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AB-2067 Financial institutions: service of process. (2023-2024)

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Assembly Bill No. 2067

CHAPTER 222

An act to amend Sections 488.610, 684.115, and 701.030 of the Code of Civil Procedure, relating to civil actions.

[Approved by Governor September 12, 2024. Filed with Secretary of State September 12, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2067, Dixon. Financial institutions: service of process.

Existing law, the Enforcement of Judgments Law, governs the enforcement of, among other things, money judgments and judgments for possession of personal property in civil actions. Existing law requires a writ, notice, order, or other paper relating to the enforcement of a judgment to be served on the judgment creditor or, if applicable, the judgment creditor's attorney. Under existing law, a financial institution is permitted, and if it has more than nine branches or offices within the state is required, to designate one or more central locations for service of legal process within the state. Except as specified, service of legal process at a central location of a financial institution is effective against all deposit accounts and all property held for safekeeping, as collateral for an obligation owed to the financial institution, or in a safe-deposit box if, among other conditions, the deposit accounts or properties are held by the financial institution at any branch or office covered by central process and located within the state.

This bill would permit a financial institution to designate a third-party agent, as defined, as a central location for service of legal process, as specified. If the financial institution designates a third-party agent as a central location, the bill would require the financial institution to designate another central location. The bill would prohibit each central location from being located in the same county as another designated central location.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 488.610 of the Code of Civil Procedure is amended to read:

488.610. (a) At the time of service of a copy of the writ of attachment and a notice of attachment on a third person, the levying officer shall request the third person to give the levying officer a garnishee's memorandum containing the information required by this section. Within 10 days after the request is made, the third person shall mail or deliver the garnishee's memorandum to the levying officer whether or not the levy is effective.

(b) The garnishee's memorandum shall be executed under oath and shall contain the following information:

(1) A description of any property of the defendant sought to be attached that is not delivered to the levying officer and the reason for not delivering the property.

(2) A statement of the amount and terms of any obligation to the defendant sought to be attached that is due and payable and is not paid to the levying officer and the reason for not paying the obligation.

(3) A statement of the amount and terms of any obligation to the defendant sought to be attached that is not due and payable at the time of levy.

(4) A description of claims and rights of other persons to the attached property or obligation that are known to the third person and the names and addresses of those other persons.

(5) A statement that the garnishee holds neither any property nor any obligations in favor of the judgment debtor.

(c) If a garnishee's memorandum is received from the third person, the levying officer shall promptly mail or deliver a copy of the memorandum to the plaintiff and attach the original to the writ when it is returned to the court. If a garnishee's memorandum is not received from the third person, the levying officer shall so state in the return.

(d) Except as provided in subdivisions (e) and (f), if a third person does not give the levying officer a garnishee's memorandum within the time provided in subdivision (a) or does not provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceedings to obtain the information required in the garnishee's memorandum.

(e) Notwithstanding subdivision (a), where a deposit account or property in a safe-deposit box is attached, the financial institution need not give a garnishee's memorandum to the levying officer if the financial institution fully complies with the levy and, if a garnishee's memorandum is required, the garnishee's memorandum need provide information with respect only to property which is carried on the records available at the office or branch where the levy is made, unless the levy has been served at a central location designated by a financial institution in accordance with Section 684.115, in which case the garnishee's memorandum shall apply to all offices and branches of the financial institution except to the extent acceptance of the levy at that central location is limited pursuant to paragraph (3) of subdivision (b) of Section 684.115.

(f) Notwithstanding subdivision (a), the third person need not give a garnishee's memorandum to the levying officer if both of the following conditions are satisfied:

(1) The third person has delivered to the levying officer all of the property sought to be attached.

(2) The third person has paid to the levying officer the amount due at the time of levy on any obligation to the defendant that was attached and there is no additional amount that thereafter will become payable on the obligation levied upon.

SEC. 2. Section 684.115 of the Code of Civil Procedure is amended to read:

684.115. (a) A financial institution may, and if it has more than nine branches or offices at which it conducts its business within this state shall, designate one or more central locations for service of legal process within this state. Each designated location shall be referred to as a "central location." A financial institution may designate a third-party agent as a central location for service of legal process. If a financial institution designates a third-party agent as a central location, the financial institution shall designate at least one additional central location that is not located in the same county as another designated central location. The financial institution may designate the same third-party agent as multiple central locations for service of legal process if the third-party agent maintains physical locations in multiple counties.

(b) If a financial institution elects or is required to designate a central location for service of legal process, pursuant to subdivision (a), the financial institution shall file a notice of its designation with the Department of Financial Protection and Innovation which filing shall be effective upon filing and shall contain all of the following:

(1) The physical address of the central location.

(2) The days and hours during which service will be accepted at the central location and, if the central location is a third-party agent, the name of the third party agent.

(3) If the central location will not accept service of legal process directed at deposit accounts maintained or property held at all of the financial institution's branches or offices within this state, or if the service accepted at the central location will not apply to safe-deposit boxes or other property of the judgment debtor held by or for the judgment debtor, the filing shall also contain sufficient information to permit a determination of the limitation or limitations, including, in the case of a limitation applicable to certain branches or offices, an identification of the branches or offices as to which service at the central location will not apply and the nature of the limitation applicable to those branches or offices. If the limitation will apply to all branches or offices of the financial institution within this state, the filing may indicate the nature of the limitation and that it applies to all branches or offices, in lieu of an identification of branches or offices as to which the limitation applies. To the extent that a financial institution's designation of a central location for service of legal process covers the process directed at deposit accounts, safe-

deposit boxes, or other property of the judgment debtor held by or for the judgment debtor at a particular branch or office located within this state, the branch or office shall be a branch or office covered by central process.

(c) Should a financial institution required to designate a central location fail to do so, each branch of that institution located in this state shall be deemed to be a central location at which service of legal process may be made, and all of the institution's branches or offices located within this state shall be deemed to be a branch or office covered by central process.

(d) Subject to any limitation noted pursuant to paragraph (3) of subdivision (b), service of legal process at a central location of a financial institution shall be effective against all deposit accounts and all property held for safekeeping, as collateral for an obligation owed to the financial institution or in a safe-deposit box if the same is described in the legal process and held by the financial institution at any branch or office covered by central process and located within this state. However, while service of legal process at the central location will establish a lien on all property, if any property other than deposit accounts is physically held by the financial institution in a county other than that in which the designated central location is located, the financial institution shall include in its garnishee's memorandum the location or locations of the property, and the judgment creditor shall obtain a writ of execution covering the property and directed to the levying officer in that county to accomplish the turnover of the property and shall forward the writ and related required documentation to the levying officer in the county in which the property is held.

(e) A financial institution may modify or revoke any designation made pursuant to subdivision (a) by filing the modification or revocation with the Department of Financial Protection and Innovation. The modification or revocation shall be effective when the Department of Financial Protection and Innovation's records have been updated to reflect the modification or revocation, provided that the judgment creditor may rely upon the superseded designation during the 30-day period following the effective date of the revocation or modification.

(f) (1) The Department of Financial Protection and Innovation shall update its online records to reflect a filing by a financial institution pursuant to subdivisions (a) and (b) or a modification or revocation filed by a financial institution pursuant to subdivision (e) within 10 business days following the filing by the financial institution. The Department of Financial Protection and Innovation's internet website shall reflect the date its online records for each financial institution have most recently been updated.

(2) The Department of Financial Protection and Innovation shall provide any person requesting it with a copy of each current filing made by a financial institution pursuant to subdivisions (a) and (b). The Department of Financial Protection and Innovation may satisfy its obligation under this subdivision by posting all current designations of a financial institution, or the pertinent information therein, on an internet website available to the public without charge, and if that information is made available, the Department of Financial Protection and Innovation may impose a reasonable fee for furnishing that information in any other manner.

(g) As to deposit accounts maintained or property held for safekeeping, as collateral for an obligation owed to the financial institution or in a safe-deposit box at a branch or office covered by central process, service of legal process at a location other than a central location designated by the financial institution shall not be effective unless the financial institution, in its absolute discretion, elects to act upon the process at that location as if it were effective. In the absence of an election, the financial institution may respond to the legal process by mailing or delivery of the garnishee's memorandum to the levying officer within the time otherwise provided therefor, with a statement on the garnishee's memorandum that the legal process was not properly served at the financial institution's designated location for receiving legal process, and, therefore, was not processed, and the address at which the financial institution is to receive legal process.

(h) If any legal process is served at a central location of a financial institution pursuant to this section, all related papers to be served on the financial institution shall be served at that location, unless agreed to the contrary between the serving party and the financial institution.

(i) This subdivision shall apply whenever a financial institution operates within this state at least one branch or office in addition to its head office or main office, as applicable, or a financial institution headquartered in another state operates more than one branch or office within this state, and no central location has been designated or deemed to have been designated by the institution for service of legal process relating to deposit accounts maintained at the financial institution's head office or main office, as applicable, and branches located within this state. If a judgment creditor reasonably believes that, pursuant to Section 700.140 and, if applicable, Section 700.160, any act of enforcement would be effective against a specific deposit account maintained at a financial institution described in this subdivision, the judgment creditor may file with the financial institution a written request that the financial institution identify the branch or office within this state at which a specified account might be maintained by the financial institution. The written request shall contain the following statements or information:

(1) The name of the person reasonably believed by the judgment creditor to be a person in whose name the specified deposit account stands.

(2) If the name of the person reasonably believed by the judgment creditor to be a person in whose name the specified deposit account stands is not a judgment debtor identified in the writ of execution, a statement that a person reasonably believed by the judgment creditor to be a person in whose name the specified deposit account stands will be appropriately identified in the legal process to be served pursuant to Section 700.160, including any supplementary papers, such as a court order or affidavit if the same will be required by Section 700.160.

(3) The specific identifying number of the account reasonably believed to be maintained with the financial institution and standing in the name of the judgment debtor or other person.

(4) The address of the requesting party.

(5) An affidavit by the judgment creditor or the judgment creditor's counsel stating substantially the following:

"I hereby declare that this deposit account location request complies with Section 684.115 of the Code of Civil Procedure, that the account or accounts of the judgment debtor or other person or persons appropriately identified in the legal process and specified herein are subject to a valid writ of execution, or court order, that I have a reasonable belief, formed after an inquiry reasonable under the circumstances, that the financial institution receiving this deposit account location request has an account standing in the name of the judgment debtor or other person or persons appropriately identified in the legal process, and that information pertaining to the location of the account will assist the judgment creditor in enforcing the judgment."

(j) The affidavit contemplated by subdivision (i) shall be signed by the judgment creditor or the judgment creditor's counsel and filed at the financial institution's head office located within this state or, if the financial institution's head office is in another state, at one of its branches or offices within this state. Failure to comply with the requirements of subdivision (i) and this subdivision shall be sufficient basis for the financial institution to refuse to produce the information that would otherwise be required by subdivision (k).

(k) Within 10 banking days following receipt by a financial institution at the applicable location specified in subdivision (j) of a request contemplated by subdivision (i), as to each specific deposit account identified in the request contemplated by subdivision (i), the financial institution shall respond by mailing, by first-class mail with postage prepaid, to the requester's address as specified in the request a response indicating the branch or office location of the financial institution at which the specified deposit account might be maintained, or, if the specified deposit account, if it exists, would not be maintained at a specific location, at least one place within this state at which legal process relating to the deposit account should or may be served. The response to be furnished pursuant to this subdivision shall not require the financial institution to determine whether an account exists or, if an account does exist, whether it would be reached by the legal process, rather, the branch or office location shall be determined and reported by the financial institution based solely upon its determination that an account with the identifying number provided by the requester would be maintained at that branch if an account did exist, and the response shall not contain any information about the name in which the account stands or any other information concerning the account, if it exists. If more than one account number is specified in the request, the financial institution's responses as to some or all of those account numbers may be combined in a single writing.

(l) A response furnished in good faith by the financial institution pursuant to subdivision (k) shall not be deemed to violate the privacy of any person in whose name the specified deposit account stands nor the privacy of any other person, and shall not require the consent of the person in whose name the account stands nor that of any other person.

(m) A financial institution shall not notify the person in whose name the specified deposit account stands or any other person related to the specified account of the receipt of any request made pursuant to subdivision (i) and affecting that person's or persons' accounts at the financial institution, provided that the financial institution shall have no liability for its failure to comply with the provisions of this subdivision.

(n) For purposes of this section, "third-party agent" means a non-financial institution entity, such as a corporation, that is in the business of accepting service of legal process on behalf of financial institutions and other businesses. Third-party agent does not include a licensed attorney or law firm acting on behalf of a financial institution.

SEC. 3. Section 701.030 of the Code of Civil Procedure is amended to read:

701.030. (a) At the time of service of a copy of the legal process on a third person, the levying officer shall request the third person to give the levying officer a garnishee's memorandum containing the information required by this section. Within 10 days after the legal process is served, the third person shall mail or deliver the garnishee's memorandum to the levying officer whether or not the levy is effective.

(b) The garnishee's memorandum shall be executed under oath and shall contain the following information, as applicable:

- (1) A description of any property of the judgment debtor sought to be levied upon that is not delivered to the levying officer and the reason for not delivering the property.
- (2) A description of any property of the judgment debtor not sought to be levied upon that is in the possession or under the control of the third person at the time of levy.
- (3) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is due and payable and is not paid to the levying officer, and the reason for not paying the obligation.
- (4) A statement of the amount and terms of any obligation to the judgment debtor sought to be levied upon that is not due and payable at the time of levy.
- (5) A statement of the amount and terms of any obligation to the judgment debtor at the time of levy not sought to be levied upon.
- (6) A description of claims and rights of other persons to the property or obligation levied upon that are known to the third person and the names and addresses of those other persons.
- (7) A statement that the garnishee holds neither any property nor any obligations in favor of the judgment debtor.

(c) If a garnishee's memorandum is received from the third person, the levying officer shall retain a copy and promptly mail or deliver a copy of the memorandum to the judgment creditor.

(d) Except as provided in subdivisions (e) and (f), if a third person does not give the levying officer a garnishee's memorandum within the time provided in subdivision (a), or does not provide complete information, the third person may, in the court's discretion, be required to pay the costs and reasonable attorney's fees incurred in any proceedings to obtain the information required in the garnishee's memorandum.

(e) Notwithstanding subdivision (a), when the levy is made upon a deposit account or upon property in a safe-deposit box, the financial institution need not give a garnishee's memorandum to the levying officer if the financial institution fully complies with the levy and, if a garnishee's memorandum is required, the garnishee's memorandum needs to provide information with respect only to property that is carried on the records available at the office or branch where the levy is made provided that if a levy has been served at a central location designated by a financial institution in accordance with Section 684.115, the garnishee's memorandum shall apply to all offices and branches of the financial institution except to the extent acceptance of the levy at those central locations is limited pursuant to paragraph (3) of subdivision (b) of Section 684.115.

(f) Notwithstanding subdivision (a), the third person need not give a garnishee's memorandum to the levying officer if both of the following conditions are satisfied:

- (1) The third person has delivered to the levying officer all of the property sought to be levied upon.
- (2) The third person has paid to the levying officer the amount due at the time of levy on any obligation to the judgment debtor that was levied upon, and there is no additional amount that thereafter will become payable on the obligation levied upon.

(g) The garnishee may electronically transmit the garnishee's memorandum to the levying officer pursuant to Chapter 2 (commencing with Section 263) of Title 4 of Part 1.