

ASSEMBLY BILL

No. 1167

Introduced by Assembly Member Dickinson

February 22, 2013

An act to amend Sections 488.030 and 687.010 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1167, as introduced, Dickinson. Civil procedure: levies

Existing law governs the procedure for levying an execution lien or attachment lien upon real or personal property. Existing law requires the plaintiff or judgment creditor to give the levying officer written instructions containing the information needed or requested by the levying officer to serve the writ, order, notice, or other paper on a person.

This bill would require instructions given to a levying officer to include specified information if the instructions are accompanied by a writ issued by the court as an electronic record or document printed from an electronic record issued by the court. The bill would authorize the issuance and acceptance of an electronic writ only if the court and the levying officer are technologically able to do so.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 488.030 of the Code of Civil Procedure
- 2 is amended to read:

1 488.030. (a) The plaintiff shall give the levying officer
2 instructions in writing. The instructions shall be signed by the
3 plaintiff's attorney of record or, if the plaintiff does not have an
4 attorney of record, by the plaintiff. The instructions shall contain
5 the information needed or requested by the levying officer to
6 comply with the provisions of this title, including but not limited
7 to:

8 (1) An adequate description of any property to be levied upon.

9 (2) A statement whether the property is a dwelling.

10 (3) If the property is a dwelling, whether it is real or personal
11 property.

12 (b) Subject to subdivision (c), the levying officer shall act in
13 accordance with the written instructions to the extent the actions
14 are taken in conformance with the provisions of this title.

15 (c) Except to the extent the levying officer has actual knowledge
16 that the information is incorrect, the levying officer may rely on
17 any information contained in the written instructions.

18 *(d) If the instructions directing the levying officer to perform a*
19 *levy are accompanied by a writ of attachment issued by the court*
20 *as an electronic record, as defined in subdivision (k) of Section*
21 *263.1, or a document printed from an electronic record issued by*
22 *the court, the instructions shall also include all of the following*
23 *information, as stated in the electronic writ:*

24 *(1) The date of issuance of the writ.*

25 *(2) The name of the defendant or defendants whose property is*
26 *subject to levy under the writ.*

27 *(3) The amount to be secured by the attachment.*

28 *(4) A statement indicating that the accompanying writ is either*
29 *of the following:*

30 *(A) An original writ not already in the possession of the levying*
31 *officer.*

32 *(B) A copy of the writ already in possession of the levying*
33 *officer.*

34 *(e) Unless and to the extent the levying officer has actual*
35 *knowledge that the information in the electronic writ has been*
36 *altered, the levying officer may proceed in the same manner as if*
37 *in possession of a paper version of the writ.*

38 *(f) The court may issue, and the levying officer may accept, an*
39 *electronic writ only if they are technologically able to do so.*

1 SEC. 2. Section 687.010 of the Code of Civil Procedure is
2 amended to read:

3 687.010. (a) The judgment creditor shall give the levying
4 officer instructions in writing. The instructions shall include the
5 signature and name of the judgment creditor's attorney of record
6 or, if the judgment creditor does not have an attorney of record,
7 by the judgment creditor. The instructions shall contain the
8 information needed or requested by the levying officer to comply
9 with this title, including but not limited to:

10 (1) An adequate description of any property to be levied upon.

11 (2) A statement whether the property is a dwelling.

12 (3) If the property is a dwelling, whether it is real or personal
13 property.

14 (4) The name of the judgment debtor. If the judgment debtor is
15 other than a natural person, the type of legal entity shall be stated.

16 (b) Subject to subdivision (c), the levying officer shall act in
17 accordance with the written instructions to the extent the actions
18 are taken in conformance with the provisions of this title.

19 (c) Except to the extent the levying officer has actual knowledge
20 that the information is incorrect, the levying officer may rely on
21 any information contained in the written instructions.

22 (d) The levying officer instructions may be transmitted
23 electronically to the levying officer pursuant to Chapter 2
24 (commencing with Section 263) of Title 4 of Part 1.

25 (e) *If the instructions directing the levying officer to perform a
26 levy are accompanied by a writ of attachment issued by the court
27 as an electronic record, as defined in subdivision (k) of Section
28 263.1, or a document printed from an electronic record issued by
29 the court, the instructions shall also include all of the following
30 information, as stated in the electronic writ:*

31 (1) *The date of issuance of the writ.*

32 (2) *The name of the defendant or defendants whose property is
33 subject to levy under the writ.*

34 (3) *The amount to be secured by the attachment and the amount
35 required to satisfy the money judgment on the date the writ is
36 issued or a description of the property to be delivered pursuant to
37 the judgment for possession to the judgment creditor in satisfaction
38 of the judgment.*

39 (4) *A statement indicating that the accompanying writ is either
40 of the following:*

1 (A) An original writ not already in the possession of the levying
2 officer.

3 (B) A copy of the writ already in possession of the levying
4 officer.

5 (f) Except to the extent the levying officer has actual knowledge
6 that the information in the electronic writ has been altered, the
7 levying officer may proceed in the same manner as if in possession
8 of a paper version of the writ.

9 (g) The court may issue, and the levying officer may accept, an
10 electronic writ only if they are technologically able to do so.