Civ. Proc. Code § 684.115(c). Service on the central location will establish an immediate lien on all such property.

However, if any property other than deposit accounts is physically held at a branch that is not the central location, the levy will not reach the property. Instead, the financial institution's obligation is to state in the memorandum of garnishee where such property is physically located

the judgment creditor may request the financial institution to identify the branch at which a specific account is located. The request must be supported by an affidavit which contains the requisite information. Cal. Civ. Proc. Code § 684.115(h). The financial institution has ten days to respond to a proper request (Cal. Civ. Proc. Code § 684.115(j)), and a good faith response shall not be deemed to violate the judgment debtor's privacy rights (Cal. Civ. Proc. Code § 684.115(k)). Importantly, the financial institution is not permitted to notify its customer that a request has been

made. Cal. Civ. Proc. Code § 684.115(l).

The request mechanism is particularly useful to judgment creditors where the financial institution has fewer than nine branches in California, thereby exempting it from designating a central location. The new procedure now enables judgment creditors to obtain the location information without tipping off the judgment debtor.

Judgment Creditor Considerations

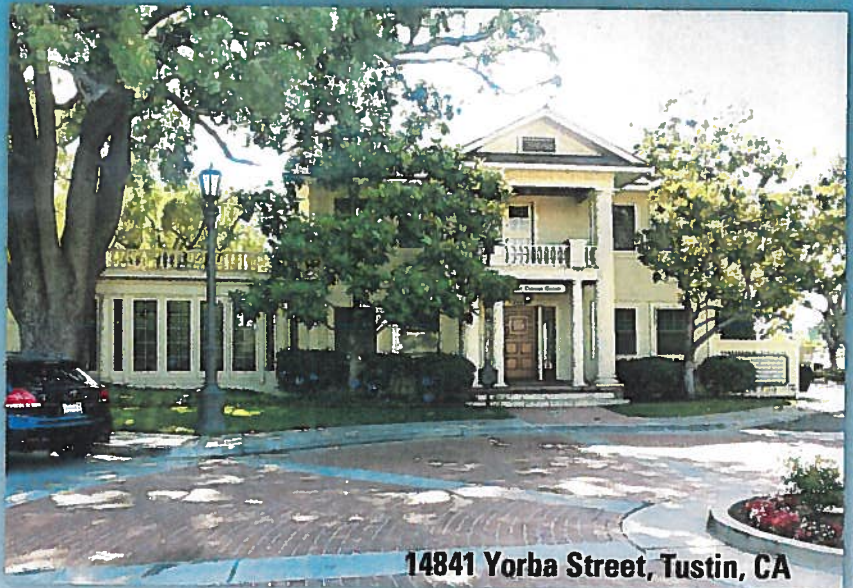
The new law is welcome news for judgment creditors. However, there will likely be an

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so that the judgment creditor can then levy a writ in that county. *Id.* In the interim, the judgment creditor should be protected by the lien established through service at the central process location.

Another novel concept in the new law is the "written request" opportunity set forth in California Code of Civil Procedure § 684.115(h) that is applicable to deposit accounts believed to be maintained by financial institutions that have not designated a central location. If the judgment creditor "reasonably believes" that any act of enforcement would be effective against a specific deposit account maintained at a financial institution,

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adjustment period as the new procedures are absorbed and become routine.

Judgment creditors that overlook the new central process rules might miss out on opportunities. What might have been a successful levy could result in a “nothing to report” memorandum of garnishee if the financial institution is mistakenly served at other than the designated central process location. If fortunate, the judgment creditor might receive a memorandum of garnishee advising that service should be made at the central location.

Either way, the judgment creditor loses time proceeding in the wrong location and obtaining a writ for the correct county. This delay could prove costly in the race to levy on assets and is embarrassing from a client relationship perspective. A botched levy also removes the element of surprise since the judgment debtor will have received service of a notice of levy notifying them of judgment creditor’s plan.

A benefit of the new law is that the judgment creditor will no longer have to spend time and money ascertaining where the judgment debtor maintains the account or property. Previously, judgment creditors might not have attempted a levy because it did not know which branch to

serve. Alternatively, a cumbersome and expensive judgment debtor examination would have been necessary to flush out the location. Those days are over.

The central location rules solve the problem with respect to financial institutions with nine or more branches, and possibly sweep previously unknown accounts at other branches into the levy. The “written request” for identification of accounts mechanism takes care of the problem for institutions with fewer than nine branches.

Financial Institution Considerations

The penalty for noncompliant financial institutions is that all branches or offices are deemed “central locations,” meaning that noncompliant institutions must have excellent logistical procedures in place in order to avoid wrongful dishonor liability.

Financial institutions that are served at locations other than the designated central location must determine how to exercise their statutory discretion to treat the levy as valid or invalid. They must decide whether to proceed on a case-by-case basis or to develop a consistent policy. Fortunately, the new law makes it clear that a financial institution will not be put between a rock and a hard place with

respect to judgment debtor customers and judgment creditors.

The “written request” for account information mechanism will require financial institutions to become familiar with the request requirements so that the good faith safe harbor is available. The financial institution must ensure that the affidavit in support of the judgment creditor’s request contains all the necessary information set forth in the statute. Of course, a financial institution must also resist the temptation to alert its customer, the judgment debtor, of the judgment creditor’s request. Any financial institution that improperly alerts its customer can expect the judgment creditor to seek redress if the judgment debtor customer removes the property from the financial institution in order to escape the levy.

The central location concept could have unintended consequences by potentially increasing the risk of wrongful levies. California is a big state and there are a lot of people with the same name. There will be more similarly named people on record at a centralized location than at a local branch. The financial institution must be certain that the levied-upon account actually belongs to the judgment debtor as opposed to someone else who happens to share the same name. Judgment creditors would be well served to provide additional identification information in the levy instructions to make certain that the levy impacts only the actual judgment debtor.

Conclusion

California’s new service of process law should make levies in California easier for financial institutions and judgment creditors alike. An adjustment period can be expected as the new rules sink in and become second nature. The financial institutions will have to put procedures and policies in place to account for the new procedures. On balance, the new streamlined procedures will help bring California’s enforcement of judgment procedures into the twenty-first century. Only the judgment debtors will be discouraged by that result.



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