

## What Is Writ of Attachment in California?

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Writ of attachment is a pre-judgment provisional remedy that in some circumstances could ensure availability of sufficient assets to satisfy judgment obtained against defendant. There are specific requirements for plaintiff or cross defendants to be able to take advantage of this writ. In this article, we explore to some extent such requirements and pros and cons of Writ of Attachment.

### Types of Claims for Writ of Attachment

- Plaintiff's claim is for money (*CA Code of Civil Procedure Section 483. 010(a)*); AND
- Plaintiff's claim is at least \$500, excluding costs, interest, and attorney fees (*CA Code of Civil Procedure Section 483. 010(a)*); AND
- Plaintiff's claim is predicated on a written or implied contract (*CA Code of Civil Procedure Section 483. 010(a)*); AND
- Plaintiff's total amount of claim or claims 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. 010(a)*).

Note that Uncertainty about the specific amount of ultimate damages is not a basis to deny 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.

### Plaintiff or Cross Defendant To Prove at the Writ of Attachment Hearing

The court requires Plaintiff or Cross Defendant 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 plaintiff has established the probable validity of the claim upon which the attachment is based; AND
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 Depends on Type of Defendants

#### If defendant is *natural person*, plaintiff's claim:

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

#### Attachable Property

The following types of property may be attached:

1. Any interest in real property *except*:
  - (a) Leasehold estates with unexpired terms of less than 1 year (CCP §487.010(c)(1)); or
  - (b) *If defendant's real property is subject to homestead declaration*, amount of any surplus over total of (CCP §487.025(b)):
2. All liens and encumbrances on homestead when attachment lien created; *plus*
3. Homestead exemption (regardless of whether and when it is recorded).
4. Accounts receivable, chattel paper, and general intangibles arising out of conduct by defendant of trade, business, or profession *except* claims with principal balance of less than \$150 (CCP §487.010(c)(2)).
5. Equipment (CCP §487.010(c)(3)).
6. Farm products (CCP §487.010(c)(4)).
7. Inventory (CCP §487.010(c)(5)).
8. Final money judgments arising out of defendant's conduct of trade, business, or profession (CCP §487.010(c)(6)).
9. Money on premises where defendant conducts trade, business, or profession (CCP §487.010(c)(7)).
10. *Except for the first \$1000*, money located elsewhere than on defendant's business premises (CCP §487.010(c)(7)).

**If defendant is Corporation, Partnership, or Limited Liability Company, plaintiff's:**

Claim does *not* need to arise from the trade, business, or profession. CCP §483.010(c).

### **Advantages and Disadvantages of Seeking Writ of Attachment**

#### **Advantages**

**1. Secured Position:** Obtaining the writ would convert creditor/plaintiff into a secured position hence:

- a) Gaining priority over unsecured creditors; and
- b) Most probably, ensuring that any final judgment will be enforceable against the property with the attached lien.

**2. Settlement:** Obtaining the writ might expedite settlement since:

- a) Defendant may take the case more seriously and contemplate obtaining the writ translates into the strength of the underlying claim; and
- b) Defendant faces additional financial burdens and worry more about loss.

#### **Disadvantages**

- 1. Too “Small”:** If the underlying claim is too small, then the cost of obtaining the writ might outweigh getting it.
- 2. Judgment Proof:** If the Defendant already does not have enough assets or any assets are hard to locate.

### **Other Notes**

Writ of attachment is a creature of statute and hence all statutory requirements must be strictly complied with.

### **Salient Point**

This article NEITHER supplants NOR supplements the breadth or depth of such rarefied topic. In fact, this article ONLY provides a rudimentary analysis of such esoteric subject matter.

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