

## INSTRUCTIONS FOR EX PARTE APPLICATION FOR ORDER ON DEPOSIT ACCOUNT EXEMPTION

1. **Applicable Law.** Code of Civil Procedure section 704.220 provides that financial institutions **must** apply an automatic exemption when served a *Notice of Levy* on a judgment debtor's deposit account, if the underlying judgment is not based on wages owed or child or spousal support. The exemption (the amount of which can be found on form EJ-156) is per judgment debtor, not per account. The exemption is automatically applied; the judgment debtor does not need to take any action for the exempted amount to be protected.
2. **Multiple Accounts.**
  1. If the judgment debtor has multiple deposit accounts at a single bank, either the judgment debtor or judgment creditor may make an ex parte application for an order designating how and to which account the exemption applies. The bank must automatically withhold the exempted amount, but without a specific court order it will choose to which account the exemption applies. (Code Civ. Proc., § 704.220(e)(2).)
  1. If the judgment debtor has multiple deposit accounts at multiple financial institutions, the judgment creditor must and the judgment debtor may make this application. (Code Civ. Proc., § 704.220(e)(3).)
3. **A judgment debtor or judgment creditor applying for an order to designate a specific account or how to allocate the exemption among multiple accounts should do so as soon as receiving a notice of a levy or memorandum of garnishment as applicable, because the financial institution is required to act promptly in sending funds to the levying officer.**
4. **Rules for Making the Application.** The ex parte application must be filed in the court in which the judgment was issued. The applicant must check with that court for local rules and timing as to when and where the applicant is to appear at court to have the court consider the ex parte application. The applicant must follow the rules relating to ex parte applications that are set out in California Rules of Court, rules 3.1203-3.1207, which describe the following requirements:
  - Notice of the application.** Notice of the ex parte application must generally be given to the other party in the case. Notice may be in person or by phone, fax, overnight mail, or email (if permitted in the case already). The party must be informed by 10:00 a.m. the day before the ex parte application is to be considered by the court, unless there is a good reason such notice could not or should not be given. How the notice was given, or why it was not, must be described in the declaration regarding notice and service (form EJ-158).
  - Service of papers.** Copies of the application and all related papers must be given to the other party as soon as reasonable and before the court appearance, if possible. (How this was done or why it was not must also be described in form EJ-158.)
  - Appearance at court.** The applicant must be available at the time the court is considering the application, either in person at the courthouse or by telephone. (If by phone, the applicant must inform the court and the other parties in advance, and must comply with California Rules of Court, rule 3.670(d), which requires that the application papers must be filed by 10:00 a.m. *two court days* before the application is to be considered.)
5. **Forms to Complete.** Before the time the court is scheduled to consider the application, the applicant must complete and file the following forms with the court:
  1. Ex Parte Application for Order on Deposit Account Exemption (form EJ-157);
  1. Declaration Regarding Notice and Service for Ex Parte Application for Order on Deposit Account Exemption (form EJ-158);
  1. Order on Application for Designation of Deposit Account Exemption (form EJ-159) (complete caption and item 1 only).

Take note of the following when completing form EJ-157:

1. The contents of the application must be provided under penalty of perjury.
  1. If the applicant has good cause for why the court should act immediately, with no further hearing or briefing, the box under the title of form EJ-157 stating "Without hearing" should be checked and item 6b completed to explain why. Otherwise the box under the title for "Hearing on shortened time" and item 6a should be checked.
  1. Copies of the Writ of Execution (form EJ-130) and any Notice of Levy (EJ-150) that have been issued to a financial institution must be attached to the application form.
  1. Item 5 must include the specific account or accounts to which the court is being asked to order that the exemption apply. If the judgment debtor is asking that the exemption be allocated among multiple accounts, the total amount allocated may not be more than the total amount of the deposit account exemption. (See form EJ-156 for the amount.)
6. **Filing With the Court.** The completed forms should be filed with the court clerk. There will be a filing fee unless the party is eligible for a fee waiver. (If a party cannot afford the fee and has not already received a fee waiver, the party may file a *Request to Waive Court Fees* (form FW-001) with the other forms.) Take extra copies of all the forms to the court so the clerk can give back a stamped copy.

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EJ-157-INFO

7. **What to Do With Order.** The court may rule on the application immediately if a delay could result in loss to a deposit account subject to exemption or enforcement, or may order that a hearing be held to consider the application and any opposition.
- | Once an order is issued by the court on form EJ-159, the applicant should serve the order on all other parties in the case as soon as possible. If the order sets a hearing date, it must be served by the date in item 4b on the order.
  - | If the order sets a hearing date, the applicant should appear at the hearing either in person or by phone (if by phone, notice must be given in advance to the court and other side).
  - | If the order designates the deposit account or accounts to which the exemption applies, without any further hearing, the applicant should serve the financial institution and levying officer as well as the other parties. Once an order has been issued by the court, the applicant should serve the order on all other parties in the case as soon as possible.