

## Memorandum 78-46

Subject: Study D-300 - Enforcement of Judgments (Execution)

Attached to this memorandum is a draft of Chapter 3 of the Enforcement of Judgments Law pertaining to execution. The Commission has not previously considered this material in its entirety. The text accompanying the draft statute provides a summary of the law in this area and the more important changes that would be accomplished by the recommended statute.

The staff has the following points:

§§ 703.120, 703.140, 703.250. Leviability and life of writ of execution

The need for the technical rules concerning issuance, leviability, and return of writs of execution should be reconsidered. Under existing law the writ may be effective for one year from its date of issuance. Only one writ may be outstanding in a county at a time. A levy may be made only during the 60-day period following the delivery of the writ to the levying officer and the writ is to be returned not sooner than 10 nor later than 60 days after its delivery. It may be retained for a longer period to complete the sale of property levied upon. If money is received by the levying officer after the writ has been returned, the writ may be redelivered to him and an alias return is then made with respect to the collection.

Under the draft statute, the writ would be leviable for 90 days after its issuance and would be retained thereafter for the purpose of sale or collection. If there is a need to levy upon other property after the first writ has become unleviable (that is, more than 90 days after issuance of the first writ), another writ would be issued to the same county. Each writ would be returnable no later than one year after its issuance.

Historically, the requirement that a writ be returned has had two important functions. It provides an account of the activities of the levying officer and the amounts collected. While some sort of accounting is needed, however, it does not necessarily have to take the form of a return of the writ. Return was also a prerequisite for the resort to equitable remedies such as the creditor's bill. However, the draft statute eliminates return of the writ as a prerequisite to resort to other remedies.

In view of these considerations, it may be preferable to substantially revise the traditional scheme by eliminating the technical rules concerning leviability and return and thereby cut down on paperwork. Florida law provides an interesting alternative scheme. Under the law of that state, a writ of execution is valid during the life of the judgment (20 years) and is returned only when satisfied. The writ is directed to all sheriffs in the state. See Fla. Stat. §§ 56.021, 56.031, 56.041. In Massachusetts, writs of execution are similarly returnable within 20 years after the date of the judgment. See Mass. Gen. Laws Ann. ch. 235, § 23. South Carolina provides for a statement by the levying officer of "his actions and doings" under the writ at each regular term of court during the "continuance of its active energy" which extends 10 years. The writ is returned when it is fully executed. S.C. Code §§ 15-39-30, 15-39-130. In the abstract, these schemes appear superior to California law and to the draft statute.

In discussing the idea of providing for a 20-year writ (the duration of enforceability of a money judgment under the draft statute) with several levying officers, the objection was made that writs on unsatisfied judgments would have to be retained for the full 20-year period even though the file has become inactive. This problem could be remedied by permitting the levying officers to purge their files of writs of execution unless within the past year there has been some activity under the writ or the judgment creditor has given the levying officer notice that the writ is to be retained.

Another objection to the 20-year writ is that it would make the calculation of the amount to be collected more difficult. Under the existing system where writs are of relatively short duration, the levying officer collects the amount shown on the writ plus daily interest and the costs of collection. This amount is more closely correlated to the actual amount due than it would be if the writ were five, 10, or 15 years old. However, even under the present system there may be serious discrepancies because collection may proceed in more than one county and there may be voluntary satisfaction of a portion of the judgment amount of which the levying officer is unaware. Under a 20-year writ, the determination of the exact amount due could be left to the instructions of the judgment creditor and there would be a record of all collections in the court clerk's office.

Is the Commission interested in proposing a 20-year writ at least for purposes of the tentative recommendation?

### Garnishment by Registered Process Servers

Chapter 1419 of the Statutes of 1978 amended several provisions to permit registered process servers to serve a writ of execution if the levy does not require the sale, delivery, or custody of the property levied upon. It would appear that this provision permits only garnishment of debts owed the judgment debtor by a third person. The levying officer is still required to perform the other duties under the writ (Section 687(c) as amended), presumably receiving payments from the garnishee, processing exemption claims and third-party claims, paying over to the judgment creditor, and making a return on the writ. It is not clear whether the expenses of the process server are a recoverable cost of collection. The levying officer is still entitled to the normal \$8.50 fee for performing the nonlevy duties. See Gov't Code § 26725 as amended.

This legislation is intended to afford judgment creditors with a speedier manner of levying upon bank accounts and other debts which is particularly useful in situations where the debtor is likely to attempt to close out a bank account. It also results in some savings for the levying officers' budgets since they will receive the same fee but will not have to actually serve the writ. The provision as enacted, however, is in need of some technical revisions to coordinate the activities of the process servers and the levying officers. We were informed by the sponsor of this legislation that another bill will probably be introduced in the next legislative session to take care of the concerns of the levying officers. The staff became aware of this legislation after the draft statute attached hereto was already prepared. If there is no objection, we will revise the draft where appropriate to implement the substance of this legislation.

### § 703.420. Levy on securities

Section 703.420 continues existing law concerning the manner of levy upon securities. As an examination of this section will indicate, it is not a very effective method if the holder of the stock certificate is unwilling to turn possession over to the levying officer. This is a common problem where stock is pledged as security for a loan. The existing procedure would also be useless in the case of certificateless securities. These problems have been considered by the ABA and the Permanent Editorial Board for the Uniform Commercial Code and a revision

of Article 8 of the UCC has been proposed. The proposal would permit garnishment of secured parties or financial intermediaries holding stock without requiring seizure of the stock certificate and would provide for service of process on the issuer of stock if it is not represented by a certificate. It reads as follows:

Section 8--317. [Attachment or Levy Upon Security] Creditors' Rights

(1) Subject to the exceptions in subsections (3) and (4), no attachment or levy upon a certificated security or any share or other interest [evidenced] represented thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a certificated security which has been surrendered to the issuer may be [attached or levied upon at the source] reached by a creditor by legal process at the issuer's chief executive office in the United States.

(2) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

(3) The interest of a debtor in a certificated security which is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary or in the name of a nominee of such secured party may be reached by a creditor by legal process upon the secured party.

(4) The interest of a debtor in a certificated security which is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on the books of which the interest of the debtor appears.

(5) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (3) or (4) shall not operate as a restraint of the transfer of such security, free of the lien, to a third party for new value, but, in the event of such transfer, such lien shall apply to the proceeds of such transfer in the hands of the secured party or financial intermediary subject to any claims which have priority.

(6) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be [attached or levied upon] reached by ordinary legal process.

The staff is inclined to leave draft Section 703.420 unchanged for now and revise it when the Commercial Code is revised. If the State Bar committee considering the proposed revision of Article 8 decides not to recommend its enactment in some form, we could then revise the draft

statute to permit the garnishment of securities, leaving out the matter pertaining to uncertificated securities.

On the other hand, the Commission may want to recommend the revision of Section 703.420 and Commercial Code Section 8317 now, and later make any necessary changes in response to the action of the State Bar.

Respectfully submitted,

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Staff Draft

ENFORCEMENT OF MONEY JUDGMENTS

Execution

Several procedures are available for the enforcement of a money judgment. The simplest and most common is by way of a writ of execution. With certain exceptions, all of the judgment debtor's nonexempt property,<sup>1</sup> tangible and intangible, is subject to levy under a writ of execution followed by the sale of tangible property or the collection or sale of a debt.<sup>2</sup>

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1. In general, nonexempt property interests that are assignable may, by some procedure, be reached to satisfy a money judgment. See *Murphy v. Allstate Ins. Co.*, 17 Cal.3d 937, 945-46, 553 P.2d 584, 589-90, 132 Cal. Rptr. 414, 429-30 (1976). For a discussion of exempt property, see "Exemptions From Enforcement of Money Judgments" infra.

2. For a discussion of procedures to reach property not subject to execution, see "Special Procedures for Enforcement of Money Judgments" infra. In three situations, property that is not owned by the judgment debtor is also subject to execution or some other enforcement procedure:

1. Under the community property laws, the community property is liable for the satisfaction of the debts of either spouse and if the debt was incurred for necessities of life after marriage, the separate property of the nondebtor spouse may also be applied to the judgment against the other spouse. See Civil Code §§ 5116, 5120, 5121, 5122, 5125, 5132. This aspect of the law is the subject of a separate study currently being undertaken by the Commission.

2. Property that was subject to a lien when owned by the debtor may also be reached. See Section 682 (real property subject to judgment lien); *Riley v. Nance*, 97 Cal. 203, 31 P. 1126 (1893) (property subject to attachment lien when owned by debtor); *Puissegur v. Yarbrough*, 29 Cal.2d 409, 412-13, 175 P.2d 830, 832 (1946) (property subject to execution lien when owned by judgment debtor).

3. Where the debtor makes a fraudulent conveyance, the creditor may "disregard the conveyance and . . . levy execution upon the property conveyed." Civil Code § 3439.09.

### Issuance and Return of Writ of Execution

Under existing law, a writ of execution for enforcement of a money judgment is issued by the clerk of the court where the judgment is entered upon application of the judgment creditor.<sup>3</sup> A writ may be issued to the levying officer in each county in which the judgment debtor has property that the judgment creditor desires to reach.<sup>4</sup> Only one writ may be outstanding in a county at a time.<sup>5</sup>

The writ of execution may be in force for one year from its date of issuance, but it must be returned to the court clerk between 10 and 60 days after its delivery to the levying officer.<sup>6</sup> The return provides an account of the levying officers' activities in executing the writ and the amounts collected in satisfaction of the judgment.<sup>7</sup> If proceeds are received after the writ has been returned, the writ may be redelivered to the levying officer who then makes an alias return.<sup>8</sup>

3. See Section 682. A court hearing is required before a writ of execution may be issued to enforce a judgment for support of a child or spouse. See Civil Code § 4380; *Messenger v. Messenger*, 46 Cal.2d 619, 630, 297 P.2d 988, \_\_\_ (1956); *Jackson v. Jackson*, 51 Cal. App.3d 363, \_\_\_, 124 Cal. Rptr. 101, \_\_\_ (1975). This limitation is codified in the proposed law. A judgment creditor who seeks to execute upon a dwelling house for which a homestead declaration has not been recorded is required to apply to the court in the county where the house is located. See Code Civ. Proc. § 690.31; *Krause v. Superior Court*, 78 Cal. App.3d 499, 505, 144 Cal. Rptr. 194, 197 (1978). For the proposed modification of this feature of existing law, see the discussion under "Dwelling Exemption" *infra*.
4. See Sections 682, 687. The writ may also be issued to a registered process server where the judgment creditor seeks to levy upon a debt owed the judgment debtor by a third person. See Sections 682, 687(b), as amended by 1978 Cal. Stats. ch. 1419, §§ 1, 4.
5. See Section 683; 32 Ops. Cal. Att'y Gen. 22 (1958). Section 690.31 may create an implied exception to this general rule because the special writ issued pursuant to court order under that section for the purpose of levying upon a dwelling presumably may not be used for a levy on other property and, correspondingly, a general writ of execution issued by the clerk to the same county may not be used against a dwelling.
6. See Sections 683, 688(e). The writ may be retained to complete a sale after its return date. *Southern California Lumber Co. v. Ocean Beach Hotel*, 94 Cal. 217, \_\_\_, 26 P. 627, \_\_\_ (1892).
7. See Section 682.1; *Marshal's Manual of Procedure* § 404 (rev. 1977).
8. See Section 683. Under the common law, a writ of venditioni exponas was required to enable the sheriff to sell goods which had

The writ of execution states the amount due on the judgment at the time of its issuance.<sup>9</sup> The clerk also enters the amount of interest accruing daily and the fee for issuance of the writ, and the levying officer adds the costs of levy and sale to the amount to be collected under the writ.<sup>10</sup>

The proposed law would modify these procedures in several important respects. The writ of execution would be leviable at any time during the first 90 days after its issuance, rather than 60 days after its delivery to the levying officer. If property is levied upon during the 90-day period, the writ would be retained by the levying officer for the purpose of selling or collecting thereafter during the life of the writ, thus avoiding the need for redelivery of the writ and alias returns. The creditor would also be able to obtain another writ of execution for the same county after the first writ is at least 90 days old so that additional property may be levied upon while sale or collection proceeds under the first writ. Writs would be returnable after the duties thereunder have been performed, but not later than one year after issuance.<sup>11</sup>

If no property is levied upon during the first 90 days after the writ is issued, the writ would be returnable promptly after the expiration of the 90-day period. The writ would also be returnable at the written request of the judgment creditor in order to permit issuance of a new writ when the time for levy under the prior writ has almost expired without any property having been levied upon. Ultimately, the writ would be returnable when the time for enforcement of the judgment has expired.<sup>12</sup>

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already been levied upon under a writ of fieri facias that had lost its active force. See S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 87 (2d ed. 1975).

9. See Sections 682, 682.2.

10. See Section 682.2.

11. In the case of a levy upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent, the writ would be returnable as late as one year after the date the decree distributing the interest is final.

12. See the discussion under "Time for Enforcement of Judgments" supra.



### Levy Under Writs of Execution

The levying officer executes the writ of execution<sup>13</sup> pursuant to the instructions of the judgment creditor describing the nature and location of the property to be levied upon.<sup>14</sup> Under existing law, the levying officer is required to levy first upon property previously attached in the action, next upon personal property, and finally upon real property.<sup>15</sup> This rule is ineffective because the levying officer follows the instructions of the judgment creditor as to the property to be levied upon. The order of levy rule is not continued in the proposed law because it is not efficient and is not necessarily beneficial to either the debtor or the creditor. For example, the creditor may have attached real property before entry of the judgment whereas more liquid assets such as earnings or bank accounts can be more efficiently reached after the judgment.<sup>16</sup> On the other hand, the creditor should not be prevented from reaching real property because there is some personal property which could be applied to the satisfaction of the judgment perhaps only at a great sacrifice to the debtor, as in the case of used furniture or intangibles. The proposed law would, however, permit the judgment debtor to require the judgment creditor to apply or release attached property to avoid any hardship that might result should the judgment creditor hold property previously levied upon for extended periods of time while searching for other property.

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13. Service of the writ on a third person may be accomplished by a registered process server if the levy does not require the sale, delivery, or custody of the property levied upon. See Sections 682, 687, as amended by 1978 Cal. Stats. ch. 1419, §§ 1, 4.
  14. See Section 262 (levying officer not liable for carrying out signed instructions); cf. Section 692 (instructions for sale of property); see generally Marshal's Manual of Procedure § 301.1 (rev. 1977); Cal. State Sheriffs' Association, Civil Procedural Manual 4.05 (1978).
  15. Sections 682, 684.2. The preferential protection of real property from the claims of creditors dates from feudal times and is recognized in clause 9 of the Magna Carta.
  16. For example, an individual debtor's real property may be attached before entry of judgment (Section 487.010(c)(1)), but the creditor may not attach earnings (Section 487.020(c)) or accounts receivable, chattel paper, and choses in action where the individual indebtedness is less than \$150 (Section 487.010(c)(2)).

### General Rules Governing Levy

The levy procedures under the proposed law are essentially the same as those under existing law which in general incorporates the rules governing levy under a writ of attachment.<sup>17</sup> The proposed law makes specific provision for the manner of levy upon particular types of property, however, as does the Attachment Law, rather than incorporating the attachment provisions. This avoids the need to resolve conflicts in the terminology in the attachment and execution contexts and results in a more convenient statutory scheme for practitioners and levying officers since the vast majority of levies take place after judgment.

Property is levied upon, i.e., seized in the eyes of the law, in four ways: by physical seizure accompanied by service of a writ and notice of levy, by service of a writ and notice of levy alone, by filing or recording of a writ and notice of levy, and by mere delivery of a writ and instructions to levy to the levying officer.

Seizure and service is employed where tangible personal property to be levied upon is in the judgment debtor's possession. Service alone is used for a levy upon intangible personal property or any personal property under the control of a third person. Filing or recording is used to levy upon real property, property under estate administration, or a judgment. Delivery of a writ and instructions to the levying officer constitutes a "paper levy" upon property already levied upon by the levying officer.<sup>18</sup>

Under the proposed law, both a copy of the writ of execution and a notice of levy will be served when service is required. The notice of levy informs the person served of the capacity in which the person is served, such as judgment debtor, garnishee or interest holder of record, the property which is levied upon, the person's rights under the levy, including the right to make a third-party claim or claim an exemption, and the person's duties under the levy, such as the requirement that a garnishee file a memorandum with the levying officer. Notice of levy is required to be given promptly to the judgment debtor in every case.

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17. See Section 688.

18. This provision codifies case law. See O'Connor v. Blake, 29 Cal. 312, 315 (1865); Colver v. W.B. Scarborough Co., 73 Cal. App. 441, 443, 238 P. 1104, \_\_\_ (1925).

Levy is valid, however, even if no notice is given to the judgment debtor or a third person, provided that the essential levy requirements are satisfied.

#### Execution Lien

A levy creates a lien upon the property levied upon which runs for one year from the date of the issuance of the writ.<sup>19</sup> This general principle is continued in the proposed law. The clarification of the exact method of levy on a particular type of property in the proposed law is intended to facilitate the determination of the exact time a lien is created which is necessary for a determination of the priorities among various creditors.<sup>20</sup>

#### Levy on Property in a Private Place

The right of the judgment creditor to cause a levying officer to seize property from the possession of the judgment debtor is limited by the debtor's right to privacy.<sup>21</sup> The proposed law permits the judgment creditor to apply to the court ex parte, or on noticed motion if the court so directs, for an order directing the levying officer to seize property in a private place consistent with constitutional protections. As a prerequisite to issuance of such an order, the judgment creditor must describe with particularity both the property sought to be levied upon and the place where it is to be found. The court must be satisfied that there is probable cause to believe that the property is located in the place described.

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19. See Section 688(e). The lien of execution has a longer duration in the case of a levy on interests or claims of heirs, devisees, or legatees in assets of decedents remaining in the hands of executors or administrators.
20. See the discussions under "Effect of Liens", supra, and "Distribution of Proceeds of Sale and Collection", infra.
21. This right to privacy and the protection of the security of the home derives from early common law. See 2 A. Freeman, Law of Executions § 256 (3d ed. 1900). In Blair v. Pitchess, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971), the claim and delivery procedure was held unconstitutional partly because the seizure of the property in a private place constituted an unreasonable intrusion on the debtor's privacy in the absence of probable cause. Cf. Camara v. Municipal Court, 387 U.S. 523 (1967).

### Duties of Garnishee

The proposed law contains detailed provisions concerning the duties of a garnishee which are not found in existing law.<sup>22</sup> The proposed law makes clear that service of a writ of execution and notice of levy creates a lien on any property of the judgment debtor's under the control of the garnishee or on any debt owed the judgment debtor. The garnishee is notified that if no right of possession of tangible personal property is claimed, the property described is to be delivered to the levying officer. If the garnishee does not deny the debt to the judgment debtor, it is to be paid as it becomes due to the levying officer during the period of the lien of execution which runs for one year from the date of the writ's issuance. The garnishee would also be required to execute any documents necessary to effect a transfer or payment. At the time of levy, the levying officer would request the garnishee to mail a memorandum to the levying officer within 10 days. The memorandum is to be executed under oath and describe the tangible personal property levied upon and the interest of the judgment debtor, state the amount and terms of any debt owed the judgment debtor, give any reasons for not delivering any property of the judgment debtor or paying a debt owed the judgment debtor, and describe superior interests of any other persons in the property or debt. If the garnishee complies with this memorandum requirement, the judgment creditor will be provided with information useful in deciding the most efficient manner of enforcing the judgment. If the garnishee does not fully comply with the garnishment and provide the memorandum, the garnishee may be required in the court's discretion to pay the costs of any proceedings, such as an examination or creditor's suit,<sup>23</sup> instituted to obtain possession of the property, payment of the debt, execution of necessary documents, or the information required to be supplied in the memorandum.

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22. Section 488.080(b) provides for a garnishee's memorandum in attachment, but this provision is not specifically incorporated by the enforcement of judgment provisions and does not provide as much detail as the memorandum under the proposed law.

23. See the discussions under "Examination Proceedings", infra, and "Creditor's Suit", infra.

### Methods of Levy on Particular Types of Property

The proposed law contains specific provisions for levy upon the following categories of property: interests in real property, tangible personal property in the debtor's possession, tangible personal property in a third person's possession, tangible personal property in a levying officer's custody, debts, motor vehicles and vessels, tangible personal property of a going business, personal property used as a dwelling, growing crops and standing timber, chattel paper, negotiable instruments and documents, money, securities, deposit accounts and safe deposit boxes, judgments owed to judgment debtors, and interests in personal property of a decedent's estate. Most of these provisions are the same in substance as existing law which in general incorporates the methods of levy under attachment. The following are the more important revisions:

Real property. The proposed law would make clear that leasehold interests in real property are to be levied upon in the same manner as freehold interests. Under existing law, it is the practice to treat some leases as personal property and some as real property for the purpose of determining the correct manner of levy.<sup>24</sup> The proposed law would specifically require the recording of a writ of execution and notice of levy in all cases of a levy on an interest in real property, whereas under existing law, no recordation is required if the judgment is already a lien on the property.<sup>25</sup> The proposed law would also require notice of levy to be sent to persons who have requested notice of sale and to persons holding an interest of record in the property so as to provide early notice to interested persons that the property may be sold.<sup>26</sup>

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24. See Marshal's Manual of Procedure § 300.3 (rev. 1977) (leases for a definite term of years treated as personal property, leases for indefinite term treated as real property). The Attachment Law, however, does not make this distinction. See Section 488.310.
25. See Lehnhardt v. Jennings, 119 Cal. 192, 195-97, 48 P. 56, 51 P. 195, \_\_\_ (1897). The practice has been to make a complete levy in every case. See Marshal's Manual of Procedure § 303.2 (rev. 1977).
26. Notice would be required to be given to a person holding an interest in the property acquired by an instrument sufficient to impart constructive notice of the interest if the instrument is recorded in the office of the county recorder so as to impart constructive notice prior to the date of levy on the property. Cf. Civil Code § 2924b(3)(a).

Paper levy. The proposed law contains a new provision codifying case law concerning a paper levy--that is, a levy on tangible personal property which is already in the levying officer's custody.<sup>27</sup> There is no need to reseize the property in such a case, so the levy is accomplished and a lien arises when the creditor delivers the writ of execution to the levying officer with instructions to levy upon the property already in the officer's custody. If the writ is directed to a levying officer other than the one in custody of the property, the receiving officer would levy upon the property by serving a copy of the writ and a notice of levy on the officer having custody. This procedure permits second judgment creditor to protect his or her interest in the surplus proceeds that might remain after a sale of the property<sup>28</sup> and to prevent the release of the property should the lien of the first judgment creditor cease, such as pursuant to the direction of the first judgment creditor, or pursuant to a claim of exemption,<sup>29</sup> or a third-party claim<sup>30</sup> in the proceedings involving the first creditor.

Motor vehicles and vessels. Existing law requires the levying officer to give notice of levy to the legal owner if different from the registered owner.<sup>31</sup> The proposed law is worded so as to avoid giving duplicate notice to legal owners, since if the legal owner is in possession, notice generally will be given at the time the property is seized. The proposed law also makes clear that notice need not be mailed to the legal owner in the case of a keeper levy on property of a going business or of a vehicle or vessel used as a dwelling until the levying officer takes exclusive possession of the property.

27. See O'Connor v. Blake, 29 Cal. 312, 315 (1965); Colver v. W.B. Scarborough Co., 73 Cal. App. 441, 443, 238 P. 1104, \_\_\_ (1925).

28. See the discussion under "Distribution of Proceeds of Sale and Collection" infra.

29. See the discussion under "Exemptions From Enforcement of Money Judgments" infra.

30. See the discussion under "Third-Party Claims and Related Procedures" infra.

31. See Section 689b(1).

### Turnover Orders

The proposed law would make available a turnover order remedy derived from the laws pertaining to claim and delivery and attachment.<sup>32</sup> The judgment creditor would be able to obtain an order on ex parte application or on noticed motion, if the court so directed, requiring the judgment debtor to transfer possession of property sought to be levied upon or documentary evidence of title to property or a debt sought to be levied upon. The order would be enforceable by the power of the court to punish for contempt. Use of a turnover order in appropriate cases may avoid the need to obtain an order for a levy on property in a private place, would facilitate reaching intangible assets with a situs outside California, and by permitting a turnover of evidence of title, would facilitate eventual collection of a debt or sale of property such as a motor vehicle.

### Disposition of Perishable Property

The proposed law makes specific provision for the prompt sale of perishable property by either the levying officer or a receiver.<sup>33</sup> Such property may be sold pursuant to court order obtained on noticed motion of the judgment creditor. However, if the levying officer determines that the property is so perishable or subject to deterioration or depreciation that there is not time to obtain a court order, the levying officer may take any action necessary to preserve its value or may sell the property. The levying officer would be protected from liability if such a determination is made in good faith.

### Release of Property

Existing law incorporates the provisions of the Attachment Law pertaining to the release of property which has been levied upon.<sup>34</sup> The proposed law continues the substance of existing law but adds a provision for property to be sold if the person from whom it was taken cannot be found, with the proceeds deposited in the county treasury payable to the order of such person.

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32. See Sections 482.080 (attachment), 512.070 (claim and delivery).

33. This provision is derived from Section 488.530 (attachment).

34. See Section 488.560.

## Sale and Collection

### Sale in General

The general assumption of existing law is that property levied upon will be sold to satisfy the money judgment.<sup>35</sup> This principle is continued in the proposed law subject to some modifications. The proposed law makes clear that cash or the equivalent of cash are not to be sold. Certain types of property that are especially susceptible to sacrifice sales--chattel paper, debts, judgments, and negotiable instruments that are not of a type customarily transferred in established markets or that arise out of consumer transactions--may be sold only pursuant to a court order issued on noticed motion and only on terms and conditions specified in the order that are designed to ensure that fair consideration is obtained at a sale.

### Collection

If a court order for a sale of one of the specified debts is not sought or is refused or if the judgment creditor so instructs the levying officer, debts are to be collected under the proposed law during the period of the lien of execution which lasts for one year from the date of issuance of the writ of execution.<sup>36</sup> This represents a significant change from existing law under which the writ of execution has active force only for a maximum 60-day period after delivery to the levying officer whereupon it must be returned.<sup>37</sup> By encouraging collection over as long as a year's time, the proposed law would save collection costs and result in much less disruption of the relation between the debtor and the debtor's debtors.

### Sale Procedure

Notice of sale. Except as noted, the proposed law would continue the substance of existing law governing the notice of sale. In order to

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35. See Section 691.

36. The proposed law also provides other remedies for collecting debts. See the discussion under "Special Procedures for the Enforcement of Money Judgments" infra.

37. See Section 683.



reach potentially interested bidders at an execution sale more effectively, the proposed law would permit the judgment creditor to advertise the sale in an advertising section of a newspaper of general circulation or other periodical and recover reasonable costs of such advertising. The proposed law would afford the judgment debtor an opportunity to claim any available exemption for personal property by precluding its sale until 10 days after the notice of levy was mailed to the debtor. Under existing law the 10-day period runs from the date of levy<sup>38</sup> but since the debtor may not be aware of the levy, it provides little protection. If real property is to be sold, the proposed law would require both a legal description and a street address, other common designation, or directions to the location of the property, whereas existing law permits the omission of the street address and apparently provides for a designation of the location of property only in cases of a foreclosure sale.<sup>39</sup> The proposed law would also require notice of sale to be sent to interest holders of record<sup>40</sup> and to be served on an occupant of the property or left at the premises.<sup>41</sup> The notice of sale of real property is delayed under the proposed law until 120 days after the notice of levy is mailed to the judgment debtor. This provision gives the judgment debtor time to redeem the property from the judgment creditor's lien before the sale, to sell the property, or to seek the attendance of other potential purchasers at the judicial sale. This delay provision compensates for the proposed elimination of the statutory right to redeem real property for one year after a judicial sale.<sup>42</sup>

Manner of sale. The existing law pertaining to the time, place, and nature of sale is largely continued in the proposed law.<sup>43</sup> However,

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38. See Section 690.50(a).

39. See Section 692.

40. See note 26 supra.

41. This provision is analogous to the provision for notice of levy.

42. See the discussion under "Statutory Redemption From Judicial Sales" infra.

43. See Section 694.

the requirement that personal property be in view of those attending the sale is subject to an exception where the court orders otherwise. This option avoids the expense of moving bulky objects or large lots of items to the place where the sale is to be held. Under the proposed law, the judgment debtor may request that property be sold in certain lots or in a particular order, but the levying officer would not be bound to follow the request unless it is likely that the requested manner of sale will yield an amount equal to any other manner of sale. Under existing law, it appears that the judgment debtor has absolute control over this aspect of sale.<sup>44</sup>

Manner of payment. Existing law requires bidders at an execution sale other than the judgment creditor to pay in cash or by certified check or cashier's check; the judgment creditor may credit the judgment on any bids but must pay cash to cover the expenses of the levying officer, preferred labor claims, exempt proceeds, and other superior claims that are required to be satisfied.<sup>45</sup> The proposed law continues this general requirement, but also would permit a high bidder to elect to treat a bid of over \$5,000 as a credit transaction by paying \$5,000 or 10 percent of the amount bid, whichever is greater, in cash, and then paying the balance and additional accruing costs within 30 days after the date of the sale.<sup>46</sup> This provision should encourage outside bidding at execution sales of valuable property, particularly real property, whereas under existing law it was difficult for interested bidders to have the necessary cash at a sale. If the credit bidder does not complete payment of the amount bid within the 30-day period allowed, the amount paid would be applied to the satisfaction of the judgment and any excess would be returned to the bidder.

Minimum bids. The proposed law would specifically preclude the sale of property at an execution sale if the amount bid does not exceed

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44. See Section 694.

45. See Kelley v. Barnet, 24 Cal. App. 119, 121, 140 P. 605, \_\_\_ (1914).

46. This proposal is patterned after Revenue and Taxation Code Section 3693.1 pertaining to sales of tax deeded property to private persons.

the total of superior claims that are required to be satisfied, third-party claims that have been paid off by the judgment creditor,<sup>47</sup> any proceeds exemption,<sup>48</sup> and any upset price exemption.<sup>49</sup> This provision is intended to enforce the principle that the debtor's property should not be sold, particularly at a sacrificial sale, if none of the proceeds would go toward the satisfaction of the judgment.

Liability where sale set aside. Under existing law, if a sale is set aside because of irregularities in the proceedings or because the property was not subject to levy and sale, the purchaser is authorized to recover against the judgment debtor.<sup>50</sup> Since the purchaser may be unable to recover against the judgment debtor, the proposed law also permits recovery from the judgment creditor, in which case the parties are restored to their respective positions before the sale, and the judgment creditor's judgment is revived for the purpose of eventual recovery against the judgment debtor.

#### Distribution of Proceeds of Sale and Collection

Existing law contains several incomplete and somewhat contradictory provisions relating to the distribution of the proceeds of sale and collection.<sup>51</sup> The proposed law provides one general section governing the distribution of proceeds resulting from sale or collection under a

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47. Cf. Section 689c (proceeds of sale paid first to repayment of sum paid by creditor to satisfy interest of third-party claimant). See the discussion under "Distribution of Proceeds of Sale and Collection" infra.

48. Proceeds of sale may be exempt where a dwelling, a motor vehicle, or tools of trade are sold. See the discussion under "Exemptions From Enforcement of Money Judgments" infra.

49. Under the proposed law, necessary household furnishings, wearing apparel, and the like may not be applied to the satisfaction of a money judgment unless they have an item value of at least \$500 over any liens or encumbrances. If an item of property is sold for an amount in excess of \$500, the debtor is not entitled to a share of the proceeds. See the discussion under "Exemptions From Enforcement of Money Judgments" infra.

50. See Section 708.

51. See Civil Code § 1256; Code Civ. Proc. §§ 689c, 690.2(c), (d), 690.31(j), 691.

writ of execution. Proceeds are applied as follows: first, to the satisfaction of liens and claims that are required to be paid off, including a third-party claim that the judgment creditor has satisfied; second, to the judgment debtor in the amount of any applicable exemption of proceeds; third, to the levying officer for the reimbursement of costs which have not been advanced; fourth, to the judgment creditor to satisfy costs advanced to the levying officer, costs and interest accruing after entry of judgment but before issuance of the writ, the fee for issuance of the writ, and the amount remaining unsatisfied on the judgment; fifth, to any other judgment creditor who has delivered a writ of execution to the levying officer with instructions to levy on the same property and to other persons entitled to a share of the proceeds of sale;<sup>52</sup> finally, to the judgment debtor in the amount remaining. Proceeds of sale may be distributed immediately, but the proposed law would delay the distribution of proceeds of collection for 10 days after the date notice of levy was mailed to the judgment debtor to permit the debtor to claim any available exemption while the proceeds are still in the hands of the levying officer.

#### Statutory Redemption From Judicial Sales

##### Existing Law

In California, statutes providing a right of redemption from execution sales were first enacted in 1851.<sup>53</sup> This system, patterned after the Field Code proposed for New York,<sup>54</sup> has been described as the "scram-

52. See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 57, 45 P.2d 442, \_\_\_ (1935).

53. 1851 Cal. Stats. ch. 5, §§ 229-236. Statutory redemption from execution and foreclosure sales is currently governed by Code Civ. Proc. §§ 700a-707.

54. See New York Commissioners on Practice and Pleading, *The Code of Civil Procedure of the State of New-York* §§ 844-850 (1850). Although the redemption system proposed in the Field Code was not enacted in New York, it became the prevailing type of redemption in the United States. S. Riesenfeld, *Creditors' Remedies and Debtors' Protection* 150-51 (2d ed. 1975). The California statute in turn became the model for redemption laws in the western states. See Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 866 n.93 (1925).

ble" type of redemption.<sup>55</sup> Under this system, the right to redeem is afforded the judgment debtor who owns the land, the successors in interest of the judgment debtor, and persons holding liens on the land which are subordinate to the lien under which the sale takes place.<sup>56</sup> Redemption may take place at any time within twelve months after the sale of the property.<sup>57</sup> Redemption is accomplished by paying the execution sale purchaser or prior redemptioner the amount paid to purchase or redeem the property plus the amount of a prior redemptioner's lien and specified amounts of interest and other expenses.<sup>58</sup> Redemption by the judgment debtor or a successor in interest terminates the effect of the sale

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55. See generally, J. Hetland, Secured Real Estate Transactions §§ 7.7-7.19 (Cal. Cont. Ed. Bar 1974); S. Riesenfeld, Creditors' Remedies and Debtors' Protection 149-54 (2d ed. 1975); 5 B. Witkin, California Procedure Enforcement of Judgment §§ 98-102, at 3464-68 (2d ed. 1971); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846 (1964).
56. Code Civ. Proc. § 701. Creditors entitled to redeem are termed "redemptioners" by this section.
57. Code Civ. Proc. § 702. A redemption by a redemptioner must occur within 60 days after a redemption by a prior redemptioner. Code Civ. Proc. § 703. It has been suggested that these 60-day redemption periods conceivably may continue to run after the 12-month period as long as there are qualified redemptioners prepared to redeem within 60 days after a prior redemption. See Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 852-53 (1964).
58. See Code Civ. Proc. §§ 702-703. A person redeeming from the purchaser must pay two-thirds of one percent per month interest. Code Civ. Proc. § 702. A person redeeming from a redemptioner must pay, in addition, two percent of the amount paid by the prior redemptioner. Code Civ. Proc. § 703. The other items making up the redemption price specified in the statute are assessments, taxes, reasonable sums for fire insurance, maintenance, upkeep, or repair of improvements on the property, and sums necessarily paid on a prior obligation secured by the property. Code Civ. Proc. §§ 702-703. Rents and profits or the value of the use and occupation of the property may be set off against the redemption price. Code Civ. Proc. § 707; House v. Lala, 214 Cal. App.2d 238, 245-46, 29 Cal. Rptr. 450, 454 (1963). Section 702 provides a summary hearing procedure in the event of a disagreement over the redemption price. As the discussion in Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 863-69 (1964), fully demonstrates, the determination of the redemption price frequently is not an easy matter.

so that the judgment debtor or successor in interest is restored to his estate.<sup>59</sup> However, liens which have not been paid off in the process of redemption reattach,<sup>60</sup> and a judgment lien under which the property is sold reattaches to the extent it has not been satisfied when the debtor redeems.<sup>61</sup> Redemption by a junior lienholder has the effect of satisfying the prior lien which is a part of the redemption price and preserving the junior lienholder's security in the property which would otherwise be lost at the conclusion of the redemption period as a result of the sale under a superior lien.<sup>62</sup>

These provisions apply as well to foreclosure sales under a mortgage or deed of trust.<sup>63</sup> If the property is sold for less than the amount of the judgment, the redemption period is 12 months, as in the case of redemption from an execution sale.<sup>64</sup> If the property is sold at

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59. Code Civ. Proc. § 703; *Bateman v. Kellogg*, 59 Cal. App. 464, 474-78, 211 P. 46, 51-52 (1922).

60. Code Civ. Proc. § 703; *Kaiser v. Mansfield*, 160 Cal. App.2d 620, 628-29, 325 P.2d 865, 870-71 (1958).

61. See *Fry v. Bihr*, 6 Cal. App.3d 248, 251, 85 Cal. Rptr. 742, 743 (1970); *Moore v. Hall*, 250 Cal. App.2d 25, 29, 58 Cal. Rptr. 70, 72 (1967).

62. *Bank of America v. Hill*, 9 Cal.2d 495, 502, 71 P.2d 258, 261 (1937).

63. Subdivision (a) of Code of Civil Procedure Section 700a provides in relevant part:

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.

Similar language in the law in effect in 1852 was termed "inapt" but found to be sufficiently comprehensive to apply to foreclosure sales. *Kent & Cahoon v. Laffan*, 2 Cal. 595 (1852).

64. Code Civ. Proc. § 725a. Even if there is a power of sale in the mortgage or deed of trust, a mortgagee or trustee must follow the judicial foreclosure procedures in order to be able to obtain a deficiency judgment for the difference between the fair market value of the property and the total debt. See Code Civ. Proc. §§ 580b, 580d, 726; *Roseleaf Corp. v. Chierighino*, 59 Cal.2d 35, 40-44, 378 P.2d 97, 99-101, 27 Cal. Rptr. 873, 875-77 (1963).

a foreclosure sale under a deed of trust or a mortgage with the power of sale at a price sufficient to satisfy the judgment, including interest, costs, and expenses of sale, the redemption period is three months.<sup>65</sup> There is, however, no statutory right of redemption after a private sale under a power of sale in a mortgage or deed of trust.<sup>66</sup>

Where a right of redemption exists, the judgment debtor or a tenant of the debtor is entitled to remain in possession of the real property during the redemption period.<sup>67</sup> The purchaser is entitled to receive rent or the value of the use and occupancy of the property from the tenant in possession until a redemption takes place.<sup>68</sup> If the debtor redeems, rents and profits paid to the purchaser are a credit on the redemption price.<sup>69</sup> If the purchaser or redemptioner has occupied the property, the debtor who redeems is entitled to the value of the use and occupancy of the property.<sup>70</sup>

#### Purpose of Statutory Redemption

The primary purpose of statutes permitting redemption from judicial sales of real property is to force the purchaser at the sale (almost

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65. Code Civ. Proc. § 725a.

66. Penryn Fruit Co. v. Sherman-Worrell Fruit Co., 142 Cal. 643, 645, 76 P. 484, 485 (1904); Py v. Pleitner, 70 Cal. App.2d 576, 579, 161 P.2d 393, 395 (1945); Hetland, Land Contracts, in California Real Estate Secured Transactions § 3.78, at 130 (Cal. Cont. Ed. Bar 1970).

67. Code Civ. Proc. § 706; First Nat'l Trust & Sav. Bank v. Staley, 219 Cal. 225, 227, 25 P.2d 982, 982 (1933).

68. Code Civ. Proc. § 707; see Carpenter v. Hamilton, 24 Cal.2d 95, 101-03, 147 P.2d 563, 566-67 (1944) ("tenant in possession" includes judgment debtor occupying property during redemption period); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 865-69 (1964). A redemptioner has the same rights to rents and profits from the time such person redeems until a later redemption.

69. Code Civ. Proc. § 707.

70. House v. Lala, 214 Cal. App.2d 238, 245-46, 29 Cal. Rptr. 450, 454 (1963) (free use of property by judgment creditor is a profit within meaning of Section 707).

always the judgment creditor or mortgagee)<sup>71</sup> to bid an amount near the property's fair value.<sup>72</sup> The theory behind permitting other lien creditors to redeem is that the property should be used to satisfy as many creditors as possible.<sup>73</sup> If the property is valuable enough, subordinate lienholders are enabled to protect security that they would otherwise lose.<sup>74</sup> Statutory redemption also has the purpose of giving the debtor another chance to save the property by refinancing or otherwise finding assets sufficient to pay off the debt.<sup>75</sup>

71. The defeasible title obtained at a sale subject to redemption, the lack of notice, and the requirement of cash payment by outside bidders, while the judgment creditor or mortgagee can bid the amount of the judgment, are the major factors discouraging bidding. See National Conference of Commissioners on Uniform State Laws, Handbook 258-59 (1922); G. Osborne, Handbook on the Law of Mortgages § 8, at 18 (2d ed. 1970); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 832-33 (1925); Madsen, Equitable Considerations of Mortgage Foreclosure and Redemption in Utah: A Need for Remedial Legislation, 1976 Utah L. Rev. 327, 335. In a study in New York in 1938, it was reported that, out of 40,853 foreclosures, the mortgagee bid in the amount of the obligation in 40,570 cases. Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 40 n.13 (1953).
72. See Moore v. Hall, 250 Cal. App. 25, 29, 58 Cal. Rptr. 70, 73 (1967); G. Osborne, Handbook on the Law of Mortgages § 8, at 17-18 (2d ed. 1970), Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 839-41, 851 (1925); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964).
73. S. Riesenfeld, Creditors' Remedies and Debtors' Protection 149 (2d ed. 1975).
74. See Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964).
75. See G. Osborne, Handbook on the Law of Mortgages § 8, at 17-18 (2d ed. 1970); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 839 (1925). The one-year redemption period has been termed a "farm mortgage proposition . . . based on the allowance to the mortgagor of possession of his farm for another crop year after default, to see if conditions will not better and he be able to save the farm." National Conference of Commissioners on Uniform State Laws, Handbook 270 (1922). A commentary on the law of New York, where statutory redemption was eliminated in 1962, terms the "desire to give judgment debtors every opportunity to recover their real property . . . a form of paternalism predicated in part on the special status accorded ownership of real property." 6 J. Weinstein, H. Korn, & A. Miller, New York Civil Practice § 5236.02, at 52-675 (1976).



It is difficult to assess the actual effect of statutory redemption. The states are almost evenly divided between those which permit redemption from execution or foreclosure sales and those which do not;<sup>76</sup> however, there do not appear to be any studies comparing the results in redemption states as opposed to nonredemption states. It is certain that very few redemptions take place.<sup>77</sup>

#### Proposed Law

The Commission has concluded that statutory redemption from execution and foreclosure sales has failed to achieve its purposes. The very existence of the right of redemption operates as the greatest impediment to the achievement of the primary purpose of obtaining a fair bid at the sale because the purchaser can only obtain title which is defeasible for

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76. See G. Osborne, Handbook on the Law of Mortgages § 307 (2d ed. 1970); S. Riesenfeld, Creditors' Remedies and Debtors' Protection 150-51 (2d ed. 1975). Although there are some exceptions, redemption states usually permit redemption from both execution and foreclosure sales. Of the 27 states permitting redemption from execution sales, five permit only the judgment debtor to redeem, three permit redemption by the debtor and by creditors in order of priority, 13 provide "scramble" redemption, and six have some other variation. Among the states without redemption are Florida, Georgia, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas, and Virginia. Approximately 17 states have neither redemption nor any other special provisions designed to prevent sacrifice sales of real property.
77. G. Osborne, Handbook on the Law of Mortgages § 8, at 18 (2d ed. 1970); Brodkey, Current Changes in Illinois Real Property Law, 10 DePaul L. Rev. 567, 578 (1961) (fewer than one percent of foreclosed properties are redeemed); Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 42 n.25 (1953) (reporting a 1938 study showing that, out of 22,000 properties foreclosed, only 204 were redeemed); Stattuck, Washington Legislation 1961--Real Property Mortgage Foreclosure--Redemption, 36 Wash. L. Rev. 239, 309, 311 n.3 (1961) (reporting a four-year study showing that, out of 276 foreclosures, one redemption was made by a mortgagor and two by other persons). The records of the San Francisco Sheriff's Department from mid-1970 through mid-1975 show that there were three redemptions out of 86 sales of real property. Letter from Carl M. Olsen, County Clerk, City and County of San Francisco (October 20, 1975) (on file at office of California Law Revision Commission).

another year or, in certain cases, three months.<sup>78</sup> The right of redemption thus makes "sacrifice" sales even more sacrificial. There are, no doubt, exceptional cases in which the purchase price is unreasonably low and in which the debtor manages to obtain the money necessary to save the property. The Commission has concluded, however, that whatever protection is afforded debtors by the right to redeem in these exceptional cases does not justify the detrimental effect in the vast majority of cases of the right to redeem. Accordingly, the proposed law would eliminate the statutory right of redemption from judicial sales. This change would not affect the equitable right of a debtor to redeem from a sale at a grossly inadequate price where the purchaser is guilty of unfairness or has taken undue advantage.<sup>79</sup>

78. The commentators are nearly unanimous in recognizing the drastic effect the nature of the title obtained at a sale subject to redemption has on bidding. See, e.g., G. Osborne, Handbook on the Law of Mortgages § 8, at 19 (2d ed. 1970); Carey, Brabner-Smith, & Sullivan, Studies in Foreclosures in Cook County: II. Foreclosure Methods and Redemption, 27 Ill. L. Rev. 595, 615 (1933); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 841 n.51 (1925) (Redemption "certainly caps the wall we have built to keep the public away from the public sale. The best market for land is found among those who desire it for immediate use, and to them, obviously, the redemption feature is prohibitive."); Madway & Pearlman, A Mortgage Foreclosure Primer: Part III Proposals for Change, 8 Clearinghouse Rev. 473, 478-79 (1975) ("Protecting the title of the bid purchaser and eliminating post-sale redemption rights . . . would meet one of the major objections of mortgagees because these practices tend to depress foreclosure sale prices significantly."); Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 40 (1953) ("A person's desire for a particular piece of property would have to be very strong to cause him to bid for it, as he knows he is buying a mere expectation."); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964) (The "conditional title is not attractive to investors."). It is interesting to note that the commentary following the redemption provisions in the Field Code, which served as the model for the California statute, questions whether redemption affords any benefit to the debtor. New York Commissioners on Practice and Pleading, The Code of Civil Procedure of the State of New-York 359 (1850).
79. See, e.g., Odell v. Cox, 151 Cal. 70, 90 P. 194 (1907); Smith v. Kessler, 43 Cal. App.3d 26, 31-32, 117 Cal. Rptr. 470, 473-74 (1974).

The Commission recognizes that a hurried, forced sale of real property may result in a depressed price even where the sale is absolute. Consequently, a 120-day grace period would be provided between the time when notice of a levy on the property is given<sup>80</sup> and the time when notice of sale is first given.<sup>81</sup> This 120-day period is analogous to the three-month period before notice of sale afforded a mortgagor or trustor for the purpose of curing the default under a mortgage or deed of trust containing a power of sale.<sup>82</sup> During this time, the judgment debtor may refinance the property in order to pay off the lien under which it would otherwise be sold, sell the property privately subject to valid liens in order to realize a higher price than would be obtained at a forced sale, or acquiesce in the judicial sale but seek potential buyers by advertising and personal contact.

The provision for delay of sale would not apply to leasehold estates with less than two years' unexpired term at the time of levy. This exception is consistent with existing law which provides that sales of such interests are absolute, that is, not subject to redemption.<sup>83</sup>

The proposed scheme should accomplish more effectively the main purposes of the redemption statute--to obtain a higher price at execution and foreclosure sales and to provide the debtor with an opportunity to retain the property.<sup>84</sup> Junior lienholders may protect their interests by redeeming from the superior lien before the property is sold and

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80. Under the proposed law, notice of levy is required in every case. Under existing law, no levy is required where a foreclosure judgment is being enforced. See Code Civ. Proc. § 684; Southern Cal. Lumber Co. v. Ocean Beach Hotel Co., 94 Cal. 217, 222-24, 29 P. 627, 629 (1892). See the discussion under "General Rules Governing Levy", supra, and under "Judgments for Sale of Real or Personal Property", infra.

81. At least 20 days' notice of sales of real property is required by subdivision 3 of the Code of Civil Procedure Section 692. Hence, under this proposal, the property could not be sold sooner than 140 days after notice of levy is given to the judgment debtor.

82. Civil Code §§ 2924, 2924f.

83. See Code Civ. Proc. § 700a.

84. The proposed law would also improve the chances of obtaining a fair price by permitting credit bids (see the discussion under . . . , supra) and providing more extensive notice of levy and notice of sale (see the discussion under . . . supra).

thus being subrogated to the benefits of the superior lien.<sup>85</sup> The proposal would also eliminate the speculative aspect of the existing law which results from the fluctuation in land values during a year's time. It would achieve a more equitable balance between the interests of the debtor and the creditor and would have the added virtues of simplicity and ease of administration.<sup>86</sup>

The Commission has considered several other alternatives to statutory redemption--the most important being: requiring court confirmation

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85. The pre-sale right of subrogation upon redemption from a superior lien is provided by Civil Code Section 2904:

2904. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

The Commission does not propose to alter this right.

86. Indiana recently enacted a statute providing a six-month delay of execution sales coupled with an upset price of two-thirds the appraised value of the property. Ind. Code Ann. § 34-1-37-1, T.R. 69(a) (Burns 1973). One commentator suggested in 1938 that California substitute a grace period of a year for the one-year redemption period. King, The Enforcement of Money Judgments in California, 11 So. Cal. L. Rev. 224, 228-29 (1938). For reasons given in the text, the Commission believes that its proposal is preferable to these alternatives.

of sale,<sup>87</sup> fixing an upset price,<sup>88</sup> allowing advance bidding,<sup>89</sup> and extending antideficiency legislation to cover execution sales.<sup>90</sup>

Although some of these options may be preferable to statutory redemption as it exists in California, they have their own drawbacks that are avoided in the proposed statute. Generally speaking, these alternatives would require a court hearing in every case, thereby increasing the expenditure of time and resources by the parties and the judicial system. The Commission is mindful of the fact that the costs incurred in such additional proceedings would be borne by the judgment debtor, to the extent that the debtor is solvent, and ultimately by borrowers and consumers in general. The proposed law is most likely to forward the interests of both debtors and creditors in this area.

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87. Court confirmation, in the absence of an upset price feature, would be intended to protect against unreasonably low sale prices. It does not appear that any state provides for court confirmation of execution sales without combining it with an upset price or advance bid procedure. In California, Code of Civil Procedure Section 568.5 provides for court confirmation of sales by receivers. There is no right of redemption after a sale by a receiver. Code Civ. Proc. § 568.5.

88. Five states have a procedure for appraising the property and setting an upset price, usually two-thirds of the appraised value. E.g., Ohio Rev. Code Ann. §§ 2329.17, 2329.20 (Page 1954). California law provides an upset price of 90 percent of the appraised value in private probate sales by an executor or administrator. Prob. Code § 784. Appraisals are a matter of course in probate for tax purposes but would be an additional expense in execution and foreclosure sales.

89. Only North and South Carolina provide for continuing an execution sale so that the judgment debtor may find a buyer who will pay a specified amount over the last bid. N.C. Gen. Stat. §§ 1-339.64 to 1-339.68 (repl. vol. 1969); S.C. Code § 10-1770 (1962). California law provides for advance bids at private partition and probate sales. Code Civ. Proc. §§ 873.730, 873.740; Prob. Code § 785.

90. Pennsylvania requires the judgment creditor to petition the court within six months of an execution sale to fix the fair market value of the property if the price obtained at the sale is insufficient to satisfy the judgment. Satisfaction is granted to the extent of the fair market value of the property. If a petition is not timely filed, the debtor is released from liability. Pa. Stat. Ann. tit. 12, §§ 2621.1-2621.10 (1967). Kansas also permits the court to credit the fair market value of property on the judgment. Kan. Stat. § 60-2415(b) (1976). California's antideficiency legislation applies only to foreclosures under mortgages and deeds of trust. Code Civ. Proc. §§ 580b, 580d, 726.

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CHAPTER 3. EXECUTIONArticle 1. General Provisions§ 703.110. Property subject to execution

703.110. (a) Except as otherwise provided in subdivision (b), property that is subject to enforcement of a money judgment pursuant to Section 707.120 is subject to levy under a writ of execution.

(b) The following types of property are not subject to enforcement of a money judgment by levy under a writ of execution but are subject to enforcement by other procedures:

(1) An alcoholic beverage license that is transferable under Article 5 (commencing with Business and Professions Code Section 24070) of Chapter 6 of the Alcoholic Beverage Control Act.

(2) The interest of a partner in a partnership where the partner, but not the partnership, is the judgment debtor.

(3) A cause of action that is the subject of a pending action or special proceeding.

(4) A judgment in favor of the judgment debtor, prior to the expiration of the time for appeal from such judgment, or if an appeal is filed, prior to the final determination of the appeal.

(5) A right to future payments which is dependent on future developments other than the passage of time.

(6) Money (other than earnings) owing and unpaid by a public entity to the judgment debtor.

Comment. Section 703.110 supersedes provisions of former law which purported to prescribe the property subject to execution. See subdivision 1 of former Section 682 (personal property, earnings, real property, and real property subject to judgment lien) and former Section 688(a) ("All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property levied upon under attachment in the action, are subject to execution."). See also Section 701.260 ("property" defined).

As subdivision (a) recognizes, the types of property which may be reached by levy under a writ of execution are circumscribed by the general principles determining the classes of property that may be applied toward the satisfaction of a money judgment by any means. Many of these principles are uncodified. See Section 707.120 (property subject to enforcement of money judgment), 707.130 (property not subject to enforcement of money judgment), and the Comments thereto.

The general class of property described in subdivision (a) is subject to the exceptions provided in subdivision (b). Property which



is not subject to enforcement of a money judgment under Chapter 7 is not, of course, subject to levy of execution. See Section 707.130 (property not subject to enforcement). Property which is exempt only if a claim is made therefor under Chapter 7 is subject to execution until it is shown to be exempt. See Article 3 (commencing with Section 703.310) for methods of levy on particular types of property, and Chapter 4 (commencing with Section 704.110) for the method of levy on wages.

Subdivision (b) describes certain types of property which are not subject to execution. They are, however, subject to enforcement of a money judgment through some other procedure in Chapter 5. See Section 705.320 (receiver to transfer alcoholic beverage license), Article 4 (commencing with Section 705.410) (charging orders against interest of debtor-partner in partnership property), Article 5 (commencing with Section 705.510) (lien on cause of action and judgment), Article 6 (commencing with Section 705.610) (rights to future payments dependent on future developments other than the passage of time, including payments and wages due from the federal government, rents, commissions, royalties, surplus amount of spendthrift trusts, payments due from patent or copyright), Article 7 (commencing with Section 705.710) (money, other than wages, owing and unpaid by a public entity to the judgment debtor).

By precluding the levy under a writ of execution on a right to future payments which is dependent on future developments other than the passage of time, paragraph (5) of subdivision (b) overrules *Meacham v. Meacham*, 262 Cal. App.2d 248, 68 Cal. Rptr. 746 (1968), insofar as that decision permitted the levy upon and outright sale of the debtor's right to royalties from the marketing of an invention.

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§ 703.120. Issuance of writ of execution

703.120. (a) Except as provided in subdivision (c), after the entry of a money judgment, upon the application of the judgment creditor, the clerk of the court shall issue a writ of execution directed to the levying officer in each county requested by the judgment creditor where property sought to be levied upon is located.

(b) Writs of execution may be issued successively upon further application until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 90 days after the issuance of a prior writ for that county unless the prior writ was earlier returned.

(c) Where the judgment creditor seeks a writ of execution to enforce a judgment for the support of a child or spouse, the judgment creditor shall apply to the court ex parte, or on noticed motion if the court so orders, for an order directing issuance of a writ of execution.

Comment. Subdivision (a) of Section 703.120 is derived from portions of the first sentences of former Sections 681 and 682 pertaining to issuance of writs of execution, and continues the substance of the first and last sentences of former Section 687. The time during which writs may be issued under subdivision (a) is determined under Section 702.210. Where writs of execution are issued for two or more counties, the judgment creditor has a special duty to see that an excessive levy is not made. Cf. *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 347-50, 438 P.2d 345, \_\_\_, 66 Cal. Rptr. 697, \_\_\_ (1968) (excessive attachment as abuse of process).

Subdivision (b) supersedes prior law under which no more than one writ could be outstanding in one county for the enforcement of the same judgment. See former Section 683, para. 2; 32 Ops. Cal. Att'y Gen. 22 (1958). Subdivision (b) permits the issuance of a writ of execution for a particular county once every 90 days and Section 703.140(c) provides a 90-day period during which property may be levied upon under the writ. Hence, only one writ at a time provides authority for levy in a given county although several writs might be outstanding. This arrangement provides the judgment creditor with needed flexibility; one writ may be retained by the levying officer for the purpose of completing a sale while another writ may be issued to reach newly discovered property. This is particularly important in a case where there is a need to levy upon other property in a county where real property has been levied upon since Section 703.640(h) delays the sale of real property for at least 110 days after levy. Subdivision (b) eliminates the need which existed under former law for a return and redelivery of the writ for purposes of sale, after which the levying officer would make an alias return. See former Section 683, paras. 3, 4.

Subdivision (c) codifies the practice developed pursuant to Civil Code Section 4380 which gives the courts discretion in determining the manner of enforcing judgments for support. See *Messenger v. Messenger*, 46 Cal.2d 619, 630, 297 P.2d 988, \_\_\_ (1956); *Jackson v. Jackson*, 51 Cal. App.3d 363, 124 Cal. Rptr. 101 (1975); *Slevats v. Feustal*, 213 Cal. App.2d 113, 28 Cal. Rptr. 517 (1963). It appears that the usual practice has been to apply ex parte to the court for an order directing the issuance of the writ of execution. See 5 B. Witkin, *California Procedure Enforcement of Judgment* § 9, at 3394 (2d ed. 1971); *Simonet v. Simonet*, 263 Cal. App.2d 612, 616, 69 Cal. Rptr. 806, \_\_\_ (1968)). However, some courts have indicated a preference for application on noticed motion. See *Martin v. Martin*, 5 Cal. App.3d 749, 755, 85 Cal. Rptr. 339, \_\_\_ (1970); *Cochrane v. Cochrane*, 57 Cal. App.2d 937, 939, 135 P.2d 714, \_\_\_ (1943).

The provisions of this section are subject to limitations provided elsewhere. See, e.g., Sections 702.210-702.220 (time for enforcement), 702.140 (stay of enforcement), 702.420 (enforcement after death of judgment debtor).

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§ 703.130. Contents of writ of execution

703.130. The writ of execution shall state the date of issuance, the amount of the judgment, and the amount actually due thereon, and shall require the levying officer to whom it is directed to satisfy the judgment.

Comment. Section 703.130 prescribes the essential elements of a writ of execution. It supersedes a portion of the introductory paragraph and subdivision 1 of former Section 682 and a portion of former Section 682.2. See also Section 703.140 (execution of writ). The writ of execution is directed to the levying officer and provides the basis for the levying officer's authority under this chapter.

The technical requirements for the writ provided in former Sections 682 and 682.1 have not been continued in Section 703.130. The Judicial Council is given the responsibility of prescribing forms by Section 702.160(b). The requirement that the writ state the kind of money or currency in which the judgment is payable is not continued; Section 667 has been revised to require all money judgments to be made payable in United States currency. The reference to earnings has been deleted. Levy on earnings of an employee is accomplished pursuant to Chapter 4 (commencing with Section 704.110). The statute no longer requires levy upon personal property first. The judgment creditor is permitted to designate the order of levy in the instructions to the levying officer. See Sections 702.610 (instructions to levying officer) and 703.140 (delivery of writ and instructions to levying officer). Former law required satisfaction of the judgment first out of property previously attached before judgment in the action, then out of personalty, and finally out of realty. See subdivision 1 of former Section 682 and former Section 684.2. See also Section 703.230 (order requiring attached property to be released or applied to judgment).

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§ 703.140. Delivery and execution of writ

703.140. (a) The judgment creditor shall deliver the writ of execution to the levying officer to whom the writ is directed, together with written instructions containing a description of the property to be levied upon and a designation of persons to be served.

(b) The levying officer shall execute the writ by levying upon sufficient property subject to execution to satisfy the judgment and any accrued costs, interest, and levying officer's costs entered on the writ.

(c) The levying officer may not levy upon any property under the writ after the expiration of 90 days from the date the writ was issued.

(d) If the judgment creditor does not deliver the writ to the levying officer, the judgment creditor may return the writ to the court clerk.

Comment. Subdivision (a) of Section 703.140 continues the practice under former law, i.e., that the levying officer will not act until the judgment creditor delivers the writ of execution and written instructions to levy upon specific property. See Sections 262 (instructions of a party or the party's attorney not an excuse from liability unless in writing), 702.610 (instructions to levying officer). The judgment creditor's instructions may designate the order of levy. The mandatory

order of levy provided in subdivision 1 of former Section 682 and former Section 684.2 is not continued. See the Comment to Section 703.130. See also Sections 702.530 (entry of accrued costs, interest, and levying officer's costs on writ), 702.620 (deposit of costs), 703.110 (property subject to levy of execution).

Subdivision (b) continues the substance of the first portion of the first sentence of former Section 691. See also Section 488.030(b) (execution of writ of attachment).

Subdivision (c) prescribes the time within which property may be levied upon under a writ of execution. The 90-day period runs from the date of issuance of the writ, whereas under the first paragraph of former Section 683 the writ was to be returned within 60 days after its delivery to the levying officer. No levy may take place under a writ after the expiration of the 20-year period of enforceability prescribed by Sections 702.210 and 702.220.

Subdivision (d) permits the judgment creditor to return a writ of execution to the court clerk if it has not been delivered to the levying officer. During the first 90 days after its issuance, an outstanding writ precludes the issuance of another writ of execution for that county even though it has not been delivered to the levying officer. See Section 703.120(b) (issuance of writ of execution).

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§ 703.150. Contents of notice of levy

703.150. The notice of levy required by Article 3 (commencing with Section 703.310) shall inform the person notified of all of the following:

- (a) The capacity in which the person is notified.
- (b) The property which is levied upon. If real property which stands upon the records of the county in the name of a person other than the judgment debtor is sought to be levied upon, the notice of levy shall identify such person. If growing crops or timber to be cut which is located on real property standing upon the records of the county in the name of a person other than the judgment debtor is sought to be levied upon, the notice of levy shall identify such person.
- (c) The person's rights under the levy, including the right to make a third-party claim pursuant to Chapter 6 (commencing with Section 706.110) and the right to claim an exemption pursuant to Chapter 7 (commencing with Section 707.110).
- (d) The person's duties under the levy.

Comment. Section 703.150 prescribes the contents of the notice of levy. The Judicial Council is given the responsibility of prescribing the form of the notice of levy. See Section 702.160(b). The notice of levy of execution is similar to the notice of attachment provided by Section 488.020. Under prior law, the notice of levy was recognized by

Section 688(b), but there was no provision for an official form of the notice. Instead, the form of the notice of levy was determined by the levying officers. See, e.g., Marshal's Manual §§ 302.1, 344.1 (rev. Jan. 1, 1977); Cal. State Sheriffs' Association, Civil Procedural Manual 4.10-4.11, 4.19-4.20, 4.23-4.24 (1978). The notice of levy is directed to the person being notified whereas the writ of execution is directed to the levying officer. See Sections 703.120 (writ directed to levying officer) and 703.130 (contents of writ of execution). The judgment creditor must supply written instructions to the levying officer which provide sufficient information to complete the notice of levy. See Sections 702.610 (instructions to levying officer), 703.140 (delivery of instructions to levying officer).

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§ 703.160. Effect of failure to give notice of levy

703.160. In any case where, pursuant to a levy, a copy of the writ of execution and a notice of levy are required to be posted or mailed to the judgment debtor or other person by Article 3 (commencing with Section 703.310), failure to post or mail the copy of the writ and the notice does not affect the lien created by the levy.

Comment. Section 703.160 is analogous to portions of Sections 488.310-488.430 (method of levy in attachment) which were incorporated by former Section 688.

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§ 703.170. Levy on property in private place

703.170. If property sought to be levied upon is located in a private place of the judgment debtor, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs, for an order directing the levying officer to seize the property in such place. The application for the order shall describe both the property sought to be levied upon and the place where it is to be found with particularity according to the best knowledge, information, and belief of the judgment creditor. The court may not issue the order unless the judgment creditor establishes that there is probable cause to believe that property subject to levy under a writ of execution is located in the place described.

Comment. Section 703.170 is based on comparable provisions relating to claim and delivery. See Sections 512.010, 512.060, 512.080, 514.010, and the Comments thereto. If the levying officer gains entrance into a private place pursuant to an order issued under this section, the levying officer's authority to levy upon property is restricted by the terms of the order.

§ 703.180. Payment by debtor of judgment debtor

703.180. At any time after delivery of a writ of execution to a levying officer and before its return, a person indebted to the judgment debtor may pay to the levying officer the amount of the debt or so much thereof as is necessary to satisfy the judgment. The levying officer's receipt is a discharge for the amount paid.

Comment. Section 703.180 continues the substance of former Section 716 except that Section 703.180 provides for discharge only where the debt is voluntarily paid to the levying officer after the writ of execution has been delivered, not after it has been issued but not delivered.

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§ 703.190. Duties and liability of garnishee

703.190. (a) Except as otherwise provided by statute, at the time of levy under a writ of execution by service on a third person of a copy of the writ and a notice of levy, or promptly thereafter:

(1) If the third person does not claim a right of possession of the property, the third person shall deliver to the levying officer any tangible personal property levied upon which is subject to execution and in which the judgment debtor has an interest.

(2) To the extent that the third person does not deny the debt, the third person shall pay to the levying officer any debt levied upon which is subject to execution and is due and owing to the judgment debtor and shall make further payments to the levying officer of amounts which come due during the period of the lien of execution.

(b) When a transfer or payment is made, the third person shall execute any documents necessary to effect the transfer or payment.

(c) At the time of levy, the levying officer shall request the third person to give the levying officer a memorandum which the third person shall mail to the levying officer within 10 days after levy. The memorandum shall be executed under oath and shall contain the following information:

(1) A description of any tangible personal property levied upon and the judgment debtor's interest therein.

(2) A statement of the amount and the terms of any debt levied upon.

(3) If the third person possesses property of the judgment debtor which is not delivered to the levying officer, or owes a debt to the

judgment debtor which is not paid to the levying officer, a description of the property and a statement of the amount and terms of the debt and a statement of the reasons for not delivering or paying.

(4) A description of any superior claims or rights of other persons in the tangible property or debt.

(d) Upon receipt of the memorandum, the levying officer shall promptly mail a copy thereof to the judgment creditor.

(e) If the third person fails to comply with subdivision (a), (b), or (c), the levying officer shall so state at the time the writ is returned and the third person may, in the court's discretion, be required to pay the costs of any proceedings taken for the purpose of obtaining possession of the property levied upon or payment of the debt levied upon, execution of documents necessary to effect transfer or payment, or the information required by this section.

Comment. Subdivision (a) of Section 703.190 is new. Service of the copy of the writ of execution and notice of levy creates a lien on any property or debt that is subject to levy of execution even if the garnishee refuses to turn the property over or pay the debt to the levying officer. See Section 703.200; *Nordstrom v. Corona City Water Co.*, 155 Cal. 206, 212, 100 P. 242, \_\_\_\_ (1909). Only so much of the debt need be paid as is necessary to satisfy the amount stated in the writ. See Section 703.140(b) (levy on property sufficient to satisfy the judgment, accrued costs, interest, and levying officer's costs). Payment under subdivision (a)(2) is to continue while the execution lien is in force. See Sections 702.330 (duration of liens in general), 703.200 (lien of execution), 703.240 (release extinguishes liens), 703.250 (return of writ), 703.750 (extinction of lien upon sale).

The memorandum required by subdivision (c) is more extensive than the memorandum required by Section 488.080(b) (attachment), which was incorporated by former Section 688(b) and, where cooperation is forthcoming, provides an inexpensive alternative to examination proceedings under Section 705.130. It is intended to provide the judgment creditor with the information needed to be able to select the proper manner of enforcing the judgment. The levy does not create a lien on property described in the memorandum that is not subject to execution. The garnishee is not precluded from supplying information in addition to that required in the memorandum.

Subdivision (d) is new.

Subdivision (e) supersedes the last sentence of Section 488.080(b) (attachment), which was incorporated by former Section 688(b). See also Sections 705.130 (examination of third person indebted to judgment debtor), 705.160 (order directing application of debt to satisfaction of judgment creditor's judgment), 705.210-705.270 (creditor's suit).

§ 703.200. Lien of execution

703.200. (a) Except as provided in subdivision (b), levy under a writ of execution creates a lien on the property levied upon for a period of one year from the date of issuance of the writ.

(b) A lien upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent continues for a period of one year after the decree distributing the interest has become final.

(c) Property is not affected by issuance of a writ or its delivery to the levying officer and a lien does not attach to property until levy.

Comment. Subdivision (a) of Section 703.200 continues the substance of the first portion of former Section 688(e). The running of the lien is not tolled during a stay of enforcement. An execution lien on real property is useful only if there is no judgment lien in favor of the judgment creditor on that property. See Section 674. However, levy of execution is still required in order to realize on the judgment lien.

Subdivision (b) supersedes the last portion of the first sentence of former Section 688(e). For provisions relating to personal property levied upon while in estate administration, see Section 703.460.

Subdivision (c) continues the substance of former Section 688(d).

§ 703.210. Turnover order in aid of execution

703.210. (a) If a writ of execution is issued, the judgment creditor may apply to the court ex parte, or on noticed motion if the court so directs, for an order directing the judgment debtor to transfer to the levying officer:

(1) Possession of the property sought to be levied upon where the prescribed method of levy is by taking the property into custody.

(2) Possession of documentary evidence of title to property of or a debt owed to the judgment debtor which is sought to be levied upon. An order pursuant to this paragraph may be served when the property or debt is levied upon or thereafter.

(b) The order shall be personally served upon the judgment debtor and shall contain a notice to the judgment debtor that failure to comply with the order may subject the judgment debtor to being held in contempt of court.

Comment. Section 703.210 is analogous to Section 482.080 (providing for turnover orders when a writ of attachment is issued), except that subdivision (a) specifies that the application for a turnover order



is to be made ex parte unless the court directs otherwise. In the case of a turnover order in attachment proceedings, the plaintiff is normally already before the court and the nature of those proceedings determine whether the application will be heard ex parte or on notice.

§ 703.220. Sale of or receiver for perishable property

703.220. (a) Upon noticed motion by the judgment creditor, the judgment debtor, or a third person whose interest has been determined pursuant to Chapter 6 (commencing with Section 706.110), and a showing that property levied upon is perishable or will greatly deteriorate or greatly depreciate in value or that for some other reason the interests of the parties will be best served thereby, the court may order the property to be sold or may appoint a receiver or direct the levying officer to take any action necessary to preserve the value of the property or to sell the property.

(b) If the levying officer determines that property levied upon is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order pursuant to subdivision (a) could be obtained, the levying officer may take any action necessary to preserve the value of the property or may sell the property. The levying officer is not liable for a determination made in good faith under this subdivision.

(c) A sale of property pursuant to this section shall be made in the manner provided by Article 3 (commencing with Section 703.610) and the proceeds shall be applied toward the satisfaction of the judgment in the manner provided by Article 4 (commencing with Section 703.810).

(d) If a receiver is appointed, the court shall fix the daily fee of the receiver and may order the judgment creditor to pay the fees and expenses of the receiver in advance or may direct that the whole or any part of the fees and expenses be paid from the proceeds of any sale of the property.

(e) Except as otherwise provided in this section, the provisions of Chapter 5 (commencing with Section 564) and Chapter 5a (commencing with Section 571) of Title 7 govern the appointment, qualifications, powers, rights, and duties of a receiver appointed under this section.

Comment. Section 703.220 is analogous to Section 488.530 (attachment). The remedy provided by this section is of particular importance where growing crops or recently harvested farm products have been levied upon.

§ 703.230. Satisfaction from or release of attached property

703.230. If property of the judgment debtor is subject to a lien of attachment, the judgment debtor may apply to the court upon noticed motion and the court may order the property either to be levied upon under a writ of execution and applied toward the satisfaction of the judgment or to be released.

Comment. Section 703.230 supersedes former Section 684.2. It is designed to avoid a problem that could otherwise result from the elimination of a fixed order of levy on different types of property. See also Sections 702.610 (instructions to levying officer), 703.140 (delivery of writ and instructions to levying officer). Under former law, a judgment was satisfied first out of property previously attached before judgment in the action, then out of personalty, and finally out of realty. See subdivision 1 of former Section 682 and former Section 684.2. To avoid the danger that the judgment creditor might hold attached property for extended periods while searching for other property, Section 703.230 provides a means by which the judgment debtor can compel either the application of the attached property to the satisfaction of the judgment or its release. The lien of attachment continues after judgment until it expires on its own terms or is merged in a judgment lien, execution lien, or the lien of some other postjudgment enforcement procedure. See Sections 488.510 (duration of attachment lien), 702.310 (relation back of liens); *Bagley v. Ward*, 37 Cal. 121, 131 (1869); *Balzano v. Traeger*, 93 Cal. App. 640, 643-44, 270 P. 249, \_\_\_ (1928).

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§ 703.240. Release of property from lien and custody

703.240. (a) The levying officer shall release property or proceeds thereof upon the receipt of a written direction from the judgment creditor or a certified copy of a court order for release or when otherwise required by this title to release the property. Release extinguishes any liens created by the enforcement process.

(b) If the property to be released has been taken into custody, it shall be released to the person from whom it was taken unless otherwise ordered by the court. If the person cannot be found within the county where the property was levied upon, the levying officer shall retain custody of the property and shall mail a notice of where possession of the property may be secured to the person's last known address. If the person does not claim the property within 30 days after the notice is sent, the levying officer shall sell the property, other than cash and its equivalents, in the manner provided by Article 3 (commencing with Section 703.610). The levying officer shall deposit the proceeds of

sale and cash and its equivalents, after first deducting the levying officer's costs, with the county treasurer of the county where the property is located, payable to the order of the person.

(c) If the property to be released has not been taken into custody, the levying officer shall release the property by issuing a written release and mailing notice of release to the person upon whom process was served to create the lien at the person's last known address.

(d) If the property to be released was levied upon by recording or filing a copy of the writ and a notice of levy, the levying officer shall record or file a written notice of release in the same office.

(e) The levying officer is not liable for releasing property in accordance with this section nor is any other person liable for acting in conformity with the release.

Comment. Section 703.240 supersedes the portion of subdivision (b) of former Section 688 that incorporated the manner of release of attachment. Section 703.240 is generally similar to Section 488.560 (release of attachment). Subdivision (b), however, provides for property to be sold and the proceeds deposited in the county treasury where the person to whom property is to be released does not appear. See also Section 702.510 (manner of mailing notice).

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§ 703.250. Return of writ of execution

703.250. (a) Except as otherwise provided in subdivision (b), the levying officer to whom the writ of execution is delivered shall return the writ to the court, together with a report of the levying officer's actions and an accounting, at the earliest of the following times:

(1) One year from the date of issuance of the writ or, in the case of a levy upon an interest of an heir, devisee, or legatee in personal property in the estate of a decedent, one year after the date the decree distributing the interest has become final.

(2) Promptly after all of the duties under the writ are performed.

(3) When return is requested in writing by the judgment creditor.

(4) If no levy takes place under the writ within 90 days after its issuance, promptly after the expiration of the 90-day period.

(5) Upon expiration of the time for enforcement of the judgment.

(b) If an earnings withholding order has been issued and served upon the employer as provided in Chapter 4 (commencing with Section 704.110) within 90 days after issuance of a writ, the writ shall be returned as provided in Section 704. \_\_\_\_.

Comment. Section 703.250 supersedes the first, third, and fourth paragraphs of former Section 683. Under Section 703.250, the period at the end of which the writ must be returned runs from the date of issuance of the writ rather than from the date the writ was delivered to the levying officer. The provision of former Section 683 that the writ could not be returned before the expiration of 10 days is not continued. If a levy takes place under the writ, any sale of property or collection of a debt under the writ must be completed before the expiration of a year from the date of issuance of the writ under which levy took place except in the case of an interest in a decedent's estate. See subdivision (a)(1) and Sections 703.190(a)(2) (collection), 703.610 (sale). See also Section 703.200 (duration of lien of execution). Ultimately, return must be made before the expiration of the period of enforceability of a judgment provided by Sections 702.210 and 702.220. Redelivery of the writ, alias writs, and alias returns are not authorized. See former Sections 683, 688(e).

The provisions of this section are incorporated for the purpose of returns of writs of possession and writs of sale. See Sections 708.160, 709.150, 710.140.

27805

Article 2. Method of Levy

§ 703.310. Interest in real property

703.310. (a) To levy upon real property or a leasehold or other interest therein, the levying officer shall record a copy of the writ of execution and a notice of levy with the recorder of the county where the real property is located.

(b) If the notice of levy identifies a third person in whose name the real property stands upon the records of the county, the recorder shall index the copy of the writ and the notice of levy in the names of both the judgment debtor and the third person.

(c) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to all of the following:

(1) The judgment debtor.

(2) A third person identified in the writ in whose name the real property stands upon the records of the county. Notice shall be mailed to the person at the address shown by the records of the office of the tax assessor of the county where the real property is located.

(3) A person who has requested notice of sale pursuant to Section 702.540.

(4) A person holding an interest in the property acquired by an instrument sufficient to impart constructive notice of the interest if

the instrument is recorded in the office of the county recorder so as to impart constructive notice prior to the date of levy on the property. Notice shall be mailed to the person at the address used by the county recorder for the return of the instrument after recording.

(d) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property. Service on the occupant shall be made by leaving the copy of the writ and the notice of levy with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted and who is either an employee or agent of the occupant or a member of the occupant's family or household. If the levying officer is unable to serve an occupant, at the time service is attempted the levying officer shall post a copy of the writ and a notice of levy in a conspicuous place on the real property. If the real property described in the writ consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form a continuous tract, only one service or posting need be made under this subdivision as to the continuous tract.

Comment. Section 703.310 is comparable to Section 488.310 (manner of levy upon interests in real property pursuant to the Attachment Law) which was incorporated by former Section 688(b). Any legal or equitable interest in land which is subject to the enforcement of a money judgment is subject to levy under a writ of execution unless some other exclusive method of enforcement is specified, such as in the case of a partner's interest in partnership real property which is reachable only by way of a charging order pursuant to Section 705.410 where the partnership is not included as a judgment debtor. See Sections 703.110 (property subject to execution), 707.120 (property subject to enforcement of money judgment); *Lynch v. Cunningham*, 131 Cal. App. 164, 173-75, 21 P.2d 154, 21 P.2d 973, \_\_\_ (1933).

Subdivision (a) of Section 703.310 makes clear that leasehold interests are subject to execution in the same manner as real property. Under former law, it was the practice to treat some leases as personal property and some as real property for purposes of levy. See *Marshal's Manual of Procedure* § 300.3 (rev. Jan. 1, 1977).

Former law did not require recordation of the writ of execution and notice of levy if there was an existing judgment lien on the property. See *Lehnhardt v. Jennings*, 119 Cal. 192, 195-97, 48 P. 56, 51 P. 195, \_\_\_ (1897) (no levy required where judgment is lien). However, the practice has been to levy in every case. See *Marshal's Manual of Procedure* § 303.2 (rev. Jan. 1, 1977); *Cal. State Sheriffs' Association, Civil Procedural Manual* 4.10 (1978). Subdivision (a) continues existing

practice by requiring a complete levy to be made regardless of whether there is a prior judgment lien or attachment lien on the property in favor of the judgment creditor.

The provisions concerning the notice of levy are new. See Section 703.150 (contents of notice of levy). Notice is required to be given to the persons described in paragraphs (3) and (4) of subdivision (c) in order to afford early notice that the real property is likely to be sold. Paragraph (4) is derived from Civil Code Section 2924b(3)(a). The form of the writ of execution and the notice of levy is prescribed by the Judicial Council. See Section 702.160(b).

27807

§ 703.320. Tangible personal property in possession of judgment debtor

703.320. (a) Except as otherwise provided by this article, to levy upon tangible personal property in the possession of the judgment debtor, the levying officer shall take the property into custody.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor.

Comment. Subdivision (a) of Section 703.320 prescribes the general rule governing levy on tangible personal property in the possession of the judgment debtor. It continues the substance of the first sentence of subdivision (c) of former Section 688. For a general provision concerning the manner of taking custody, see Section 702.640. The introductory phrase of subdivision (a) recognizes that the general rule does not apply where another section of this article is applicable to a particular type of property.

Subdivision (b) continues the requirement of former Section 682.1 and of the second sentence of subdivision (b) of former Section 688 that a copy of the writ be served on the judgment debtor, and adds the requirement that a notice of levy also be served. See also Section 702.510 (mailing includes personal delivery). The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 702.610. See also Sections 703.130 (contents of writ of execution), 703.150 (contents of notice of levy).

27808

§ 703.330. Tangible personal property in possession of third person

703.330. (a) Except as otherwise provided in this article, to levy upon tangible personal property in the possession of a third person, the levying officer shall serve a copy of the writ of execution and a notice of levy on the third person.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) If goods are covered by a negotiable document, the goods may not be levied upon but the negotiable document may be levied upon in the manner provided by Section 703.410.

Comment. Subdivision (a) of Section 703.330 continues the substance of a portion of the last sentence of subdivision (b) of former Section 688. It prescribes the general rule governing levy on tangible personal property in which the judgment debtor has an interest but which is in the possession of a third person. This general rule is subject to exceptions, such as that provided in subdivision (c).

Subdivision (b) continues the requirement of former Section 682.1 and of the second sentence of subdivision (b) of former Section 688 that a copy of the writ be served on the judgment debtor, and adds the requirement that a notice of levy also be served. See Section 702.510 (mailing includes personal delivery). The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 702.610.

Subdivision (c) corresponds to subdivision (d) of Section 488.330 (attachment), which was incorporated by former Section 688(b).

For special provisions applicable to a levy upon the contents of a safe deposit box, see Sections 703.430 and 703.440. The duties of the garnishee are specified by Section 703.190.

27809

§ 703.340. Debts

703.340. (a) Except as otherwise provided in this article, to levy upon a debt owed to the judgment debtor, the levying officer shall serve a copy of the writ of execution and a notice of levy on the person owing the debt.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor and to any other person identified as an obligee in a memorandum under Section 703.190.

Comment. Subdivision (a) of Section 703.340 continues the substance of a portion of the last sentence of subdivision (b) of former Section 688. It prescribes the general rule governing levy on debts, including accounts receivable and choses in action, but recognizes that the general rule is inapplicable where another section of this article governs the manner of levy on a particular type of property.

Subdivision (b) continues the requirement of former Section 682.1 and of the second sentence of subdivision (b) of former Section 688 that a copy of the writ be served on the judgment debtor, and adds the requirement that a notice of levy also be served. See Section 702.510 (mailing includes personal delivery).

The judgment creditor has the responsibility of furnishing the levying officer with the information necessary to comply with this provision. See Section 702.610.

§ 703.350. Tangible personal property in custody of levying officer

703.350. (a) To levy upon tangible personal property in the custody of a levying officer:

(1) If the writ of execution is directed to the levying officer having custody of the property, the judgment creditor shall deliver the writ to the levying officer.

(2) If the writ of execution is directed to a levying officer other than the levying officer having custody of the property, the levying officer to whom the writ is directed shall serve a copy of the writ and a notice of levy on the levying officer having custody.

(b) At the time of levy or promptly thereafter, the levying officer to whom the writ is directed shall mail a copy of the writ and a notice of levy to the judgment debtor.

Comment. Section 703.350 is new. Paragraph (1) of subdivision (a) codifies case law concerning a "paper levy" involving only one levying officer. See, e.g., *O'Connor v. Blake*, 29 Cal. 312, 315 (1865); *Colver v. W.B. Scarborough Co.*, 73 Cal. App. 441, 443, 238 P. 1104, \_\_\_\_\_ (1925). Paragraph (1) makes clear that the lien of execution arises at the time the writ is delivered to the levying officer. See also Section 703.200 (lien of execution). Paragraph (1) applies in cases where the judgment creditor is seeking to have property sold on execution which has been previously attached by the creditor and also in cases where a judgment creditor seeks to reach property which has already been taken into custody on attachment or execution at the behest of another creditor. Paragraph (2) is a new provision governing levies involving two levying officers.

§ 703.360. Motor vehicles and vessels required to be registered

703.360. (a) Except as provided in subdivision (b), promptly after levy upon a motor vehicle or a vessel required to be registered with the Department of Motor Vehicles, the levying officer shall determine from the department the name and address of the legal owner of the vehicle or vessel and, if the legal owner is a person other than the judgment debtor or a third person in possession, the levying officer shall mail a copy of the writ of execution and a notice of levy to the legal owner.

(b) If a motor vehicle or vessel is levied upon pursuant to Section 703.370 or 703.380, the copy of the writ and the notice of levy need not be mailed to the legal owner pursuant to subdivision (a) until the levying officer takes exclusive custody of the motor vehicle or vessel.



Comment. Section 703.360 supersedes subdivision (1) of former Section 689b. Former law required notice to be given the legal owner if different from the registered owner. Subdivision (a) of Section 703.360 is worded so as to avoid duplicate notice in any case where the legal owner has already received notice in the course of the levy. See Sections 703.320, 703.330, 703.370, 703.380.

Subdivision (b) is new. The levying officer is not required to send notice to the legal owner when a keeper levy is made under Section 703.370(a) or 703.380(a), but only when the levying officer takes exclusive custody of the vehicle or vessel under Section 703.370(c) or 703.380(c).

27811

§ 703.370. Tangible personal property of a going business

703.370. (a) To levy upon tangible personal property of a going business (other than money or a vehicle required to be registered under the Vehicle Code), the levying officer shall, if the judgment debtor consents, place a keeper in charge of the property, at the judgment creditor's expense, for two days or for a longer period agreed upon by the judgment creditor and the judgment debtor. During this period, the judgment debtor may continue to operate in the ordinary course of business at the judgment debtor's expense provided that all sales are final and are for cash or the equivalent of cash. For the purpose of this subdivision, payment by check is the equivalent of cash payment. The levying officer is not liable for accepting payment in the form of a cash equivalent. The proceeds from all sales shall be given to the keeper for the purposes of the levy unless otherwise authorized by the judgment creditor.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor.

(c) At the conclusion of the period during which the business continues to operate under subdivision (a), the levying officer shall take the tangible personal property into exclusive custody unless some other disposition is made by the court or agreed upon by the judgment creditor and the judgment debtor.

Comment. Section 703.370 provides a special method of levy on a going business which permits the business to operate for at least two days after levy subject to the custody of a keeper. Subdivision (a) continues the substance of the fifth through the ninth sentences of subdivision (c) of former Section 688.

Subdivision (b) makes clear that the judgment debtor is to be given notice of the levy just as in any other case of a levy on tangible

personal property in the possession of the judgment debtor. See Section 702.510 (mailing includes personal delivery). See also Section 703.360 (notice to legal owner of motor vehicle or vessel required to be registered).

Subdivision (c) continues the substance of the tenth sentence of subdivision (c) of former Section 688.

27812

§ 703.380. Personal property used as dwelling

703.380. (a) To levy upon personal property used as a dwelling, such as a housetrailer, mobilehome, or vessel, the levying officer shall place a keeper in charge of the property, at the judgment creditor's expense, for two days or for a longer period agreed upon by the judgment creditor and the judgment debtor.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor.

(c) At the conclusion of the period during which the property is in the custody of the keeper pursuant to subdivision (a), the levying officer shall remove the occupants and take the personal property used as a dwelling into exclusive custody unless some other disposition is made by the court or agreed upon by the judgment creditor and the judgment debtor.

Comment. Subdivision (a) of Section 703.380 continues the substance of the third sentence of subdivision (c) of former Section 688.

Subdivision (b) makes clear that the judgment debtor is to be given notice of the levy just as in any other case of a levy on tangible personal property in the possession of the judgment debtor. See Section 702.510 (mailing includes personal delivery). See also Section 703.360 (notice to legal owner of motor vehicle or vessel required to be registered).

Subdivision (c) continues the substance of the fourth sentence of subdivision (c) of former Section 688.

Note. This section may need to be revised or deleted to conform with the provisions relating to the homestead exemption. See Memorandum 78-69.

27813

§ 703.390. Growing crops and standing timber

703.390. (a) To levy upon growing crops or timber to be cut, the levying officer shall record a copy of the writ of execution and a notice of levy with the recorder of the county where the real property

on which the crops are growing or on which the timber is standing is located.

(b) If the notice of levy identifies a third person in whose name the real property stands upon the records of the county, the recorder shall index the copy of the writ and the notice of levy in the names of both the judgment debtor and the third person.

(c) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor and to any other person identified in the notice of levy in whose name the real property stands upon the records of the county at the address of the third person shown by the records of the office of the tax assessor of the county where the real property is located.

(d) At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property. Service on the occupant shall be made by leaving a copy of the writ and a notice of levy with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted and who is either an employee or agent of the occupant or a member of the occupant's family or household. If there is no occupant on the real property at the time service is attempted, the levying officer shall post a copy of the writ and a notice of levy in a conspicuous place on the real property. If the real property described in the notice of levy consists of more than one distinct lot, parcel, or governmental subdivision and any of such lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made under this subdivision as to each such continuous, unbroken tract.

Comment. Section 703.390 is derived from a portion of Section 488.360(c) (prescribing the manner of attachment of growing crops and timber to be cut), which was incorporated by former Section 688(b), and from paragraphs 1a and 2a of former Section 542 (repealed by 1974 Cal. Stats., Ch. 1516, § 12, operative January 1, 1977). Although growing crops and standing timber are considered to be personal property, the method of levy on such property corresponds to the method of levy on real property. See Section 703.310. Once the crops are harvested and the timber is cut, such property may be levied upon in the manner provided for levy upon tangible personal property generally. See Sections 703.320, 703.330, 703.350. The levying officer or a receiver may, pursuant to court order, cultivate, care for, harvest, pack, and sell the property if necessary. See Section 703.220.

§ 703.400. Chattel paper

703.400. (a) To levy upon chattel paper, the levying officer shall:

(1) If the chattel paper is in the possession of a third person, serve a copy of the writ of execution and a notice of levy on the third person.

(2) If the chattel paper is in the possession of the judgment debtor, take the chattel paper into custody.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the person obligated on the chattel paper. Until notification, the levy does not affect the rights and duties of the obligor. After notification, the obligor shall make payments required under the chattel paper to the levying officer.

(d) If payments required by the chattel paper are made after levy to the person in possession of the chattel paper, the payments shall be delivered by the person to the levying officer to be held pursuant to the levy.

Comment. Section 703.400 is analogous to Section 488.380 (method of attachment of chattel paper), which was incorporated by former Section 688(b). See also Section 701.130 ("chattel paper" defined).

§ 703.410. Negotiable instruments; negotiable documents; money

703.410. (a) To levy upon a negotiable instrument, a negotiable document, or money not in a deposit account, the levying officer shall:

(1) If the negotiable instrument, negotiable document, or money is in the possession of a third person, serve a copy of the writ of execution and a notice of levy on the third person.

(2) If the property is in the possession of the judgment debtor, take the negotiable instrument, negotiable document, or money into custody.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) At the time of levy upon a negotiable instrument or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the person obligated under the negotiable instrument. Until notification, payments made in good faith by the obligor to the prior holder of the instrument shall be applied to discharge the obligation of the obligor.

Comment. Section 703.410 is analogous to Section 488.400 (method of attachment of negotiable instruments, negotiable documents, and money), which was incorporated by former Section 688(b). See also Sections 701.170 ("document" defined), 701.240 ("negotiable instrument" defined).

27816

§ 703.420. Securities

703.420. (a) To levy upon a security in the possession of the judgment debtor, the levying officer shall take the security into custody. At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ of execution and a notice of levy to the judgment debtor.

(b) To levy upon a security which is held in escrow pursuant to the provisions of the Corporate Securities Law or has been surrendered to the issuer, the levying officer shall serve a copy of the writ and a notice of levy on the person in possession of the security. At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) In cases not provided for by subdivisions (a) and (b), the judgment creditor's relief is governed by subdivision (2) of Section 8317 of the Commercial Code.

Comment. Section 703.420 is analogous to Section 488.410 (method of attachment of securities), which was incorporated by former Section 688(b). See also Section 701.270 ("security" defined).

27818

§ 703.430. Deposit accounts and safe deposit boxes

703.430. (a) Except where a deposit account is represented by a negotiable instrument, to levy upon a deposit account or property in a safe deposit box maintained by a financial institution, the levying officer shall serve a copy of the writ of execution and a notice of levy on the financial institution.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor and to any other person in whose name the deposit account or safe deposit box stands.

(c) While the lien created by the levy is in effect, the financial institution is not liable to any person by reason of any of the following:

- (1) Compliance with the levy.
- (2) Nonpayment of any check or other order for the payment of money drawn or presented against the deposit account.
- (3) Refusal to pay any withdrawal from the deposit account.
- (4) Refusal to permit access to the safe deposit box by the renter thereof.

(d) Before permitting access to a safe deposit box, the financial institution may demand payment of the cost of opening the safe deposit box and of the cost of repairing any damage caused by the opening.

Comment. Subdivisions (a) through (c) of Section 703.430 are analogous to Section 488.390 (method of attachment of deposit accounts), which was incorporated by former Section 688(b). The reference to safe deposit boxes is new.

Subdivision (d) continues a portion of former Section 682a. See also Sections 701.160 ("deposit account" defined), 701.180 ("financial institution" defined). For special provisions applicable in the case of a levy upon a joint account or safe deposit box, see Section 703.440 and in the case of a levy upon a deposit account into which social security payments are directly deposited, see Section 707.590.

27864

§ 703.440. Deposit accounts and safe deposit boxes not exclusively in name of judgment debtor

703.440. (a) The provisions of this section apply in addition to the provisions of Section 703.430 where any of the following property is levied upon:

(1) A deposit account, or interest therein, standing in the name of a person other than the judgment debtor, or in the name of the judgment debtor and a person other than the judgment debtor.

(2) Property in a safe deposit box rented to a person other than the judgment debtor, or to both the judgment debtor and a person other than the judgment debtor.

(b) The judgment creditor shall provide, and the levying officer shall deliver to the financial institution, a bond in an amount not less

than twice the amount of the judgment or, if a lesser amount is sought to be levied upon, not less than twice such amount. The bond shall indemnify any person (other than the judgment debtor whose interest is sought to be levied upon) rightfully entitled to the property against actual damage by reason of the levy on the property and shall assure to the person the return of the property upon proof of the person's right thereto. The bond need not name the person specifically but may refer to the person generally in the same manner as in this subdivision.

(c) Upon delivery of the bond to the financial institution, the financial institution shall immediately mail notice of the levy and the delivery of the bond to the person (other than the judgment debtor) in whose name the deposit account stands or to whom the safe deposit box is rented, addressed to the person's last address known to the financial institution. The financial institution shall deliver the bond as directed by the person.

(d) From the time of levy and the delivery of the bond to the financial institution until 15 days after the mailing of notice under subdivision (c), if no proceedings excepting to the sufficiency of the sureties have been commenced or, if such proceedings have been commenced, when the sureties have justified, the financial institution may not honor a check or other order for the payment of money drawn against, or any withdrawals from, the deposit account that would reduce the deposit account to less than the amount levied upon, and shall not permit the removal of any of the contents of the safe deposit box levied upon. The financial institution is not liable to any person by reason of the nonpayment of any check or other order for the payment of money drawn against the deposit account levied upon that is presented during the period prescribed in this subdivision, the refusal to pay any withdrawal from the deposit account, or the refusal of the financial institution to permit access to the safe deposit box by the renter thereof.

(e) Upon the expiration of the period prescribed in subdivision (d), the financial institution shall comply with the levy. The financial institution is not liable to any person by reason of its compliance or by reason of the removal of any of the contents of the safe deposit box pursuant to the levy.

(f) The bond described in subdivision (b) shall be executed, exceptions to the sufficiency of the sureties may be taken by any person

claiming to be the rightful owner of the property levied upon, and the sureties, when excepted to, shall justify in the manner provided by Article 1 (commencing with Section 489.010) of Chapter 9 of Title 6.5.

(g) A purported levy that does not comply with this section is ineffectual and shall be disregarded.

Comment. Subdivision (a) of Section 703.440 continues the substance of the first portion of the first sentence of former Section 682a. See also Section 701.160 ("deposit account" defined).

Subdivision (b) continues the substance of the second sentence of former Section 682a. See also Section 701.180 ("financial institution" defined).

Subdivision (c) continues the third and eighth sentences of former Section 682a.

Subdivision (d) continues the substance of the fourth sentence of former Section 682a except that subdivision (d) recognizes the former practice of holding only so much of the account as is necessary to satisfy the levy.

Subdivisions (e) and (f) continue the substance of the fifth, sixth, and seventh sentences of former Section 682a. See also Sections 1054a (deposit of money or bearer bonds or notes instead of undertaking), 1056 (single corporate surety may execute bond in place of two or more personal sureties).

Subdivision (g) continues the last portion of the first sentence of former Section 682a.

The requirements of this section are an exception to the requirements of Section 703.190 (duties and liabilities of garnishee).

27819

§ 703.450. Judgments owing to judgment debtor

703.450. (a) To levy upon a judgment owing to the judgment debtor, the levying officer shall file in the action or special proceeding in which the judgment was entered a copy of the writ of execution and a notice of levy, and serve a copy of the writ and a notice of levy upon the judgment debtor in the action or special proceeding.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) A judgment owing to the judgment debtor may not be levied upon until after its entry as a final judgment and the time for appeal from the judgment has expired or, if an appeal is filed, until the appeal is finally determined.

Comment. Section 703.450 is analogous to Section 488.420 (method of attachment of judgments owing to a defendant), which was incorporated by former Section 688(b). A judgment which is not final within the



terms of subdivision (c) may be reached only through the procedure for obtaining a lien on a cause of action and judgment set forth in Sections 705.510-705.530. This section does not apply where a public entity is the judgment debtor's judgment debtor. See Article 7 (commencing with Section 705.710) of Chapter 5.

27821

§ 703.460. Interest in personal property of estate of decedent

703.460. (a) To levy upon the interest of the judgment debtor in personal property in the estate of a decedent, whether by testate or intestate succession, the levying officer shall file a copy of the writ of execution and a notice of levy in the office of the clerk of the court in which the estate is being administered, and serve the personal representative of the decedent with a copy of the writ and a notice of levy.

(b) At the time of levy or promptly thereafter, the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor.

(c) The personal representative shall report the levy to the court in which the estate is being administered when any petition for distribution is filed.

(d) The levy does not impair the powers of the representative over the property for the purposes of administration.

(e) If a decree orders distribution to the judgment debtor, the property shall be ordered to be delivered to the levying officer subject to the claim of the judgment debtor or any person claiming under the judgment debtor. The property may not be delivered to the levying officer until the decree distributing the property has become final.

Comment. Section 703.460 is analogous to Section 488.430 (method of attachment of an interest in personal property of a decedent's estate), which was incorporated by former Section 688(b). See also Sections 703.200(b) (lien of execution on interest in personal property in estate of decedent), 703.250(a)(1) (return of writ).

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Article 3. Sale

§ 703.610. Sale of property levied upon

703.610. (a) Subject to subdivision (b), the levying officer shall sell the following property during the period of the lien of execution:

(1) Real property that has been levied upon.

(2) Personal property (other than cash or the equivalent of cash) that has been levied upon and is in the custody of the levying officer.

(b) The following types of property may be sold only pursuant to court order issued on noticed motion, and only on terms and conditions, specified in the order, designed to ensure that fair consideration is obtained at the sale:

(1) Chattel paper.

(2) Debts.

(3) Judgments.

(4) Negotiable instruments which are not of a type customarily transferred in an established market or which represent an obligation arising out of the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased, or licensed for use, the services furnished, or the money loaned was used by an individual primarily for personal, family, or household purposes.

(c) Where property described in subdivision (b) is not ordered to be sold, the person owing the debt to the judgment debtor shall make payments to the levying officer of amounts which become due during the period of the lien of execution as provided in Section 703.190.

Comment. Subdivision (a) of Section 703.610 continues the general authority of the levying officer to sell property after a levy under a writ of execution issued to enforce a money judgment. See former Section 691. After sale, the proceeds are applied in the manner provided by Section 703.810. See also Section 703.200 (lien of execution).

Subdivision (b) provides exceptions to the general rule stated in subdivision (a) applicable to types of property peculiarly susceptible to sacrifice and speculative sales. Former law did not contain such an exception although former Section 691 did direct the levying officer to collect or sell things in action. Subdivision (b) provides the court with broad authority to specify terms of sale designed to obtain a fair price. Some circumstances, such as a lack of interested buyers, may require that no sale be permitted. In other situations, the court may choose to set a minimum price or require court confirmation of sale. Sales pursuant to subdivision (b) may be conducted in the same manner as other execution sales or may be conducted in some other manner, e.g., a negotiated private sale through a broker or other commercial channel.

Subdivision (b)(3) clarifies the manner of applying a judgment in favor of the judgment debtor to the satisfaction of the judgment creditor's money judgment. Prior law provided for the attachment of final judgments (see subdivision 5 of former Section 542, superseded by Section 488.420), but appeared to forbid levy and sale under execution (see former Section 688(e)). Although the judgment creditor might obtain a lien on a cause of action and judgment under former Section 688.1

(superseded by Sections 705.510-705.530), the manner of enforcing the lien was not clear, nor did former law explicitly provide the manner of reaching a final judgment that was not subject to a lien before it became final.

Subdivision (b)(4) is intended to permit the sale without court order of negotiable instruments that are regularly transferred on established markets so long as the instruments are not consumer paper.

Subdivision (c) makes clear that, if a sale is not permitted, the judgment creditor is entitled to have the obligation collected as it becomes payable. See Section 703.190(a)(2) (payment of amounts as they become due to levying officer during period of execution lien). See also Sections 705.110-705.190 (examination proceedings), 705.210-705.270 (creditor's suit), 705.310-705.340 (receiver), 705.410-705.420 (charging order), 705.610-705.630 (assignment order).

30150

§ 703.620. Notice of sale generally

703.620. (a) Before property levied upon may be sold, the levying officer shall give notice of sale as provided in Sections 703.630 (personal property) and 703.640 (real property).

(b) The notice of sale shall be in writing, shall describe the property to be sold, and shall state the time and place of sale.

(c) Failure to give notice as required by this section does not invalidate the sale.

(d) In addition to the required notice, the judgment creditor may advertise the sale in the classified or other advertising section of a newspaper of general circulation or other periodical publication, and may recover reasonable costs of such advertising.

Comment. Subdivision (a) and (b) of Section 703.620 continue the substance of portions of former Section 692. The judgment creditor is responsible for supplying the information to the levying officer that is needed to comply with the notice provisions. See Section 702.610.

Subdivision (c) codifies existing law. *Smith v. Randall*, 6 Cal. 47, 50 (1856); *Hamilton v. Carpenter*, 52 Cal. App.2d 447, 448, 126 P.2d 395, \_\_\_\_ (1942). See also Section 703.760 (all sales absolute) and the Comment thereto. Damages occasioned by the failure to give the prescribed notice are recoverable pursuant to Section 703.650.

Subdivision (d) is new. Notice under this provision would be particularly appropriate where certain types of property with a specialized market are to be sold, such as stamps, coins, and rare books. Reasonable expenses of advertising in this manner are a recoverable cost under Section 1033.7. Subdivision (d) is permissive, not restrictive. The judgment debtor may also desire to advertise the sale.

15109

§ 703.630. Notice of sale of personal property

703.630. (a) Not less than 10 days before a sale of personal property, notice of sale shall be posted and shall be mailed to the

judgment debtor and to any person who has requested notice pursuant to Section 702.540.

(b) Notwithstanding subdivision (a), if personal property to be sold is perishable, the notice of sale shall be posted and mailed at reasonable time before the sale, considering the character and condition of the property.

(c) Posting under this section shall be in three public places in the city in which the property is to be sold, if it is to be sold in a city or, if not, then in three public places in the judicial district in which the property is to be sold.

(d) A sale of personal property of an individual may not take place until the expiration of 10 days after the date notice of levy on the property to be sold was mailed to the judgment debtor.

Comment. Subdivisions (a) through (c) of Section 703.630 continue the substance of paragraphs 1 and 2 of former Section 692. See Section 703.220 (sale of perishable property). See also Section 703.620 and the Comment thereto.

Subdivision (d) is new. It is intended to provide an individual with an opportunity to claim any available exemptions. See Section 707.320 (exemption claim must be made within 10 days after notice of levy is mailed or delivered). See also Section 702.510 (mailing includes personal delivery).

15110

§ 703.640. Notice of sale of real property

703.640. (a) A notice of sale of an interest in real property shall describe the real property by giving a legal description of the property and its street address or other common designation, if any. The validity of the notice is not affected by the fact that the street address or other common designation given is erroneous. If the property has no street address or other common designation, the notice of sale shall contain a statement that directions may be obtained from the levying officer upon oral or written request. Directions are sufficient if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road.

(b) Notice of sale of an interest in real property shall be given not less than 20 days before the sale.

(c) Notice shall be mailed to all of the following:

(1) The judgment debtor.

(2) A person who has requested notice of sale pursuant to Section 702.540.

(3) A person holding an interest in the property acquired by an instrument sufficient to impart constructive notice of the interest if the instrument is recorded in the office of the county recorder so as to impart constructive notice prior to the date of levy on the property. Notice shall be mailed to the person at the address used by the county recorder for the return of the instrument after recording.

(d) Notice shall be served on one occupant of the real property. Service on the occupant shall be made by leaving the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted and who is either an employee or agent of the occupant or a member of the occupant's family or household.

(e) Notice shall be posted in the following places:

(1) One public place in the city in which the interest in the real property is to be sold, if it is to be sold in a city, or, if not, one public place in the judicial district in which the interest in the real property is to be sold.

(2) A conspicuous place on the real property.

(f) If the property described in the notice consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lie with relation to any of the others so as to form a continuous tract, only one service pursuant to subdivision (d) or posting pursuant to paragraph (2) of subdivision (e) need be made as to the continuous tract.

(g) Notice shall be published once a week from the time notice is mailed to the judgment debtor until the time of the sale in a newspaper of general circulation published in the city in which the real property or a part thereof is situated, if any part thereof is situated in a city, or, if not, in a newspaper of general circulation published in the judicial district in which the real property or a part thereof is situated. If no newspaper of general circulation is published in the city or judicial district, a copy of the notice shall be published for such time in the county in which the real property or a part thereof is situated. As used in this subdivision, the term "newspaper of general circulation" has the meaning provided in Article 1 (commencing with

Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code.

(h) Notice of sale of an interest in real property, other than a leasehold estate with an unexpired term of less than two years at the time of levy, may not be given pursuant to this section until the expiration of 120 days after the date notice of levy on the interest in real property was mailed to the judgment debtor.

Comment. Section 703.640 supersedes paragraph 3 of former Section 692. Subdivision (a) requires both a legal description and a street address, common designation, or directions, whereas former law permitted the omission of the street address if a legal description was given. The responsibility of the levying officer to give directions to the location of property that has no street address or other common designation is derived from the former provision for giving directions by the beneficiary of a deed of trust.

Subdivision (b) continues a portion of paragraph 3 of former Section 692.

Subdivision (c) requires more extensive notice than did former law. Subdivision (c)(1), along with Section 702.510 ("mailing" includes personal delivery), continues former law except that notices are sent by first class rather than certified mail. Subdivision (c)(2) continues the substance of a portion of former Section 692a. Subdivision (c)(3) is new; it is based on Civil Code Section 2924b(3)(a) (notice of default under mortgage or deed of trust).

Subdivision (d) is new and is the same as Section 703.310(d) (notice of levy).

Subdivisions (e) and (g) continue the substance of portions of paragraph 3 of former Section 692.

Subdivision (f) is the same as a portion of Section 703.310(d).

Subdivision (h) is new. This provision delays the giving of notice of a sale of real property for at least 120 days after the notice of levy is mailed to the judgment debtor in order to provide the judgment debtor with an opportunity to redeem the property from the judgment creditor's lien before the sale or to seek potential purchasers. The statutory right of redemption from judicial sales of real property has been repealed. See Section 703.760 (sales absolute).

15/111

§ 703.650. Liability for sale without notice

703.650. A levying officer who sells property without giving the required notice is liable to the judgment creditor, the judgment debtor, and any person who has requested notice of sale pursuant to Section 702.540, for the actual damages caused by the failure to give the notice.

Comment. Section 703.650 continues the levying officer's liability for actual damages for failure to give proper notice of sale provided by former Section 693. Former Section 693 provided for liability to the

"aggrieved party." Except for the addition of the party requesting notice of sale, Section 703.650 continues prior law. See *Sheehy v. Graves*, 58 Cal. 449, \_\_\_ (1881) (judgment creditor as aggrieved party); *Bellmer v. Blessington*, 136 Cal. 3, \_\_\_, 68 P. 111, \_\_\_ (1902) (judgment debtor as aggrieved party); *Kelley v. Desmond*, 63 Cal. 517, \_\_\_ (1883) (purchaser at execution sale not aggrieved party). The forfeiture of \$100 by the levying officer to the aggrieved party under former Section 693 is not continued. A sale is not invalidated by a failure to give notice. See Section 703.620(c). See also Section 703.760 (sales absolute) and the Comment thereto.

15/112

§ 703.660. Place, time, and manner of sale

703.660. (a) A sale of property shall be held in the county where the property or some part thereof is situated.

(b) The sale shall be made to the highest bidder at an auction held between the hours of nine in the morning and five in the afternoon.

(c) If personal property capable of manual delivery is to be sold, it shall be within the view of those who attend the sale unless, upon application of the judgment creditor or the judgment debtor, the court orders otherwise.

(d) Property shall be sold separately or in such groups or lots as are likely to bring the highest price. The judgment debtor may request the property to be sold separately or together and may request the property to be sold in a particular order. If the judgment debtor is not present at the sale, the request may be made in writing. The levying officer shall honor the request if it is likely that the requested manner of sale will yield an amount at least equal to any other manner of sale.

(e) After sufficient property has been sold to satisfy the judgment, no more may be sold.

Comment. Subdivisions (a) and (b) of Section 703.660 continue the substance of the first sentence of former Section 694.

Subdivision (c) supersedes a portion of the first sentence of former Section 694 which required personal property to be in the view of the persons attending the sale.

Subdivision (d) supersedes a portion of the fourth sentence and the fifth sentence of former Section 694. Although former Section 694 appeared to require that real property be sold in separate parcels, the cases interpreting that section suggest that sale en masse constitutes at most an irregularity and that the true test is whether separate sale would produce a higher price. See 5 B. Witkin, *California Procedure Enforcement of Judgment* § 80, at 3451 (2d ed. 1971). Subdivision (d) also permits the judgment debtor to make reasonable requests concerning the manner of sale, but makes clear that the levying officer must sell

the property in a different manner if it is likely to result in a higher price. Under former Section 694, the judgment debtor appeared to have absolute control over the order and lots in which the property was sold. The authority for the judgment debtor to make a request in writing when not present at the sale is new.

Subdivision (e) continues the second sentence of former Section 694.

15/113

§ 703.670. Postponement of sale

703.670. (a) The judgment debtor and judgment creditor together may request in writing that a sale be postponed to an agreed day and hour. The request shall be delivered to the levying officer conducting the sale, and the levying officer shall, by public declaration at the time and place originally fixed for the sale, postpone the sale to the day and hour fixed in the request.

(b) Notice of any additional postponements shall be given by public declaration by the levying officer at the time and place last appointed for the sale. No other notice of postponed sale need be given.

Comment. Section 703.670 continues the substance of the second paragraph of former Section 694.

15/114

§ 703.680. Manner of payment

703.680. (a) Except as provided in subdivisions (b) and (c), the purchaser at a sale shall pay in cash or by certified check or cashier's check.

(b) The levying officer conducting the sale shall accept the amount of a bid by the judgment creditor as a credit on the judgment except that the expenses of the levying officer and the amount of preferred labor claims, exempt proceeds, and any other superior claim which is required to be satisfied, shall be paid in cash or by certified check or cashier's check.

(c) If the high bid is in excess of five thousand dollars (\$5,000), the high bidder may elect to treat the sale as a credit transaction by paying five thousand dollars (\$5,000) or 10 percent of the amount bid, whichever is the greater, in cash or by certified check or cashier's check, and paying the balance and additional accruing costs within 30 days from the date of the sale in cash or by certified check or cashier's check.



Comment. Section 703.680 is new. Subdivisions (a) and (b) codify the practice under former law. See *Kelley v. Barnet*, 24 Cal. App. 119, 121, 140 P. 605, \_\_\_ (1914); *Marshal's Manual of Procedure* § 423.4 (n.d.); *Cal. State Sheriffs' Ass'n, Civil Procedural Manual* 6.10-6.11, 6.20 (1978).

Under subdivision (b), if the judgment creditor bids at the auction, the judgment creditor may use the judgment as a credit to pay all or a portion of the bid instead of cash. However, the judgment creditor must pay in cash the costs of the officer conducting the sale, preferred labor claims, and exempt sale proceeds. See Civil Code § \_\_\_ (proceeds of dwelling); Sections 703.810 (distribution of proceeds), 707.530 (proceeds of motor vehicle), 707.570 (proceeds of tools of trade), 1206 (preferred labor claims). Subdivision (b) recognizes that a transfer of cash back and forth between the judgment creditor and the levying officer generally can be dispensed with. Under former law, the levying officer apparently had the discretion to refuse the judgment as a credit and to require cash payment. See *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 60-61, 45 P.2d 442, \_\_\_ (1935); *Kelley v. Barnet*, supra at 122, 140 P. at \_\_\_.

Subdivision (c) is a new provision derived from Revenue and Taxation Code Section 3693.1 (sales of tax dedeed property to private persons). If additional costs accrue after the sale, such as keeper or storage fees, the credit bidder must satisfy them.

15/116

§ 703.690. Defaulting bidder

703.690. (a) If the highest bidder does not pay the amount bid for property struck off to the bidder at the sale in the manner provided by Section 703.680, the levying officer shall, at the request of the judgment creditor, sell the property either immediately to the next highest bidder at the next highest amount bid or to a bidder at a new sale.

(b) If a bidder does not pay the amount bid for property struck off to the bidder at a sale, the levying officer may, in the levying officer's discretion, reject any subsequent bid of the bidder.

(c) If the bidder fails to complete the purchase within the time allowed, the amount paid shall be applied toward the satisfaction of the judgment and any excess remaining thereafter shall be returned to the bidder.

(d) If the highest bidder does not pay the amount due, the bidder is liable to the judgment creditor and the judgment debtor for the following amounts:

(1) The amount bid, less the amount obtained from a resale of the property and any amount forfeited pursuant to subdivision (c).

(2) The amount of any costs of custody and resale incurred after the first sale.

(3) Costs and attorney's fees incurred in the action against the defaulting bidder.

(e) Sale to the next highest bidder or to a bidder at a new sale is a prerequisite to recovery under subdivision (d).

(f) The amount recovered pursuant to paragraph (1) of subdivision (d) shall be distributed in the manner provided by Section 703.810.

Comment. Subdivision (a) of Section 703.690 supersedes the first portion of former Section 695. See *Bell v. Redwine*, 98 Cal. App. 784, 787, 277 P. 1050, \_\_\_ (1929) (officer must resell property). If a new sale is held, it must satisfy the requirements of notice, time, place, and manner of sale provided by this article.

Subdivision (b) continues the substance of former Section 696.

Subdivision (c) is a new provision designed to handle situations where there is a default by a bidder who elects to treat the sale as a credit transaction pursuant to Section 703.680(c).

Subdivision (d) supersedes the latter portion of former Section 695. This subdivision authorizes the judgment creditor and the judgment debtor to sue the defaulting bidder whereas former Section 695 provided that the officer could recover the amount of the loss, with costs. However, case law under former Section 695 permitted the judgment debtor to recover from the defaulting bidder. See *Meherin v. Saunders*, 131 Cal. 681, 689-91, 63 P. 1084, \_\_\_ (1901). Paragraph (1) of subdivision (d) codifies the case law rule that the amount of the loss is the difference between the unpaid bid and a lower price obtained at a later sale. See *Johns v. Trick*, 22 Cal. 511, 513 (1863); *Meherin v. Saunders*, 131 Cal. 681, 687-88, 63 P. 1084, \_\_\_ (1901) (dictum). The provisions for recovery of costs of custody and resale and of attorney's fees are new.

Subdivision (e) is new.

Subdivision (f) is new. It should be noted that different rules govern the distribution of amounts forfeited pursuant to subdivision (c) and of amounts recovered pursuant to subdivision (d). The excess of a forfeited deposit made pursuant to Section 703.680 goes to the defaulting bidder in order to prevent a windfall, since the property is not sold. However, sale of the property being a prerequisite to recovery under subdivision (d), any proceeds after the judgment and costs are satisfied, go to the judgment debtor pursuant to Section 703.810.

15/115

§ 703.700. Persons ineligible to purchase

703.700. The levying officer may not be a purchaser or have an interest in any purchase at a sale.

Comment. Section 703.700 continues the substance of the third sentence of former Section 694. See also Section 701.220 ("levying officer" includes deputy).

§ 703.710. Certificate of sale of personal property

703.710. (a) When the purchaser of personal property pays the amount due, the levying officer conducting the sale shall do all of the following:

- (1) Execute and deliver a certificate of sale to the purchaser.
- (2) Deliver property capable of manual delivery to the purchaser.
- (3) If authorized by court order, assist the purchaser in obtaining possession of personal property not capable of manual delivery.

(b) The certificate of sale conveys to the purchaser the interest of the judgment debtor in the personal property on, or at any time after, the effective date of the lien under which the property was sold.

Comment. Section 703.710 supersedes former Sections 698 and 699. Unlike former Section 698, Section 703.720 codifies existing practice by requiring the levying officer to deliver a certificate of sale whether or not the purchaser so requests. For the contents of the certificate of sale, see Section 703.730. See also Section 702.310 (relation back of liens).

§ 703.720. Certificate of sale of real property

703.720. (a) When the purchaser of an interest in real property pays the amount due, the levying officer conducting the sale shall do all of the following:

- (1) Execute and deliver a certificate of sale to the purchaser.
- (2) Record a duplicate of the certificate in the office of the county recorder.

(b) The certificate of sale conveys to the purchaser the interest of the judgment debtor in the real property on, or at any time after, the effective date of the lien under which the property was sold.

Comment. Subdivision (a) of Section 703.720 continues a portion of the third sentence of subdivision (a) of former Section 700a. For the contents of the certificate of sale, see Section 703.730.

Subdivision (b) continues the substance of the portion of former Section 700 applicable to sales of real property to satisfy money judgments. Subdivision (b) makes clear that the sale on execution conveys the interest which the judgment debtor has on the date of levy or the date that the judgment became a lien on the property and any interest that the judgment debtor thereafter acquires up to the date of sale, assuming that the lien has been maintained throughout such period. See Section 702.310 (relation back of liens); *Kenyon v. Quinn*, 41 Cal. 325, 329-30 (1871); *Frink v. Roe*, 70 Cal. 296, 305, 11 P. 820, \_\_\_ (1886).

§ 703.730. Form of certificate of sale

703.730. The certificate of sale shall contain all of the following:

- (a) Identification of the judgment under which the sale was made.
- (b) A description of the property sold.
- (c) The price paid for the property. If the property is sold in groups or lots, the price paid for the entire group or lot may be stated. If the property is not sold in groups or lots, the price paid for each item or parcel of property shall be separately stated.

Comment. Section 703.730 makes general the requirements for the certificate of sale provided by subdivision (a) of former Section 700a (certificate of sale of real property). The provisions of former Section 700a requiring a statement of the price of property subject to redemption and a notice of the right of redemption are not continued. See Section 703.760 (all sales absolute).

10/906

§ 703.740. Minimum bid

703.740. Property may not be sold unless the amount bid exceeds the sum of the following:

- (a) The amount of a claim, lien, or other interest of a third person, which is superior to the judgment creditor's lien and is required to be satisfied, including the amount of a deposit made pursuant to Section 706.350, with interest from the date of the deposit.
- (b) The amount of any applicable exemption of proceeds.
- (c) In the case of property described in Section 707.540, five hundred dollars (\$500).

Comment. Section 703.740 is new. See also Civil Code § \_\_\_\_ (dwelling proceeds exemption); Code Civ. Proc. §§ 703.810 (distribution of proceeds of sale or collection), 707.530 (motor vehicle proceeds exemption), 707.540 (household goods value limitation), 707.570 (tools of trade proceeds exemption).

10/909

§ 703.750. Extinction of liens upon sale

703.750. When property is sold pursuant to this article, the lien under which it is sold and liens inferior thereto are extinguished.

Comment. Section 703.750 is new. See Civil Code § 2910.

§ 703.760. Sales absolute

703.760. A sale of property pursuant to this article is absolute.

Comment. Section 703.760 supersedes the first sentence of subdivision (a) of former Section 700a which made absolute only sales of personal property and of leasehold estates with unexpired terms of less than two years. Section 703.760 reflects the repeal of the statutory right of redemption from execution and foreclosure sales. See former Sections 700a-707. Sales of interests in real property (except leasehold estates with less than two years' unexpired term at the time of levy) are delayed 120 days, however, in order to provide an opportunity for the judgment debtor to redeem the property from the judgment creditor's lien before sale or to advertise the sale and give notice to potential buyers. See Civil Code § 2903; Code Civ. Proc. § 703.640(f).

This provision does not affect the equitable right to redeem from a defective execution or foreclosure sale. See, e.g., *Odell v. Cox*, 151 Cal. 70, \_\_\_, 90 P. 194, \_\_\_ (1907) (grossly inadequate price and excusable ignorance of levy and sale); *Smith v. Kessler*, 43 Cal. App.3d 26, 31-32, 117 Cal. Rptr. 470, 473-74 (1974) (grossly inadequate price and manifest unfairness).

The elimination of the statutory right to redeem after a sale pursuant to this article does not affect rights to redeem afforded by other law. See, e.g., Harb. & Nav. Code § 504 (20-day redemption period after sale of vessel on lien for repairs); Rev. & Tax. Code § 4101 (redemption of tax-deeded real property); Sts. & Hwys. Code § 6530 (12-month redemption period after sale by treasurer to collect assessments under Improvement Act of 1911); I.R.C. § 6337 (120-day redemption period after sale of real property to collect federal taxes).

15/123

§ 703.770. Sale set aside

703.770. (a) As used in this section, "purchaser" includes a successor in interest of the purchaser.

(b) If a sale is set aside because the judgment on which it was based is reversed or discharged, the purchaser may recover the price paid, with interest, from the judgment creditor. A judgment for this purpose may be entered by the court against the judgment creditor and in favor of the purchaser on motion of the purchaser and after notice to the judgment creditor.

(c) If a sale is set aside because of irregularities in the proceedings concerning the sale or because the property sold was not subject to levy under a writ of execution and sale, the purchaser may recover the price paid, with interest, from either the judgment creditor or the judgment debtor. If the purchaser recovers from the judgment

creditor, the judgment creditor may have the judgment revived as provided in subdivision (d) to recover from the judgment debtor the amount paid to the purchaser, with interest. To recover from the judgment debtor, the purchaser may have the judgment revived in the purchaser's name as provided in subdivision (d).

(d) After notice to the parties to the action, and on motion of a person authorized by subdivision (c), the court shall revive the original judgment in the name of the person for the amount the person is entitled to recover from the judgment debtor. The revived judgment has the same force and effect as would an original judgment entered on the date of revival.

Comment. Section 703.770 supersedes former Section 708. Subdivision (b) applies where real or personal property is sold, whereas the first sentence of former Section 708 referred only to sales of real property.

Under former Section 708, a person who purchased at an execution sale which was later set aside (for example, because the property attempted to be sold was exempt or belonged to a person other than the judgment debtor) was authorized to seek recovery only against the judgment debtor. Since the judgment debtor may be unable to satisfy the judgment, subdivision (c) permits the purchaser to recover from either the judgment debtor or the judgment creditor.

Subdivision (d) makes clear that recovery from the judgment creditor restores the original parties to their relative positions before the execution sale, and the judgment creditor is therefore authorized to seek recovery against the judgment debtor afresh. The time for enforcing a judgment under this section is governed by Section 702.210 from the time the new judgment is entered; it does not run from the time the original judgment was entered.

405/194

Article 4. Distribution of Proceeds of  
Sale or Collection

§ 703.810. Distribution of proceeds of sale or collection

703.810. Except as otherwise provided by statute or court order, the levying officer shall distribute the proceeds of sale or collection in the following order:

(a) To persons having a claim, lien, or other interest which is superior to the judgment creditor's lien, in the amount required to be satisfied, or if a deposit has been made pursuant to Section 706.350, to the judgment creditor, in the amount of the deposit, with interest from the date of the deposit, in the order of their respective priority.

(b) To the judgment debtor in the amount of any applicable exemption of proceeds.

(c) To the levying officer for the reimbursement of the levying officer's costs for which an advance has not been made.

(d) To the judgment creditor to satisfy the following:

(1) First, advances to the levying officer for costs accruing after issuance of the writ and interest accruing after issuance of the writ.

(2) Second, costs and interest accruing after entry of the judgment but before issuance of the writ pursuant to which the sale or collection is conducted, in the amount remaining unsatisfied, and the fee for issuance of such writ.

(3) Third, the judgment as entered, in the amount remaining unsatisfied.

(e) To any other judgment creditors who have delivered a writ to the levying officer before the sale or collection, accompanied by instructions to levy upon the same property, or are otherwise entitled to a share of the proceeds of sale, in the manner prescribed by subdivision (d) and in the order of their respective priority.

(f) To the judgment debtor, in the amount remaining.

Comment. Section 703.810 supersedes former Sections 689c and 690.2(c), a portion of former Section 690.2(d), former Section 690.31(j), a portion of former Section 691, and former Civil Code Section 1256. See also former Sections 682.1 and 682.2. Section 703.810 applies to the distribution of the proceeds of a sale or collection pursuant to the enforcement of a money judgment and, by way of incorporation, to cases where levy takes place under a writ of possession for the recovery of costs and damages or the value of the property, or under a writ of sale for the recovery of costs and damages. See Sections 708.130, 709.130, 710.130.

Subdivision (a) does not determine which interests are required to be satisfied; it recognizes that such interests may be required by other statutes or court order to be paid off. See, e.g., Civil Code § [1256] (sale of homestead). Subdivision (a) treats the judgment creditor as a third person with a superior interest to the extent that the judgment creditor is subrogated to the rights of a secured party pursuant to Section 706.350(b).

In certain circumstances, the judgment debtor will be entitled to receive a portion of the proceeds as provided by subdivision (b). See Civil Code § \_\_\_\_\_ (dwelling); Sections 707.530 (motor vehicle), 707.570 (tools of a trade).

As a general rule, the costs of the levying officer are required to be prepaid. See Section 702.620. However, in some instances, costs are not prepaid, such as where a governmental agency is the creditor. See, e.g., Labor Code § 101. Subdivision (c) provides for the reimbursement of such costs before any payments are made to the creditor. See also Section 701.140 ("costs" defined).

Subdivision (d) sets forth the order in which proceeds are allocated to the judgment creditor and is based on former Sections 682.1 and 682.2. This subdivision codifies the existing practice of satisfying new costs and interest first, then costs incurred and interest accruing before the writ is issued, and finally the principle amount of the judgment. New costs are entered on the writ by the levying officer. See Sections 702.530(b), 703.140(b). The interest accruing after issuance of the writ is computed on a daily basis as provided by Section 702.530(a)(3). Costs accruing after judgment but before issuance of the latest writ may be collected only if a memorandum of costs has been filed pursuant to Section 1033.7. See Section 702.530(a)(1). Interest accruing after judgment but before issuance of the latest writ is entered on the face of the writ if an affidavit has been filed pursuant to Section 702.530(a)(2).

Subdivision (e) is based on the rule in *Mitchell v. Alpha Hardware & Supply Co.*, 7 Cal. App.2d 52, 57, 45 P.2d 442, \_\_\_ (1935). Cf. *Caito v. United California Bank*, 20 Cal.3d 684, 701, 576 P.2d 466, \_\_\_, 144 Cal. Rptr. 751, \_\_\_ (1978); *Nomellini Constr. Co. v. Modesto Sav. & Loan Ass'n*, 275 Cal. App.2d 114, 118, 79 Cal. Rptr. 717, \_\_\_ (1969).

Note. This section may require further revision to conform with the provision for distribution of homestead proceeds. See Memorandum 78-69.

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§ 703.820. Time for distribution of proceeds of collection

703.820. If the judgment debtor is an individual, the proceeds of collection may not be distributed until the expiration of 10 days after the date notice of levy was mailed to the judgment debtor.

Comment. Section 703.820 is new. It is intended to provide an individual with an opportunity to claim any available exemption for amounts collected. See Section 707.320 (exemption claim must be made within 10 days after notice of levy is mailed or delivered). See also Sections 702.510 (mailing includes personal delivery), 703.630(d) (sale of personal property of individual no sooner than 10 days after notice of levy is mailed or delivered), 703.640(h) (notice of sale of real property no sooner than 120 days after notice of levy mailed or delivered).