SYNDICATE LEGAL ADVISORY SERVICES

WRIT OF ATTACHMENT

Syndicate Legal Advisory Services – *Writ of Attachment*

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Attorneys / Lawyers
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What is a Writ of Attachment in California?

A Writ of Attachment is a "***Pre-Judgment***" provisional remedy that in some circumstances could ensure availability of ***Sufficient Assets to Satisfy a Judgment Obtained Against a Defendant.*** There are specific requirements for the ***Petitioner*** (*generally the "Plaintiff" or "Cross-Defendant"*) to be able to take advantage of this Writ.

Types of Claims for a Writ of Attachment:

- Petitioner's claim is fore money (CA Code of Civil Procedure Section 483.010(a));
- Petitioner's claim is at least $500, excluding costs, interest, and attorney fees (CA Code of Civil Procedure Section 483.010(a));
- Petitioner's claim is predicated on a Written or Implied Contract (CA Code of Civil Procedure Section 483.010(a));
- Petitioner's total amount of claim(s) is a fixed or readily ascertainable amount not less than five hundred dollars ($500) exclusive of costs, interest, and attorney's fees (CA Code of Civil Procedure Section 483.0101(a)).

NOTE: The uncertainty about the specific amount of ultimate damages is not a basis to deny a Writ of Attachment. As long as there is a clear and definite formula for the computation of damages, an Order of Attachment is proper (*CIT Group / Equip., Fin., Inc. v. Super DVD, Inc.* (2004) 115 CA4th 537, 540).

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What does the Petitioner need to Prove at the Writ of Attachment Hearing or in an *Ex Parte* Filing?

The Court requires the Petitioner to prove ALL of the following in order to Issue a Writ of Attachment (CA Code of Civil Procedure Section 484.090(a)):

1. The Petitioner must establish the "probably validity of the claim upon which the attachment is based";
2. The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based; and
3. The amount to be secured by the attachment is greater than zero.

How Obtaining the Writ of Attachment Depends on Type of Respondents (the "Defendant(s)"):

If a Respondent is a natural person, Petitioner's claim"

- Must be based on an obligation arising from Respondent's conduct of trade, business, or profession (CCP §483.010(c); Kadison, Pfaelzer, Woodard, Quinn & Ross v. Wilson (1987) 197 CA3d 1).
- Must not be based on sale or lease of property, license to use property, the furnishing of services, or loan of money when property, services, or money was used by Respondent for personal, family, or household purposes. CCP §483.010(c).

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Attachable Property:

The following types of property may be attached:

- Any interest in real property, except:
  - Leasehold Estates with unexpired terms of less than one year (CCP §487.010(c)(1)); or
  - If Respondent's real property is subject to homestead declaration, amount of any surplus over total of (CCP §487.025(b))
- All liens and encumbrances on homestead when Attachment Lien is created; plus
- Homestead exemption (regardless of whether and when it is recorded).
- Accounts receivable, chattel paper, and general intangibles arising out of conduct by the Respondent(s), business, or profession except claims with a principal balance of less than $150 (CCP §487.010(c)(2)).
- Equipment (CCP §487.010(c)(3)).
- Farm Products (CCP §487.010(c)(4)).
- Inventory (CCP §487.010(c)(5)).
- Final Money Judgments arising out of Respondent(s) conduct of trade, business, or profession (CCP §487.010(c)(6)).
- Money on Premises where Respondent(s) conduct trade, business, or profession (CCP §487.010(c)(7)).
- Except for the first $1,000, money (including Crypto) located elsewhere than on the Respondent's premises (including bank accounts) (CCP §487.010(c)(7)).

If Respondent is a Corporation, Partnership, or LLC, Petitioner's claim(s) do not need to arise from the trade, business, or profession. CCP §483.010(c).

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