

Memorandum 75-52

Subject: Study 39.220 - Enforcement of Judgments (Redemption From Execution Sales)

This memorandum contains a brief background discussion of the redemption law in California and suggests possible alternatives. The staff has drafted a new redemption statute (Sections 703.710-703.780) which is attached to this memorandum as Exhibit I (green pages). Also attached are a copy of the existing redemption statute (Code Civ. Proc. §§ 700a-707, Exhibit II on yellow) and some material from Witkin (Exhibit III on white).

Present Law

In California, real property (except leasehold estates of less than two years) sold at an execution or foreclosure sale may be redeemed as provided in Code of Civil Procedure Sections 700a-707. This redemption scheme has been described by Professor William Warren as follows:

If we are to retain the concept of the right of redemption, some consideration should be given to revising the present law of redemption which has been aptly described as the "scramble" system. CCP Sections 701-703 set up a system that works like this: The parties that may redeem are the judgment debtor (in our case that is the mortgagor or trustor), his successor in interest, or any creditor having a lien by judgment or mortgage subsequent to that on which the property was sold. These junior lien holders are called redemptioners. After foreclosure sale either the debtor or redemptioner has one year in which to redeem by paying the amount the purchaser paid at the sale plus certain sums. (Note the discussion of CCP Section 725(a) below explaining that in some cases the time of redemption is three months.) If the judgment debtor redeems, the effect of the sale is "terminated" and the junior liens which would have been cut off by the foreclosure sale are reinstated. However, if a redemptioner redeems the sale is "continued" and any junior liens are dead unless their holders exercise their rights to redeem from the redemptioner, which they must do within 60 days after a redemption by a redemptioner. In effect, when a redemptioner redeems he takes the rights of the purchaser.

All this can be illustrated by this hypothetical: Debtor's property is burdened by a \$10,000 trust deed in favor of Creditor 1 (C-1), a \$5,000 trust deed in favor of Creditor 2 (C-2), and judgment lien in the amount of \$1,000 in favor of Creditor 3 (C-3). Suppose C-1 foreclosed

by judicial action and the property was sold on judicial sale to P for \$8,000. C-1's trust deed was purchase money so he cannot get a deficiency judgment. Debtor has one year in which to redeem from Purchaser and he must pay \$8,000 plus additional sums stated by the statute. His redemption revives the liens of C-2 and C-3 which would otherwise have been cut off by being joined in the foreclosure action. Suppose C-2 redeems first from Purchaser by paying \$8,000 plus additional sums. Now C-2 owns the property subject only to the rights of redemption of C-3 and Debtor. If C-3 is to redeem he must do so within 60 days after C-2's redemption and he must pay not only what C-2 paid Purchaser but also the amount of C-2's lien. So it will cost C-3 \$8,000 plus \$5,000 plus additional sums to redeem. Now if Debtor wants his property back he can redeem from C-3 only by paying \$8,000 plus \$5,000 plus the amount of C-3's lien (\$1,000) plus additional sums. If this sequence of events occurred, Debtor would own the property free of any liens for they have all been paid off.

The Marx Brothers aspects of the scramble system are best seen in a case in which C-3 redeemed from Purchaser for \$8,000 plus. Now C-2 is cut off unless he does something, so he redeems from C-3 by paying \$8,000 plus -- he needn't pay the amount of C-3's lien because it is not prior to his. Now C-3 is cut off unless he does something, so he redeems from C-2 for \$8,000 plus \$5,000 plus additional amounts. Now C-3 owns the property unless Debtor redeems from him.

See also the excerpt from Witkin attached as Exhibit III.

A primary reason for permitting redemption by the debtor is "to force the purchaser at the execution sale to bid on the property at a price approximating its fair value." (Moore v. Hall, 250 Cal. App.2d 25, 58 Cal. Rptr. 70 (1967).) Of course, this purpose may be served by some other scheme such as fixing an upset price (a minimum price which must be met before the property can be sold) or by encouraging more spirited bidding. Redemption by lien creditors may be permitted in order to use the land to satisfy as many creditors as possible. See S. Riesenfeld, Creditors' Remedies and Debtors' Protection 96 (1967). The arguments for and against redemption, particularly as they relate to foreclosure sales, is summarized in Comment, The Statutory Right of Redemption in California, 52 Cal. L. Rev. 846, 848 (1964):

The statutory right of redemption has been both praised and condemned by commentators. It is argued that by allowing redemption from a foreclosure sale the law encourages mortgagors to be less responsible in meeting their installment payments; they know that even if they

default they may later regain their property by redeeming it from the purchaser at the sale. A more important objection is that the availability of redemption means that the purchaser at the foreclosure sale gets a defeasible title. This probably discourages outside bidding at the sale since the conditional title is not attractive to investors. Moreover, a period of redemption allows speculation by those entitled to redeem; they may choose to exercise their right to redeem only if the value of the property rises. It is also argued that allowing the mortgagor to remain in possession during the period of redemption permits him to "milk" the property before surrendering it to the purchaser. On the other side it is argued that the reasons for allowing redemption outweigh the possible abuses. Such purposes include protecting persons who purchased the property subject to the mortgage, allowing time for the mortgagor to refinance and save his property, permitting additional use of the property by a hard-pressed mortgagor, and probably most important, encouraging those who do bid at the sale to bid in at a fair price. By allowing junior lienors to redeem, the statutes permit them to protect the security which they probably would otherwise lose.

Alternatives

1. No redemption. As of 10 years ago, approximately one half of the states had redemption statutes; states without redemption included Connecticut, Florida, Missouri, New Jersey, New York, Oklahoma, Pennsylvania, Texas, and Virginia. The staff tends to favor elimination of redemption. However, it may be politically unpalatable to do so completely. Consequently, we have proposed the more limited system set out in Exhibit I.

The elimination of redemption should result in higher prices at most execution or foreclosure sales. However, as has been noted earlier, other protections may be provided, such as the upset price. The bidding at the sale may be more spirited if provisions are enacted which afford better notice of the sale. One writer has said that the debtor would be better off if redemption were abolished and in its place a sale of real property were delayed for one year to give the debtor time to satisfy his creditor. See King, The Enforcement of Money Judgments in California, 11 So. Cal. L. Rev. 224, 228 (1938).

2. Limit redemption to the debtor. In order to avoid the exceedingly complex problems which have resulted from the California scramble system which permits redemption by redemptioners in any order, the right to redeem could be limited to the debtor or his successor in interest. This is the scheme proposed by the staff in Exhibit I. Such limited redemption is permitted in Massachusetts, Kentucky, New Hampshire, New Mexico, and Vermont. This permits the redemption period to be significantly shorter and should result in higher prices at the sale since a junior lienholder will have to bid if he wants to protect his lien. We could also make clear that the judgment debtor may waive his right to redeem by filing written notice of waiver before the sale.

3. Scramble system. Existing law could be continued with clarifying changes.

4. Order of priority system. This system gives the judgment debtor an exclusive right to redeem for a certain period; if he does not do so, each redemptioner has a certain number of days (five in Minnesota) within which to redeem in the order of their priority. This system is used in Arizona, Colorado, and Minnesota.

5. Staggered scramble system. In New York prior to 1962, the judgment debtor was first permitted to redeem and then, if he did not do so within a certain period of time, redemption was opened up on a scramble basis to the redemptioners. This is the law in Michigan, Wisconsin, and Wyoming.

Respectfully submitted,

Stan G. Ulrich
Legal Counsel

Memorandum 75-52

EXHIBIT I

Draft of §§ 703.710-703.780. Redemption
405-503

Article 5. Redemption From Execution Sale

§ 703.710. Property subject to redemption

703.710. Real property, except for a leasehold estate with an unexpired term of less than two years, sold pursuant to a writ of execution, supplementary procedures, or a writ of enforcement is subject to redemption as provided in this article.

Comment. Section 703.710 continues the substance of prior law as to the property that is subject to redemption. Compare the first two sentences of subdivision (a) of former Section 700a. It should be noted, however, that the procedures for redemption provided by this article depart significantly from the former law.

405-504

§ 703.720. Elimination of liens by execution sale

703.720. Whether or not the property is redeemed, neither the lien on which the property is sold nor any other lien subsequent to that on which the property is sold continues in effect after such sale.

Comment. Section 703.720 is new. By preserving only liens that are prior to the lien on which the property is sold, this section should encourage the judgment creditor and junior lienholders to protect their interests by looking to the property sold. This should, in turn, increase the likelihood that such property will be sold at a price nearer

its fair market value. This section changes the prior rule that liens subsequent to that under which the sale was held reattach upon redemption by the judgment debtor or his successor in interest. See Call v. Thunderbird Mortgage Co., 58 Cal. 2d 542, 375 P.2d 169, 25 Cal. Rptr. 265 (1962). This section also changes the prior rule that upon redemption by the judgment debtor the judgment lien under which the property was sold reattaches for the amount of the deficiency. See Moore v. Hall, 250 Cal. App. 2d 25, 58 Cal. Rptr. 70 (1967).

999-340

§ 703.730. Persons entitled to redeem

703.730. Property sold subject to redemption may be redeemed only by the judgment debtor or his successor in interest.

Comment. Section 703.730 changes the former law by restricting the right of redemption to the judgment debtor and any successor in interest. Contrast former Section 701. Successors in interest may include a new owner who purchased the property from the judgment debtor after a judgment lien was acquired but before the sale, an assignee after the sale of the debtor's right of redemption, a trustee in bankruptcy, or a junior lienholder who has acquired the judgment debtor's interest in the property through a prior foreclosure. Of course, it does not include the purchaser at the execution or foreclosure sale.

405-390

§ 703.740. Notice of right of redemption; liability of officer

703.740. (a) Where property is sold subject to redemption, the officer who conducted the sale shall inform the judgment debtor, by mail or personal service, of his right of redemption.

(b) Failure to give the notice required by subdivision (a) within one week after the sale makes the officer liable to the judgment debtor for [both] actual damages [and a penalty of one hundred dollars (\$100)].

Comment. Section 703.740 continues the substance of subdivision (b) of former Section 700a.

Note. We have preserved this provision, but we have some doubt whether it is really necessary. Assuming that it is necessary, we wonder whether notice should also be given to "successors in interest"-- at least those of record. If this is done, the judgment creditor could be required to give the officer the necessary information. It should be noted, however, that a certificate of sale is required to be recorded by the officer making the sale. See existing Section 700a (draft Section 703.620).

Elsewhere there is a general provision that, where notice is required or permitted to be mailed, it may be sent by registered or certified mail.

At the July meeting, the Commission deleted the provision for a \$100 penalty for holding a sale without notice; the penalty in subdivision (b) should be deleted to be consistent.

405-391

§ 703.750. Deposit of redemption price; time for deposit; proof of right of redemption

703.750. (a) Any person who seeks to redeem property pursuant to this article shall deposit with the officer who conducted the sale the amount of the purchase price at the sale together with interest from the date of sale until the date the deposit is made. The deposit shall be made not more than [90] days after the date the certificate of sale is recorded pursuant to Section 703.620.

(b) At the time he makes his deposit, a successor in interest to the judgment debtor shall file with the officer a copy of the conveyance establishing his claim, verified by his affidavit or the affidavit of a subscribing witness to the conveyance, and a note of the record thereof, certified by the recorder.

Comment. Section 703.750 is based in part on former Sections 704 and 705. The first sentence of subdivision (a) permits payment of the redemption price only to the officer who conducted the sale. Former Section 704 also permitted the payments to be made directly to the purchaser at the sale or a redemptioner; the latter provision would be meaningless here since only one redemption can take place. The provisions of Section 704 requiring payment in a particular kind of money is not continued. The second sentence of subdivision (a), providing a 90 day period during which redemption may take place, replaces portions of former Sections 702 and 703 which provided a 12-month period for redemption by the judgment debtor and a 60-day period after a prior redemption for redemption by a redemptioner.

Subdivision (b) serves the same purpose as did former Section 705, but is more limited since only the judgment debtor or his successor in interest may redeem. See Section 703.730.

Note. The 90-day period is suggested by Professor Riesenfeld. The staff at one time had suggested 30 days.

405-392

§ 703.760. Issuance of deed of sale or certificate of redemption; tender of deposit; effect of redemption on liens

703.760. (a) As used in this section and Section 703.780, the "date of redemption" refers to the day immediately following the last day upon which a deposit may be made pursuant to Section 703.750.

(b) If no deposit is made before the date of redemption, the officer who conducted the sale shall forthwith execute and deliver a deed of sale to the purchaser.

(c) If the judgment debtor or his successor in interest makes a deposit pursuant to Section 703.750 before the date of redemption, the officer who conducted the sale shall forthwith execute and deliver a

certificate of redemption to such person and tender the deposit to the purchaser at the sale. The officer shall immediately thereafter record a duplicate of the certificate in the office of the recorder of the county where the property is located. The person who redeems shall acquire all rights to the property acquired by the purchaser at the sale.

(d) If the tender of the officer pursuant to subdivision (c) is refused, the amount tendered shall be deposited with the county treasurer of the county where the property is located, payable to the order of the purchaser.

Comment. Section 703.760 is new. If no redemption takes place within the time permitted by Section 703.750, subdivision (b) requires the officer who conducted the sale to issue a deed to the purchaser; if the property is redeemed, subdivision (c) requires the officer to issue a certificate of redemption to the person who redeems the property and tender the deposit to the purchaser. This differs from former law in several respects. Redemption could take place without going through the sheriff, although written notice of redemption was required to be given to the sheriff and recorded. See the third paragraph of former Section 703. and former Section 704. Where the debtor redeemed, the person receiving payment issued and recorded a certificate of redemption. See the sixth paragraph of former Section 703. The last redemptioner was "entitled" to a sheriff's deed. See the fourth paragraph of former Section 703. This informal, but complex, procedure of former law is replaced by the more formal but much simpler, procedure of Section 703.760.

The last sentence of subdivision (c) supersedes the last sentence of the fifth paragraph of former Section 703.

Subdivision (d) replaces the former rule that tender was payment. See the last clause of the last sentence of former Section 704.

405-393

§ 703.770. Liability for additional sums paid by purchaser; procedure for recovery

703.770. (a) The person to whom a certificate of redemption is issued pursuant to Section 703.760 is liable to the purchaser at the sale for the following:

(1) The amount of any assessment or taxes paid by the purchaser together with interest from the date of payment.

(2) Any reasonable sum paid by the purchaser for fire insurance, maintenance, upkeep, or repair of the improvements upon the property together with interest from the date of payment.

(3) Any sum paid by the purchaser on a prior obligation secured by the property to the extent such payment was necessary for the protection of the purchaser's interest together with interest from the date of payment.

(b) The liability of the person who redeems may be enforced on motion filed in the court which issued the execution on which the sale was based from which redemption was made. Notice of the motion shall be served on the persons whose liability is sought to be enforced at least 30 days prior to the time set for hearing of the motion. The notice

shall state the amount of the claim and shall be supported by an affidavit or affidavits setting forth the facts on which the claim is based. Such notice and affidavit shall be served in the same manner as a summons and complaint. Judgment may be entered in accordance with the notice against the person served therewith unless such person serves and files an affidavit in opposition to the motion showing such facts as may be deemed by the court hearing the motion sufficient to present a triable issue of fact. If such showing is made, the issues to be tried shall be specified by the court and trial thereof shall be set for the earliest date convenient to the court, allowing sufficient time for discovery. Affidavits filed pursuant to this section shall conform to the standards prescribed for affidavits filed pursuant to Section 437c.

Comment. Section 703.770 continues the liability of the person who redeems for taxes, insurance, upkeep, and payments on prior liens provided by part of former Section 702. However, unlike former law, this article does not require the payment of these sums to redeem the property. See Section 703.750(a).

Subdivision (b) provides a procedure for settling disputes concerning the amount of the liability under subdivision (a). This procedure is based on Section 1058a (enforcement of surety's liability on a bond) and supersedes the procedure provided by the last paragraph of former Section 702.

§ 705.780. Possession during redemption period; rents and profits entry purchaser or redemptioner; waste

703.780. (a) The purchaser at the sale, from the time of the sale until a redemption, is entitled to receive, from the person in possession, the rents of the property sold or the value of the use and occupation thereof.

(b) Notwithstanding subdivision (a), the purchaser is liable to the person who redeems for any rents or profits which have been received by a purchaser pursuant to subdivision (a). The person who redeems may demand in writing a written and verified statement of the rents and profits received. Any disagreement concerning such rents and profits may be determined in the manner provided by Section 703.770.

(c) The purchaser, from the time of sale until redemption, is entitled to enter the property during reasonable hours to repair and maintain the premises and is entitled to an order restraining waste on the property from the court which issued the execution on which the sale was based. Such order may be granted with or without notice in the discretion of the court. [It is not waste for the person entitled to possession during the period allowed for redemption to continue to use the property in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel for his family while he occupies the property.]

Comment. Section 703.780 continues the substance of former Sections 706 and 707 and the second sentence of the first paragraph of former Section 702. The importance of these provisions is, however, significantly reduced since the judgment debtor (or his successor in interest) is entitled to remain in possession of the property only for a period of 90 days after the sale. Compare First Nat'l Trust & Sav. Bank v. Staley, 219 Cal. 225, 25 P.2d 982 (1933)(under former law, period of possession was one year). Of course, if there is a tenant on the

property under a lease which preceded the lien under which the property was sold, the purchaser at the sale acquires only the lessor's reversionary interest and his right to rents, and the tenant may remain in possession during the term of his lease. However, the purchaser is entitled to the rents from the property or the reasonable value of the use of the property.

Under subdivision (b), a person who redeems is entitled to recover the rents received by a purchaser. Former Section 707 provided a special procedure to resolve disputes concerning the existence and amount of a similar credit, but subdivision (b) simply incorporates the procedure provided by Section 703.770 for resolving similar disagreements as to the amounts required to be paid by a redeeming party. It should be noted that, even where a dispute arises, redemption is not affected.

Subdivision (c) combines the substance of former Section 706 and the second sentence of former Section 702.

Note. We have placed the last sentence of subdivision (c) in brackets. This is an existing provision, but we do not think that it is necessary or desirable. We would prefer to have the court determine on the particular facts what is or is not waste; e.g., can a judgment debtor cut down shade trees out of spite but purportedly for firewood?

The most significant change in this section is, of course, the greatly reduced period for possession by the judgment debtor. He will however, have at least 110 days from the time of notice of sale until the time when he must vacate the property. (Twenty days for notice of sale and 90 days for the redemption.)

EXHIBIT II
(§§ 700a-707)

§ 700a. [When sales are absolute: What certificate must show.] (a) Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption, as provided in this chapter. The officer must give to the purchaser a certificate of sale, and file a duplicate thereof for record in the office of the county recorder of the county, which certificate must state the date of the judgment under which the sale was made and the names of the parties thereto, and contain:

1. A particular description of the real property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. If the property is subject to redemption, the certificate must so declare, and if the redemption can be effected only in a particular kind of money or currency, that fact must be stated.

(b) If the property is subject to redemption the officer shall inform the judgment debtor, by certified mail or personal service, of his right of redemption. Failure to give such notice within one week after the sale shall make the officer liable to the judgment debtor for actual damages, in addition to a penalty of one hundred dollars (\$100). [1907 ch 361 § 2; 1971 ch 1312 § 2.] - *Cal Jur 2d Chat Mtg § 98, Crops § 11, Exec §§ 160, 179, 200, 203, L & T § 179, Mtg §§ 728, 753; Cal Practice §§ 56:91, 56:274; Witkin Procedure 2d pp 3452, 3464; Summary (8th ed) pp 1434, 1608, 1609.*

§ 701. [Redemption:] Real property so sold, by whom property may be redeemed. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property;
2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners. [1872.] *Cal Jur 2d Exec §§ 203, 204, 206, 216, 218, Judgm § 284, Mech L § 171, Mtg §§ 541, 756; Cal Practice §§ 51:193, 56:277, 56:279, 56:296, 56:298, 214:50; Witkin Procedure 2d pp 3463, 3466, 3467; Summary p 765.*

§ 702. [Redemption: Time and manner of redemption: Proceedings on disagreement as to amount.] The judgment debtor, or redemptioner, may redeem the property from the purchaser any time within 12 months after the sale on paying the purchaser the amount of his purchase, with two-thirds of 1 percent per month thereon in addition, up to the time of redemption, together with the amount of any assessment or taxes, and any reasonable sum for fire insurance, maintenance, upkeep, or repair of the improvements upon the property, and any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of his interest, which the purchaser may have paid thereon after purchase, and interest on such amounts, and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which said purchase was made, the amount of such lien with interest. If judgment debtor, redemptioner, or tenant in possession, refuse the right of entry to the purchaser, his agent or contractor, such purchaser may petition the court, out of which execution or order authorizing the sale, was issued, in the same manner as hereafter provided for determining the amount due to the purchaser in the event of a disagreement, and the court may issue an order authorizing purchaser, his agent or contractor, during reasonable hours, to repair and maintain the premises.

In the event there shall be a disagreement between the purchaser and redemptioner as to whether any sum demanded by the purchaser is a proper charge to be added to the amount required for redemption, the proposed redemptioner shall thereupon pay to the clerk of the court out of which execution, or order authorizing the sale, was issued the amount necessary for redemption, less the amount in dispute, and shall at the same time file with said clerk a

petition in writing setting forth specifically the item or items demanded to which he objects, together with his reason for such objections, and asking that such amount be determined by the court; said clerk shall thereupon fix a day, not less than 5 nor more than 10 days from the date of such filing, for the hearing of said objections; a copy of said petition, together with a notice of hearing giving the time and place thereof, shall be served by the person seeking redemption, or his attorney, upon the purchaser not less than two days before the day of hearing; upon the day fixed the court in which the order of sale or execution was originally issued shall determine, by order duly entered in the minutes of said court, the amount required for redemption, either upon affidavit or evidence satisfactory to the court; and when the amount has been so determined, in the event the amount theretofore deposited with the clerk shall be sufficient the same shall be forthwith paid to the purchaser upon his execution of a proper certificate of redemption; in the event an additional amount to that theretofore paid to the clerk is requisite, the redemptioner shall forthwith pay such additional amount to the clerk who shall then pay the whole amount necessary to the purchaser upon his execution of a proper certificate of redemption; the certificate of redemption so issued may be deposited with the clerk for delivery to the redemptioner, or given to the redemptioner at the time of payment. [1872; 1875-76 ch 84 § 1; 1895 ch 184 § 1; 1897 ch 44 § 1; 1933 ch 911 § 1; 1937 chs 175 § 1, 584 § 1.] *Cal Jur 2d Exec §§ 104, 209, 211, 215, Mtg §§ 754, 755, 763, Pub Imp § 151; Cal Practice §§ 56:282, 56:284, 56:289, 56:294; Witkin Procedure 2d pp 3464, 3465, 3466, 3467, 3485.*

§ 703. [Same: Another redemptioner may redeem: Proceedings.] If property be so redeemed by a redemptioner, another redemptioner may, within 60 days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with 2 percent thereon in addition, and the amount of any assessment or taxes, and any reasonable sum for fire insurance, maintenance, upkeep, or repair of any improvements upon the property, and any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of his interest, which the last redemptioner may have paid thereon after the redemption by him, with interest on such amounts, and, in addition, the amount of any liens held by such redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. In the event there shall be a dispute or disagreement as to whether any sum demanded by the last redemptioner is a proper charge to be added to the amount required to be paid by the subsequent redemptioner, the amount to be paid shall be determined in a like manner as provided in Section 702 for the determination of such amount in the event of disagreement between the original redemptioner and purchaser.

The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within 60 days after the last redemption, on paying the sum paid on the past previous redemption, with 2 percent thereon in addition, and the amounts of any assessments or taxes, and any reasonable sum for fire insurance, maintenance, upkeep, or repair of any improvements upon the property, and any sum paid on a prior obligation secured by the property to the extent such payment was necessary for the protection of his interest, which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own with interest. In the event there shall be a dispute or disagreement as to whether any sum demanded by the last redemptioner to be added to the amount required to be paid by the subsequent redemptioner, the amount to be paid shall be determined in a like manner as provided in Section 702 for the determination of such amount in the event of disagreement between the original redemptioner and purchaser.

Written notice of redemption must be given to the sheriff and a duplicate recorded with the recorder of the county, and if any taxes or assessments are paid by the redemptioner, or if any sum for fire insurance, maintenance, upkeep, or repair of any improvement upon the property, is paid by the redemptioner, or if any sum is necessarily paid by the redemptioner on a prior obligation secured by the property, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the

sheriff and recorded with the recorder; and if such notice be not recorded, the property may be redeemed without paying such tax, assessment, sum, or lien.

If no redemption be made within 12 months after the sale, the purchaser, or his assignee, is entitled to a conveyance, or if so redeemed, whenever 60 days have elapsed and no other redemption has been made, and notice thereof given and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but, in all cases, the judgment debtor shall have the entire period of 12 months from the date of the sale to redeem the property.

If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate.

Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be recorded in the office of the recorder of the county in which the property is situated. [1872; 1873-74 ch 383 § 97; 1895 ch 184 § 2; 1897 ch 44 § 2; 1933 ch 911 § 2; 1957 ch 1865 § 10; 1963 ch 204 § 2.] *Cal Jur 2d Decl R § 63, Exec §§ 208-211, 215, 216, 221, Mtg §§ 754, 760 et seq., 774, Pub Imp § 151; Cal Practice §§ 56:111, 56:281-56:284, 56:289, 46:294, 56:296, 214:45, 214:50; Witkin Procedure 2d pp 3464, 3465, 3466, 3467, 3468.*

§ 704. In cases of redemption, to whom the judgments [payments] are to be made. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency, and the tender of the money is equivalent to payment. [1872.] *Cal Jur 2d Exec §§ 213, 214, Mtg §§ 761, 762; Cal Practice §§ 56:287, 56:288; Witkin Procedure 2d p 3467.*

§ 705. [Documents to be produced by redemptioner.] A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the sheriff making the sale, or his successor in office;

1. A copy of the judgment under which he claims the right to redeem, certified by the clerk of the court, or of the county where the judgment is entered; or, if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the recorder;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto;

3. An affidavit by himself or his agent, showing the amount then actually due on the lien. [1872; 1909 ch 632 § 1; 1945 ch 828 § 4.] *Cal Jur 2d Exec §§ 206, 210, Mtg §§ 758, 760; Cal Practice § 56:283; Witkin Procedure 2d pp 3466, 3467.*

§ 706. Until the expiration of redemption-time court may restrain waste on the property: **What considered waste.** Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family, while he occupies the property. [1872.] *Cal Jur 2d Exec § 194, Mtg §§ 196, 195, Waste § 4; Witkin Procedure 2d p 3485.*

§ 707. Rents and profits. The purchaser from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser or, his or their assigns, from the property thus sold preceding such

redemption, the amounts of such rents and profits shall be a credit upon the redemption-money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor. [1872.] *Cal Jur 2d Crops § 11, Exec §§ 192, 193, 212, Frd Conv § 95, L & T §§ 176, 179, 211, Mtg §§ 464, 518, 763, 765, 786, 796-798; Cal Practice §§ 56:285, 214:51; Witkin Procedure 2d pp 1554, 3486; Summary (8th ed) pp 1581, 2120.*

[§§ 98-102, 5 B. Witkin, California Procedure
Enforcement of Judgments, (2d ed. 1971)]

(g) Redemption Within 12 Months.

(1) [§98] In General.

(a) *Nature of Right.* Sales of personal property or leasehold interests of less than 2 years unexpired term are *absolute*. Real property sold on execution is subject to redemption within 12 months after the sale, during which period the debtor remains in possession. (C.C.P. 700a et seq.; see *infra*, §121; *Corp. of America v. Eustace* (1932) 217 C. 102, 106, 17 P.2d 723 [distinguishing redemption from purchase at execution sale]; 11 So. Cal. L. Rev. 228 [criticism of redemption statute as practically eliminating purchasers other than judgment creditor]; 45 Cal. L. Rev. 191; 52 Cal. L. Rev. 846 [comprehensive discussion]; 7 Cal Practice 549 et seq.; 9 Am.Jur. P.P. Forms (Rev. ed.) 836 et seq.)

(b) *Persons Entitled To Redeem.* Property subject to redemption may be redeemed by: (1) the judgment debtor or his successor in interest (*infra*, §99), or a "redemptioneer," i.e., a creditor having a lien on the property subsequent to that on which the property was sold (*infra*, §100).

(c) *Redemption Period.* The statutory right of redemption may be exercised any time within 12 months after the execution sale (C.C.P. 702, 703), except that a *redemptioneer* must redeem from a *prior redemptioneer* within 60 days after the last redemption (C.C.P. 703).

(d) *Amount Required To Redeem.* C.C.P. 702 and 703 specify the sums that must be paid to redeem the property. C.C.P. 702 applies when the property is redeemed from an execution sale *purchaser* and requires payment of the purchase price plus two-thirds of 1 percent per month additional. C.C.P. 703 applies when the property is redeemed from a *redemptioneer* and requires payment of the sum paid by the redemptioneer plus 1 percent additional.

Both sections require payment, with interest, of any sums expended by the purchaser or prior redemptioneer for assessments or taxes, any reasonable sums paid for fire insurance, maintenance, upkeep or repair, and "any sum paid on a prior obligation secured by

(b) *Effect of Redemption.* Redemption by a judgment debtor or his successor terminates the effect of the particular execution sale and restores the judgment debtor or his successor to the estate sold at that sale (C.C.P. 703); but it does not cancel other execution liens or wipe out the effect of other execution sales. So, where there were two execution sales under liens of two separate judgment creditors, redemption by payment of the first creditor did not cancel the obligation to the other. (*Kaiser v. Mansfield* (1958) 160 C.A.2d 620, 325 P.2d 865.)

If the judgment debtor redeems, the lien of judgment under which the property was sold reattaches to the extent it remains unsatisfied. But if the redemption is by the judgment debtor's successor, he takes the property free and clear of such lien. (See *Fry v. Bihr* (1970) 6 C.A.3d 248, 251, 85 C.R. 742; *Moore v. Hall* (1967) 250 C.A.2d 25, 29, 58 C.R. 70.)

(3) By Redemptioner.

(aa) [§100] Who Is Redemptioner.

(1) *Holder of Lien by Judgment or Mortgage.* "A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold," is a "redemptioner," and he may redeem on somewhat different conditions from those governing redemption by the judgment debtor or his successor (*supra*, §99). (See C.C.P. 701(2); *Bateman v. Kellogg* (1922) 59 C.A. 464, 211 P. 46; *Stetson v. Sheehan* (1921) 52 C.A. 353, 361, 200 P. 387; *Phillips v. Hagart* (1896) 113 C. 552, 555, 45 P. 843; *Allen v. McGee* (1942) 54 C.A.2d 476, 484, 129 P.2d 143; *Clark v. Cuin* (1956) 46 C.2d 386, 295 P.2d 401; *Salsbery v. Ritter* (1957) 48 C.2d 1, 306 P.2d 897; 52 Cal. L. Rev. 858; 58 A.L.R.2d 467; see also C.C.P. 702, *supra*; C.C.P. 703 ["The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner" within 60 days by reimbursing him and making some additional payments]; C.C.P. 705 [documents to be produced by redemptioner].)

(2) *Holder of Judgment Lien Arising After Execution Sale.* Although the purchaser gets legal title at the execution sale, it is still subject to the judgment debtor's statutory right of redemption. And that statutory right of redemption is an interest which may be reached by a subsequent judgment creditor. Hence, a creditor whose judgment was not obtained nor abstract thereof recorded until after the execu-

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tion sale is nevertheless a redemptioner entitled to redeem. (*Clark v. Cuin*, supra; *Ritter v. Salsbery* (1956) 142 C.A.2d Supp. 847, 849, 298 P.2d 166; see 45 Cal. L. Rev. 191; 58 A.L.R.2d 467.)

(3) *Holder of Other Lien.* Although C.C.P. 701(2) mentions only "lien by judgment or mortgage," C.C.P. 705(1) refers to "mortgage or other lien," and may possibly justify redemption by the holder of some other kind of lien. (See *Fly v. Cline* (1920) 49 C.A. 414, 421, 193 P. 615.)

(bb) [§101] Procedure.

The property may be redeemed by paying the amount of money required by statute (infra, §101) to the purchaser or the last redemptioner of record, as the case may be, or for him to the officer who made the sale. (C.C.P. 702 et seq.) Tender of the money is equivalent to payment. (C.C.P. 704.) In addition, a redemptioner must give written notice of redemption to the sheriff and must record a copy of the notice. (C.C.P. 703, infra, §102; see 7 Cal Practice 569; 9 Am.Jur. P.P. Forms (Rev. ed.) 843.) He must also produce with his payment, and serve on the sheriff with his notice, the documents necessary to establish his right to redeem. (C.C.P. 705.) The person to whom the money is paid must give the redeeming party a certificate of redemption, which is recorded. (C.C.P. 703; see 7 Cal Practice 569; 9 Am.Jur. P.P. Forms (Rev. ed.) 843.)

C.C.P. 703 requires the payment not only of the redemption price plus penalties, but also "the amount of any liens . . . held by the last redemptioner previous to his own." Hence, where a judgment creditor has redeemed the property from an execution purchaser, the judgment debtor or his successor in interest must pay the full amount of any judgment liens held by the judgment creditor. (*Lawler v. Gleason* (1955) 130 C.A.2d 390, 397, 279 P.2d 70; *Ritter v. Salsbery* (1956) 142 C.A.2d Supp. 847, 852, 298 P.2d 166; see supra, §98.)

The rule on redemption from an execution purchaser and from a prior redemptioner is the same; to effectuate the statutory purpose the statute is construed to make the property answer for existing liens up to its fair value. "Redemption would not be encouraged by a construction that would permit a subsequent lienor to re-redeem without paying to the prior redemptioner the amount of his judgment. Under such a construction the current redemptioner would take subject to the lien of the prior redemptioner. The prior redemptioner would

then be entitled to levy execution upon the property, and the process would begin anew. Such a result would be absurd." (*Salsbery v. Ritter* (1957) 48 C.2d 1, 11, 306 P.2d 897; see 52 Cal. L. Rev. 863.)

(4) [§102] Recordation of Notice of Redemption.

C.C.P. 703 provides that a redemptioner must give notice of redemption to the sheriff and must record a copy. The section also requires him to record a notice of any sums expended or liens held which a person redeeming from him may be required to pay (supra, §98).

In *Salsbery v. Ritter* (1957) 48 C.2d 1, 306 P.2d 897, supra, §101, the court construed the statute and explained the requirement as follows: "Recordation of a notice of redemption diminishes the possibility that a subsequent redemptioner will make payment to some person who because of an undisclosed intervening redemption no longer has any interest in the property. . . . Another reason is that persons eligible to re-redeem are entitled to know the amount of money required to effect a redemption so that they may act intelligently with respect to the property." (48 C.2d 13.)

The effect of failure to record, as the court points out, is: (1) If no person seeks to re-redeem within the statutory period, the faulty redemption is nevertheless good. (2) If, as a consequence of the failure to record, a subsequent redemptioner without notice pays the wrong person, the good faith redemption will be effective as against the faulty one. (48 C.2d 13.)