

Memorandum 79-64

Subject: Study D-300 - Enforcement of Judgments (Homestead Exemption--
Newly Revised)

At the October 1979 meeting the Commission developed a new approach to the homestead exemption--give greater protection to the judgment debtor while residing in the dwelling but ensure greater payment to the judgment creditor when the dwelling is sold. The attached staff revision of the dwelling exemption article (Exhibit 2) implements this decision. The dwelling is not subject to forced sale until the judgment debtor's equity exceeds \$100,000; but upon sale, the judgment debtor's proceeds exemption is limited to \$7,500, the remainder of the funds going to the judgment creditor up to the amount of the judgment. This scheme, and the reasons for it, is explained in the preliminary portion of the recommendation, which is likewise redrafted and is attached as Exhibit 1. You should read both the preliminary portion and the draft statute with care, since this is quite a new concept and represents a major shift in the law.

At the October meeting, the Commission also determined that where there are joint debtors each may claim an independent exemption in the dwelling, i.e., there can be more than one dwelling exemption per dwelling. The staff draft preserves this policy insofar as it applies to the proceeds of sale of the dwelling--each joint debtor gets \$7,500, which may be used for replacement rental housing or other purposes. The staff draft does not preserve this policy insofar as it applies to the threshold question whether the dwelling is subject to forced sale. With the new revision of the dwelling exemption to preclude sale unless the judgment debtor's equity exceeds \$100,000, it would be almost impossible for a judgment creditor to obtain the sale of the dwelling any time there were two or more joint judgment debtors residing in it--their combined equities would have to exceed \$200,000 or more before the dwelling could be sold. The staff draft resolves this problem by permitting sale of the dwelling if the aggregate of the equities of the joint judgment debtors exceeds \$100,000, i.e., there is one dwelling exemption per dwelling, shared by the joint judgment debtors. This makes sense since a creditor should be able to force sale if there is

\$100,000 of equity in the dwelling, no matter how distributed, that would be available to satisfy the judgment.

The staff draft incorporates a number of improvements suggested to the staff by the Commission's homestead consultant, Professor Charles Adams. One substantive matter raised by Professor Adams that the staff believes deserves further review is the minimum bid requirement of 90% of the fair market value of the dwelling. See Section 704.820(b). This provision was added by legislation enacted at the current legislative session and was clearly intended to prevent sacrifice execution sales of homes. However, as Professor Adams points out, the 90% minimum bid limitation is made worthless by the authority of the court to order sale at a lower bid. Moreover, implementation of the provision requires court hearing and proof of the fair market value of the dwelling, with its attendant costs. Under our proposed scheme, the judgment debtor will have four months within which to voluntarily sell the property and turn over the proceeds to the judgment creditor (less \$7,500); this should be sufficient protection against a sacrifice sale. The staff recommends deletion of the 90% minimum bid requirement.

Respectfully submitted,

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Assistant Executive Secretary

EXHIBIT 1

Dwelling ExemptionIntroduction

California law provides a substantial dwelling exemption for the purpose of promoting the security of the home and protecting it from the consequences of the owner's economic misfortune.¹ Under existing law there are three separate dwelling exemption statutes: the declared homestead,² the dwelling house exemption for persons who have failed to declare a homestead,³ and the claimed exemption for a mobilehome or vessel.⁴ Each statute provides a dwelling exemption if an exemption has not been obtained pursuant to the other statutes.⁵ The amount of the dwelling exemption provided by each statute is the same--\$40,000 if the judgment debtor is married, the head of a family, or over 65 years old, and \$25,000 in other cases.⁶ Each statute protects the dwelling from sale to satisfy a judgment if the judgment debtor's equity is less than the dwelling exemption; if the judgment debtor's equity exceeds the dwelling exemption, the dwelling may be sold to satisfy the judgment and the statute preserves the sale proceeds for the judgment debtor in the amount of the dwelling exemption.⁷

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1. The California Constitution requires the Legislature to provide for the protection of a portion of the homesteads of heads of families. Cal. Const. art. 20, § 1.5. For a discussion of the development of the homestead provisions, see *Taylor v. Madigan*, 53 Cal. App.3d 943, 955-61, 126 Cal. Rptr. 376, 384-88 (1975).
 2. See Civil Code §§ 1237-1304.
 3. See Section 690.31.
 4. See Sections 690.3, 690.50.
 5. Sections 690.3(b) and 690.31(b); but see Civil Code § 1259.2.
 6. Civil Code § 1260; Code Civ. Proc. §§ 690.3(a), 690.31(a).
 7. Civil Code §§ 1245-1256; Code Civ. Proc. §§ 690.31(c)-(k), 690.3, 690.50(i).

Amount of Exemption

The \$40,000 dwelling exemption fails to accomplish the intent of the exemption laws to protect the judgment debtor from forced dispossession of the family home. In California's current inflationary economy, housing costs are high and are rapidly rising. If a judgment debtor has owned a home for any significant length of time, the equity will exceed the \$40,000 exemption and the home will be subject to forced sale. Moreover, the \$40,000 exemption of sale proceeds will not ordinarily enable the judgment debtor to purchase replacement housing, since the judgment debtor may be unable to obtain credit. And if replacement housing is obtained, its rapid inflationary increase will subject it also to forced sale within a short period.

The \$40,000 exemption of sale proceeds, in addition to being of little value to the judgment debtor in purchasing replacement housing, is also unfair to judgment creditors. To require judgment creditors to go unpaid in order to protect \$40,000 cash which the judgment debtor is free to spend at will⁸ is poor policy. A judgment creditor has a legitimate interest in collecting the debt out of the judgment debtor's assets that are not necessary for the support and maintenance of the judgment debtor and dependents.

The dwelling exemption should be revised to provide greater security for the judgment debtor's home and greater assurance that the judgment creditor is paid when the home is sold. The Commission recommends that the home of the judgment debtor not be subject to forced sale unless the judgment debtor's equity exceeds \$100,000. This amount will protect the great majority of ordinary residences, but will not permit the judgment debtor to live in a mansion at the expense of the judgment creditor. The exemption should apply as long as the judgment debtor continues to own and reside in the dwelling, but a judgment creditor should be permitted to obtain a judgment lien on the dwelling that

8. Civil Code Section 1265 protects the proceeds of sale of a homestead for a period of six months without the requirement that the proceeds be applied to purchase of another dwelling or for any other purpose.

facilitates collection from proceeds in case of a future sale of the dwelling or in case the dwelling appreciates in value to the point where it is subject to forced sale. When the dwelling is sold, whether voluntarily or involuntarily, judgment creditors having judgment liens on the property should receive the amounts due them before the sale proceeds are paid to the judgment debtor. Of the sale proceeds, \$7,500 should be exempt for use by the judgment debtor for any purpose, including rental housing. The modest amount of the proceeds exemption recognizes the fact that a larger exemption would not ordinarily enable the purchase of a replacement dwelling nor, if a replacement dwelling is purchased, preserve it from forced sale. It also takes into account the right of the creditor to have the judgment eventually paid. The \$7,500 proceeds exemption is the same as the amount of the dwelling exemption provided in bankruptcy.⁹

Exemption Procedure

The three dwelling exemption procedures provided by existing law display unnecessary differences and complexities. They should be simplified and unified.

Declared homestead. The judgment debtor may exempt a real property dwelling by filing a homestead declaration with the county recorder¹⁰ if the judgment creditor has not earlier obtained a judgment lien.¹¹ Once an effective declaration is recorded, the judgment debtor cannot obtain a subsequent judgment lien, even if the judgment debtor's equity in the property exceeds the amount of the exemption.¹² This results in a race to the recorder's office. If the judgment creditor wins the race, the judgment debtor may still assert a dwelling house exemption in

9. 11 U.S.C. § 522 (d)(1) (bankruptcy).

10. See Civil Code §§ 1262-1265, 1266-1269, 1300-1303.

11. See Civil Code § 1241.

12. See Boggs v. Dunn, 160 Cal. 283, 285-87, 116 P. 743, 744-75 (1911); Swearingen v. Byrne, 67 Cal. App.3d 580, 585, 136 Cal. Rptr. 736, 739 (1977).

a court hearing on the judgment creditor's application for a writ of execution.¹³ If the judgment debtor wins the race, the exemption is not secure since the declaration may in fact be invalid; a hearing on entitlement to the exemption is necessary.¹⁴ The practical effect of a declared homestead is simply that judgment creditors are precluded from securing payment of the judgment by means of the relatively benign judgment lien. In consequence a second race ensues among judgment creditors who seek immediate execution in order to reach any equity the judgment debtor may have in excess of the dwelling exemption, since the creditor who first levies has priority.¹⁵ The declared homestead is also inefficient because it permits the recording of a declaration at a time when it is not needed for protection against the claims of creditors.

Dwelling house exemption. Before a judgment creditor may obtain a writ of execution against a dwelling, the judgment creditor must apply to a court in the county where the dwelling is located.¹⁶ This requirement applies whether or not the judgment debtor has recorded an effective homestead declaration on the dwelling. A judgment debtor who has not recorded a prior homestead declaration may nonetheless assert the dwelling house exemption at this time.¹⁷ This manner of asserting the exemption is preferable to the declared homestead because it comes into play only when the exemption is needed--when the judgment creditor seeks to apply the property to the satisfaction of the judgment. It is defective, however, in that it fails to protect any proceeds of sale of the

13. Section 690.31(b).

14. Civil Code § 1245.

15. See Adams, Homestead Legislation in California, 9 Pac. L.J. 723, 728 (1978).

16. Civil Code § 1245; Code Civ. Proc. § 690.31(c).

17. Section 690.31(a)-(b).

dwelling against a judgment lien when the dwelling is sold voluntarily.^{17a}

Mobilehome and vessel exemption. Under existing law, the judgment debtor may, within 10 days after the property is levied upon, claim a dwelling exemption for a housetrailer, mobilehome, houseboat, boat, or other waterborne vessel pursuant to the general procedure for claiming exemptions for personal property levied upon under execution.¹⁸

Exemption procedure under proposed law. The proposed law would unify these varying procedures and make them consistent to the extent practicable. Under the proposed law, if the dwelling is personal property (a mobilehome not affixed to land or a vessel) or a leasehold estate with an unexpired term of less than two years at the time of levy, the general procedure for claiming exemptions for personal property would apply.¹⁹

The declared homestead would be eliminated as unnecessary. If the dwelling is real property other than a leasehold estate with an unexpired term of less than two years at the time of levy, a procedure patterned after the existing declared homestead and dwelling house exemptions would apply, subject to the following important differences:

(1) As under existing law, the proposed law would require the judgment creditor to initiate court proceedings to determine whether the property is exempt or whether the judgment debtor's

17a. Section 674(c).

18. Sections 690.3, 690.50(a). See the discussion under "Procedure for Claiming Exemptions After Levy" infra.

19. This continues the aspect of existing law that requires the debtor to initiate exemption proceedings as to personal property. It eliminates the overlap between Sections 690.3 and 690.31 insofar as certain mobilehomes are concerned.

equity exceeds the dwelling exemption. However, instead of the judgment creditor applying for a writ of execution, the judgment creditor would have the property levied upon and would then apply for an order permitting sale of the property. The writ will be issued by the court clerk where the judgment is entered; the order for sale will be made by the court where the dwelling is located. This will eliminate the confusion caused by issuance of writs of execution for different purposes and out of different courts for the enforcement of the same judgment.

(2) Under the proposed law, the judgment creditor must apply to the court for an order permitting sale of the dwelling within 20 days after notice of the levy. This provision is intended to provide a resolution of the exemption question early in the period during which the sale of real property is delayed under the proposed law.²⁰ It also enables prompt clearing of title where property is levied upon but an order for sale is not diligently pursued.

(3) Under existing law, if the judgment creditor alleges the dwelling is not exempt, the judgment debtor has the burden of proof on the exempt status of the dwelling.²¹ The proposed law creates a presumption in favor of exempt status if the judgment debtor has claimed a homeowner's property tax exemption for the dwelling. Such a claim of exemption requires an affidavit by the claimant that he or she owns and occupies the property as the principal place of residence and intends to occupy the property as the principal place of residence at the same time the following year.²²

(4) Before a dwelling on which a homestead has been declared may be sold on execution, it must be determined whether a portion of the land on which it is located can be divided without material injury to the dwelling and sold to satisfy the judgment.²³ This requirement is time-consuming, costly, and burdensome, and results in few partitions in kind. It dates from an era when dwellings were commonly located on larger tracts. Today most dwellings are located on standard lots that cannot be divided. The proposed law

20. See the discussion under "Repeal of Statutory Redemption From Judicial Sales" supra.

21. Section 690.31(e); Civil Code § 1247.

22. Rev. & Tax. Code § 253.5.

23. Civil Code § 1248; Code Civ. Proc. § 690.31(c).

does not require a determination whether the property can be divided without material injury to the dwelling. A judgment debtor living on a larger tract who desires to save the dwelling from forced sale may voluntarily divide the property and sell the remainder to satisfy the judgment.

Other Improvements

In addition to the amount of the dwelling exemption and the basic exemption procedures, there are a number of other features of the dwelling exemption that require revision.

Junior liens on the dwelling. To what extent can the judgment debtor defeat the efforts of the judgment creditor by lowering the judgment debtor's equity in the dwelling through creation of voluntary encumbrances subordinate to the judgment creditor's lien, such as mechanics' and contractors' liens? Existing law is unclear. The dwelling exemption is an amount over and above "all" liens and encumbrances²⁴ and proceeds of sale are applied first to the discharge of "all" liens and encumbrances;²⁵ existing law does not distinguish between liens that are superior to the judgment creditor's lien and those that are inferior.²⁶ The judgment debtor should not be able to defeat the collection efforts of the judgment creditor by further encumbering the property after the judgment creditor has obtained a judgment lien or execution lien on the property. In practice, language requiring satisfaction of "all" liens

24. Civil Code § 1260.

25. Civil Code § 1255; Code Civ. Proc. § 690.31(j).

26. The relevant language was amended in 1945 to require satisfaction of all liens and encumbrances. Pre-1945 cases indicate that the lien of the judgment creditor had priority over subsequent liens and encumbrances. See *Marelli v. Keating*, 208 Cal. 528, 530, 282 P. 793, 794 (1929) (dictum); *Lean v. Givens*, 146 Cal. 739, 743, 81 P. 128, 129 (1905).

and encumbrances appears to be ignored.^{26a} Under the proposed law, voluntary liens and encumbrances subordinate to the judgment creditor's lien would be satisfied out of the proceeds representing the dwelling exemption.²⁷ If such proceeds are insufficient, subordinate voluntary liens and encumbrances would be satisfied along with subordinate involuntary liens in their order or priority out of any surplus remaining after satisfaction of the judgment creditor's lien.

Joint tenancy and tenancy in common property.²⁸ If there are co-owners of a dwelling and the judgment debtor's interest in the dwelling is sold to satisfy the judgment, the proceeds of sale are used to pay all liens and encumbrances jointly burdening the property before setting apart the amount of the exempt proceeds for the judgment debtor.²⁹ When this occurs, the buyer at the execution sale becomes a co-owner in place of the judgment debtor and has an equitable claim against the

26a. See 3 H. Miller & M. Starr, Current Law of California Real Estate § 16:32, at 61 n.19 (rev. ed. 1977).

27. This provision is consistent with the principle that exemptions are ineffective against judgments for the purchase price of exempt property or against judgments foreclosing a mortgage or other lien on the property. See Section 690.52.

28. The problem of applying exemptions to married debtors' property is currently under study by a Commission consultant.

29. Schoenfeld v. Norberg, 11 Cal. App.3d 755, 762-67, 90 Cal. Rptr. 47, ___ (1970). The holding in Schoenfeld is the result of the application of two rules: (1) that a joint encumbrance burdens both cotenants' interests to the full amount and must be satisfied in an execution sale of either interest and (2) that a co-owner may claim the entire exemption as to his or her interest.

other co-owners for their proportionate share of the liens and encumbrances paid off; in the ordinary course of events the parties ultimately partition the property. The proposed law simplifies this complex arrangement by selling all interests of the co-owners in the property at the execution sale, paying off the joint liens and encumbrances out of the proceeds of sale, and apportioning the proceeds remaining; the co-owners are given the right of first refusal at the sale.³⁰ This in effect transforms the execution sale into a partition sale.

Joint judgment debtors.³¹ If judgment debtors are jointly obligated on a judgment, the question arises whether each judgment debtor is entitled to a separate dwelling exemption or whether the judgment debtors must share the dwelling exemption. If the joint judgment debtors live apart, each is entitled to a dwelling exemption. If the joint judgment debtors share a dwelling, the proposed law adopts a dual approach. To determine whether the dwelling is subject to forced sale, the equities of the joint judgment debtors are aggregated; if their equities exceed the \$100,000 dwelling exemption, the dwelling is subject to forced sale. After sale, each joint judgment debtor is entitled to an independent \$7,500 proceeds exemption. It is necessary to aggregate equities for purposes of the \$100,000 forced sale threshold to preclude exemption of property of unduly high value, which would otherwise occur. In addition, it is appropriate that the judgment creditor be able to force sale where the combined equities of the joint debtors exceed \$100,000--this amount should be available to satisfy the judgment. On the other hand, each judgment debtor should not be required to share the already modest \$7,500 proceeds exemption; the full amount of the exemption is necessary to enable each joint judgment debtor to obtain rental housing after the dwelling is sold.

30. This approach is drawn from the bankruptcy act, 11 U.S.C. § 363 (Pub. L. No. 95-598).

31. The problem of applying exemptions to married debtors' property is currently under study by a Commission consultant.

Collateral Effects of Homestead Declaration

In addition to shielding the home from general creditors, the declaration of a homestead under existing law prevents the conveyance or encumbrance of the homestead property without the acknowledged written consent of both spouses and creates a right of survivorship in certain cases that vests title to the homestead in the surviving spouse despite the will of the deceased spouse.³² Under the proposed law, the declared homestead system would be repealed, thereby eliminating these aspects of the law. The probate homestead provisions would be revised and used in place of the declared homestead survivorship right.³³ The general rules limiting the ability of spouses to convey or encumber community property and requiring the spouses to support each other out of separate property would replace the comparable feature of the declared homestead.³⁴

32. See Civil Code §§ 1242, 1265.

33. See Recommendation Relating to Probate Homestead, 15 Cal. L. Revision Comm'n Reports ____ (1979).

34. See, e.g., Civil Code §§ 5100, 5102, 5125, 5127 (Family Law Act). The proposed law would revise these provisions to make clear that a community personal property dwelling could not be conveyed or encumbered without the consent of the spouse and to permit a spouse to record a lis pendens in a dissolution proceeding thereby restraining alienation of a separate property dwelling for a period of three months.

EXHIBIT 2

406/239

Article 4. Dwelling Exemption

§ 704.710. Definitions

704.710. As used in this article:

(a) "Dwelling" includes but is not limited to the following:

(1) A house together with the outbuildings and the land upon which they are situated.

(2) A mobilehome together with the outbuildings and the land upon which they are situated.

(3) A waterborne vessel.

(4) A condominium, as defined in Section 783 of the Civil Code.

(5) A planned development, as defined in Section 11003 of the Business and Professions Code.

(6) A stock cooperative, as defined in Section 11003.1 of the Business and Professions Code.

(7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) "Equity" means the fair market value of an interest in a dwelling over and above all liens and encumbrances on the interest superior to the judgment creditor's lien.

(c) "Homestead" means the dwelling in which the judgment debtor or spouse of the judgment debtor actually resides.

Comment. Subdivision (a) of Section 704.710 supersedes the provisions of former law pertaining to the property that could be exempt as a homestead or dwelling. See former Civil Code § 1237 (declared homestead); former Code Civ. Proc. §§ 690.3 (housetrailer, mobilehome, houseboat, boat, or other waterborne vessel), 690.31(a) (dwelling house). Subdivision (a) is intended to include all forms of property for which an exemption could be claimed under former law and any other property in which the judgment debtor or the judgment debtor's spouse actually resides.

Subdivision (b) supersedes provisions of former Civil Code Sections 1245-1255 and former Code of Civil Procedure Section 690.31 that implied that "all" liens and encumbrances were considered in determining the judgment debtor's equity. Subdivision (b) makes clear that the judgment creditor's lien and junior liens are excluded in such a determination.

Subdivision (c) is intended as a drafting aid.

CROSS-REFERENCES

Defined terms

Judgment creditor § _____

§ 704.720. Dwelling exemption

704.720. One homestead is exempt if the equity of the judgment debtor does not exceed the amount of the dwelling exemption. The amount of the dwelling exemption is one hundred thousand dollars (\$100,000).

Comment. Section 704.720 supersedes Civil Code Sections 1238 and 1240 (providing for a declared homestead) and Code of Civil Procedure Sections 690.3 and 690.31(a) (providing for a claimed dwelling exemption). Unlike the former provisions, Section 704.720 does not specify the interest of the judgment debtor that is protected and does not limit the homestead in a leasehold to a long-term lease; any interest of the judgment debtor sought to be reached by the judgment creditor in the judgment debtor's dwelling is subject to the exemption. Section 704.720 makes clear that a judgment debtor may exempt only one dwelling even though the judgment debtor's family may live in more than one dwelling. The question whether a dwelling is exempt is determined under the circumstances prevailing as of the date of creation of the enforcement lien. See Section 703.110. The dwelling exemption does not apply where a lien on the property other than an enforcement lien is being foreclosed. See Section _____.

Section 704.720 also supersedes former Civil Code Section 1260 and former Code of Civil Procedure Sections 690.3(a) and 690.31(a), which provided an exemption of \$40,000 for heads of families and persons 65 years and older and \$25,000 for other persons. Section 704.720 increases the amount that is protected; however, if the judgment debtor's equity exceeds the increased amount, the dwelling may be sold and the amount of proceeds exempted is lower. See Section 704.730.

Note. The question whether a dwelling exemption may be obtained in more than one dwelling in the case of community property is reserved.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)
 Equity § 704.710(b)
 Homestead § 704.710(c)
 Judgment debtor § _____

26768

§ 704.730. Exemption of dwelling proceeds

704.730. If a homestead is sold under this title to enforce a money judgment or is otherwise voluntarily or involuntarily sold, the judgment debtor's interest in the proceeds of sale is exempt in the amount of seven thousand five hundred dollars (\$7,500).

Comment. Section 704.730 supersedes the first sentences of former Civil Code Section 1256 and former Code of Civil Procedure Section 690.31(k). It broadens them to include voluntary sales and other dispositions of the dwelling and deletes the six-month limitation for

the proceeds exemption in favor of the general tracing provisions. See Section _____ (tracing of exempt amounts); see also the last portion of former Civil Code Section 1265. The amount of the proceeds exemption provided by Section 704.730 supersedes the amounts provided by former Civil Code Section 1260 and former Code of Civil Procedure Sections 690.3(a) and 690.31(a). It is consistent with the exemption for a residence prescribed in bankruptcy. See 11 U.S.C. § 522 (bankruptcy). For the procedures for removal of a judgment lien in the case of a voluntary sale or other disposition to enable the judgment debtor to obtain the exempt proceeds, see Section _____.

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Homestead § 704.710(c)
- Judgment debtor § _____

27640

§ 704.740. Limitation on sale of dwelling

704.740. (a) Except as provided in subdivision (b), a dwelling may not be sold under this title to enforce a money judgment except pursuant to a court order for sale upon a finding of either of the following:

- (1) The dwelling is not a homestead.
- (2) The dwelling is a homestead but the judgment debtor's equity exceeds the amount of the dwelling exemption.

(b) If the dwelling is personal property or is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy:

- (1) A court order for sale is not required and the procedures provided in this article do not apply.
- (2) Any exemption claim shall be made and determined as provided in Article 2 (commencing with Section 703.510).

Comment. Subdivision (a) of Section 704.740 supersedes portions of former Civil Code Sections 1245, 1249, and 1250 and former Code of Civil Procedure Section 690.31(c) and (f). Under subdivision (a), unlike the former provisions, the value of the dwelling need only exceed the amount of the exemption and superior liens and encumbrances on the property, rather than "all" (including junior) liens and encumbrances. See Section 704.710(b) (defining "equity") and Comment thereto.

Subdivision (b) incorporates the general procedures for claiming an exemption where the dwelling levied upon is not subject to the delay of sale provision of Section [703.640(h)] (120-day delay of notice of sale of an interest in real property other than a leasehold estate with an unexpired term of less than two years). Under former law, a house-trailer, mobilehome, houseboat, boat, or other waterborne vessel in

which the judgment debtor or the judgment debtor's family actually resided could be claimed as exempt in a similar manner. See former Sections 690(a), 690.3, 690.50. This section also applies to claims of exemption for certain mobilehomes that under former law would have been determined as provided in former Section 690.31(a)(2) (judgment creditor's application for writ of execution on dwelling, including a mobilehome as defined by Health & Safety Code § 18008).

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)

Equity § 704.710(b)

Homestead § 704.710(c)

Dwelling exemption § 704.720

27641

§ 704.750. Application for order for sale

704.750. (a) When a dwelling is levied upon, the levying officer shall serve notice of levy personally or by mail on the judgment creditor. Within 20 days after service of the notice of levy, the judgment creditor shall apply to the court for an order for sale of the dwelling and shall notify the levying officer of the application. If the judgment creditor does not apply for an order for sale of the dwelling within the time prescribed in this section, the levying officer shall release the dwelling in the manner prescribed in Section _____.

(b) If the dwelling is located in a county other than the county where the judgment was entered:

(1) The judgment creditor shall apply to a court of similar jurisdiction in the county where the dwelling is located or, if there is no court of similar jurisdiction, to a court of higher jurisdiction in that county.

(2) The judgment creditor shall file with the application an abstract of judgment in the form prescribed by Section 674.

(3) The judgment creditor shall pay a filing fee of four dollars (\$4) in a justice court and six dollars (\$6) in a superior or municipal court.

Comment. Section 704.750 supersedes the introductory portion and the last two paragraphs of former Civil Code Section 1245 and former Code of Civil Procedure Section 690.31(c). Unlike the former provisions which required the judgment creditor to apply for issuance of a writ of execution, Section 704.750 requires the judgment creditor to apply for an order for sale after levy of execution. This ensures that all writs will be issued out of the court in which the judgment is entered.

Notice of the application for an order for sale of the property must be given the levying officer, or the dwelling will be released. This requirement applies only to real property dwellings and not to personal property dwellings or to dwellings with less than a two-year leasehold. See Section 704.740(b).

Note. Whether the spouse of the judgment debtor may claim a community or separate property exemption is reserved.

CROSS-REFERENCES

Defined terms

Court § _____
 Dwelling § 704.710(a)
 Judgment creditor § _____
 Levy on real property § _____
 Service of notices §§ 684.010-684.070

27642

§ 704.760. Contents of application

704.760. The judgment creditor's application shall be verified, shall describe the dwelling, and shall contain one or both of the following:

(a) A statement that the dwelling is not a homestead and the reasons therefor. In such a case, the application shall also state whether the records of the county tax assessor indicate there is a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor [or the spouse of the judgment debtor].

(b) A statement that, if the dwelling is a homestead, the judgment debtor's equity exceeds the amount of the dwelling exemption.

Comment. Section 704.760 supersedes subdivisions (a)-(c) of former Civil Code Section 1245 and subdivisions (1)-(2) of former Code of Civil Procedure Section 690.31(c).

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)
 Equity § 704.710(b)
 Homestead § 704.710(c)
 Judgment creditor § _____
 Judgment debtor § _____
 Disabled veteran's exemption Rev. & Tax. Code § 205.5
 Dwelling exemption § 704.720
 Homeowner's exemption Rev. & Tax. Code § 253.5

§ 704.770. Notice of hearing

704.770. (a) Upon the filing of the application by the judgment creditor, the court shall set a time and place for hearing and order the judgment debtor to show cause why an order for sale should not be made. The time set for hearing shall be not later than 20 days after the application is filed or such later time as the court orders upon a showing of good cause.

(b) Not later than 10 days before the time set for hearing, the judgment creditor shall do both of the following:

(1) Serve on the judgment debtor personally or by mail a copy of the order to show cause, a copy of the application of the judgment creditor, and a copy of the notice of the hearing in the form prescribed in Section 693.050.

(2) Serve personally a copy of each document listed in paragraph (1) on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of each document in a conspicuous place at the dwelling.

[(c) The judgment creditor shall file proof of service and any posting with the court.]

Comment. Subdivision (a) of Section 704.770 supersedes the introductory portions of former Civil Code Section 1246 and Code of Civil Procedure Section 690.31(d).

Subdivision (b) supersedes former Civil Code Section 1257 and Code of Civil Procedure Section 690.31(1). Co-owners of the property receive notice of the hearing pursuant to Section 704.840.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)

Judgment creditor § _____

Judgment debtor § _____

Manner of service of notice §§ 684.010-684.070

§ 704.780. Hearing

704.780. (a) The burden of proof at the hearing is determined in the following manner:

(1) If the application states that the dwelling is not a homestead and the records of the county tax assessor indicate that there is a

current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor [or the spouse of the judgment debtor], the judgment creditor has the burden of proof that the dwelling is not a homestead. If the records of the county tax assessor indicate that there is not a current homeowner's exemption for the dwelling claimed by the judgment debtor [or the spouse of the judgment debtor], the judgment debtor has the burden of proof that the dwelling is a homestead.

(2) If the application of the judgment creditor states that the judgment debtor's equity exceeds the amount of the dwelling exemption, the judgment creditor has the burden of proof that the judgment debtor's equity exceeds the amount of the exemption.

(b) The court may appoint a qualified appraiser to assist the court in determining the fair market value of the dwelling and the judgment debtor's equity. The appraiser shall view the dwelling and, within 10 days after appointment, file with the court a written declaration under penalty of perjury stating an opinion of the fair market value of the dwelling and of the judgment debtor's equity. The court shall fix the compensation of the appraiser in an amount determined by the court to be reasonable, not to exceed similar fees for similar services in the community where the services are rendered.

(c) The court shall determine the issues raised in the judgment creditor's application and shall make an order for sale of the dwelling or denying an order for sale.

(d) The clerk of the court shall transmit a copy of the court order to:

(1) The levying officer; and

(2) The clerk of the court in which the judgment was entered if the court making the order is not the court in which the judgment was entered.

Comment. Section 704.780 supersedes former Civil Code Section 1247 and Code of Civil Procedure Section 690.31(c) (second paragraph) and (e).

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Equity § 704.710(b)
- Homestead § 704.710(c)
- Judgment creditor § _____
- Judgment debtor § _____
- Disabled veteran's exemption Rev. & Tax. Code § 205.5
- Dwelling exemption § 704.720
- Homeowner's exemption Rev. & Tax. Code § 253.5

§ 704.790. Order for sale

704.790. (a) If the court determines that the dwelling is not a homestead, or that the dwelling is a homestead but the judgment debtor's equity exceeds the amount of the dwelling exemption, the court shall make an order for sale of the dwelling.

(b) If the dwelling is a homestead, the order for sale shall state all of the following:

(1) The fair market value of the dwelling.

(2) The aggregate amount of all liens and encumbrances on the judgment debtor's interest in the dwelling superior to the judgment creditor's lien.

Comment. Section 704.790 supersedes former Civil Code Sections 1248-1250 and former Code of Civil Procedure Section 690.31(f). Unlike the former provisions, Section 704.790 does not provide for a determination whether the property can be divided without material injury. Nor does Section 704.790 require that the court specify the amounts for distribution, including names and addresses of persons having encumbrances; this is done following sale pursuant to Sections 700.920 and 700.930. In the case of co-owners of the dwelling, see Section 704.840. In the case of joint judgment debtors, see Section 704.850.

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Equity § 704.710(b)
- Homestead § 704.710(c)
- Judgment creditor § _____
- Judgment debtor § _____
- Dwelling exemption § 704.720

§ 704.800. Procedure after order of sale upon default

704.800. If the court makes an order for sale upon a hearing at which neither the judgment debtor nor the attorney of the judgment debtor appeared:

(a) The judgment creditor shall, not later than 10 days after the date of the order, serve personally or by mail a copy of the order and a notice of the order in the form prescribed in Section 693.060 on the judgment debtor and shall serve personally a copy of each on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy in a conspicuous place at the dwelling. [The

judgment creditor shall file proof of service and any posting with the court.]

(b) If, within 10 days after service of notice of the order, the judgment debtor files with the levying officer a declaration that the absence of the judgment debtor or the judgment debtor's attorney from the hearing was due to mistake, inadvertence, surprise, or excusable neglect and that the judgment debtor wishes to assert the dwelling exemption, the levying officer shall not sell the dwelling pending further orders of the court and shall transmit the declaration forthwith to the court. Upon receipt of the declaration, the court shall set a time and place for hearing to determine whether the order for sale should be modified or rescinded. The time set for hearing shall be not later than 20 days after receipt of the declaration. The clerk of the court shall promptly give notice of the hearing to the parties.

Comment. Subdivision (a) of Section 704.800 supersedes former Civil Code Sections 1251 and 1257 and former Code of Civil Procedure Section 690.31(g) and (1). Unlike the former provisions, co-owners receive only notice of sale, and not notice of default.

Subdivision (b) supersedes former Civil Code Section 1252 and former Code of Civil Procedure Section 690.31(h).

Note. The question whether the spouse of a judgment debtor may claim the dwelling exemption on separate or community property is reserved.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)

Judgment creditor § _____

Judgment debtor § _____

Manner of service of notice §§ 684.010-684.070

27801

§ 704.810. Denial of order

704.810. (a) If the court determines that the dwelling is a homestead and the judgment debtor's equity does not exceed the amount of the dwelling exemption, the court shall deny the order for sale.

(b) Upon receipt of a copy of the court order denying an order for sale, the levying officer shall release the dwelling in the manner prescribed in Section _____.

(c) A subsequent application by the judgment creditor after the denial of an order for sale shall be supported by a statement under oath

alleging that there is a material change in circumstances affecting the exemption and setting forth facts supporting the claimed material change of circumstances.

Comment. Subdivision (b) of Section 704.810 supersedes portions of former Civil Code Section 1258 and former Code of Civil Procedure Section 690.31(m) (incorporating former Section 690.50(j)).

Subdivision (c) supersedes former Civil Code Section 1253 and former Code of Civil Procedure Section 690.31(i), which required supporting allegations by any judgment creditor. Subdivision (b) requires supporting allegations only by the judgment creditor who was denied the order for sale.

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Equity § 704.710(b)
- Homestead § 704.710(c)
- Judgment creditor § _____
- Judgment debtor § _____
- Dwelling exemption § 704.720

27802

§ 704.820. Sale of homestead

704.820. If a homestead is sold pursuant to court order for sale:

(a) No bid shall be received unless it exceeds the aggregate amount of all liens and encumbrances on the judgment debtor's interest in the dwelling superior to the judgment creditor's lien plus the amount of the dwelling exemption.

(b) No sale shall be made unless the highest bid is at least 90 percent of the fair market value of the dwelling as stated in the order for sale. If no bid is received that is 90 percent or more of the fair market value of the dwelling as stated in the order for sale, the court, upon motion of the judgment creditor, shall do one of the following:

(1) Authorize sale at the highest bid that exceeds the aggregate amount of all liens and encumbrances on the judgment debtor's interest in the dwelling superior to the judgment creditor's lien plus the amount of the dwelling exemption.

(2) Make an order for a new sale of the dwelling.

(c) Any sale shall be conducted within six months after the date of the original order for sale, excluding any order for a new sale, or such longer period as is agreed to by the judgment debtor. If the sale is not made within the prescribed period, the order is void, the levying

officer shall release the dwelling in the manner prescribed in Section _____, and the dwelling is not thereafter subject to a court order for sale upon subsequent application by the judgment creditor unless supported by a statement under oath alleging that there is a material change in circumstances affecting the dwelling and setting forth facts supporting the claimed material change of circumstances.

Comment. Section 704.820 supersedes former Section 1254.

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Homestead § 704.710(c)
- Judgment creditor § _____
- Judgment debtor § _____
- Dwelling exemption § 704.720

27803

§ 704.830. Distribution of proceeds of sale

704.830. If a homestead is sold pursuant to court order for sale, the proceeds of sale shall be distributed in the order prescribed in Section 701.810, except that prior to any distribution of proceeds to the judgment debtor in the amount of the exemption of dwelling proceeds, the proceeds shall be applied to the satisfaction of all liens and encumbrances on the judgment debtor's interest in the dwelling superior to the judgment creditor's lien.

Comment. Section 704.830 supersedes former Civil Code Section 1255.

Note. Whether this section should be extended to all real property sales is reserved.

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Homestead § 704.710(c)
- Judgment debtor § _____
- Exemption of dwelling proceeds § 704.730

29197

§ 704.840. Procedure where there are co-owners of the dwelling

704.840. If the dwelling is owned by the judgment debtor as a joint tenant, tenant in common, or otherwise as a co-owner of an undivided interest in the dwelling, in addition to the other requirements of this article the following provisions apply:

- (a) The co-owners shall be served with a copy of the notice of hearing in the form prescribed in Section 693.050.
- (b) The court shall determine and the order for sale shall state the proportionate interests of the co-owners in the dwelling.
- (c) If the dwelling is ordered to be sold, the interests of the judgment debtor and the co-owners in the dwelling shall be sold.
- (d) If a homestead is sold pursuant to court order for sale, no bid shall be received and no sale shall be authorized unless, in addition to all other bid and sale requirements, the bid exceeds the aggregate amount of all liens and encumbrances on the interests of the judgment debtor and co-owners superior to the judgment creditor's lien plus an amount that, when apportioned among the judgment debtor and the co-owners, will yield an amount for the share of the judgment debtor that exceeds the amount of the exemption of dwelling proceeds.
- (e) The co-owners shall have the right of first refusal to purchase the dwelling at the sale for the amount of the highest bid.
- (f) The proceeds of sale remaining after the satisfaction of all liens and encumbrances on the interests of the judgment debtor and the co-owners superior to the judgment creditor's lien shall be apportioned among the judgment debtor and the co-owners in their proportionate shares. The shares apportioned to the judgment debtor and the co-owners shall be distributed, to the extent applicable, in the order prescribed in Section 701.810.

Comment. Section 704.840 is drawn from 11 U.S.C. § 363(h) and (i) (bankruptcy). It adopts the principal that the dwelling is to be sold free of the interests of co-owners, but gives the co-owners the right of first refusal. Proceeds of sale are distributed to co-owners in their proportionate shares. This amounts in essence to a partition sale of the dwelling.

Note. The rules governing a community property dwelling are reserved.

Note. The question whether this section should apply to all real property sales, not merely to sales of dwellings, is reserved.

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Homestead § 704.710(c)
- Judgment debtor § _____
- Exemption of dwelling proceeds § 704.730
- Notice of hearing, form § 693.050

§ 704.850. Procedure where there are joint judgment debtors

704.850. If judgment debtors who are jointly obligated on a money judgment have interests in a dwelling sought to be applied to enforcement of the judgment, in addition to the other requirements of this article, the following provisions apply:

(a) The dwelling is a homestead if any of the joint judgment debtors or the spouse of any of the joint judgment debtors actually resides in the dwelling on the date of levy.

(b) If the dwelling is a homestead, the court shall not make an order for sale of the dwelling unless the court determines that the aggregate equities of the joint judgment debtors exceeds the amount of the dwelling exemption.

(c) If a homestead is sold pursuant to court order for sale, no bid shall be received and no sale shall be authorized unless, in addition to all other bid and sale requirements, the bid exceeds the aggregate amount of all liens and encumbrances on the interests of the joint judgment debtors superior to the judgment creditor's lien plus the amount of the dwelling exemption.

(d) The proceeds of sale of a homestead remaining after the satisfaction of all liens and encumbrances on the interests of the joint judgment debtors superior to the judgment creditor's lien shall be apportioned among the persons entitled thereto. The shares apportioned to the joint judgment debtors shall be distributed in the order prescribed in Section 761.810, each joint judgment debtor who actually resides in the dwelling on the date of levy being eligible for a separate exemption of dwelling proceeds.

Comment. Section 704.850 establishes the rule that although the equities of joint judgment debtors are combined to determine whether a dwelling may be sold, each joint judgment debtor who qualifies for the dwelling exemption receives the full amount of the exemption of dwelling proceeds not exceeding his or her share of the proceeds.

CROSS-REFERENCES

Defined terms

- Dwelling § 704.710(a)
- Equity § 704.710(b)
- Homestead § 704.710(c)
- Judgment creditor § _____
- Judgment debtor § _____
- Dwelling exemption § 704.720
- Exemption of dwelling proceeds § 704.730

§ 704.860. Procedure where the interest of the judgment debtor is less than a fee

704.860. If the interest of the judgment debtor in the dwelling is a leasehold or other interest less than an ownership interest, notwithstanding any other provision of this article:

(a) If the dwelling is ordered to be sold, the interest of the judgment debtor in the dwelling, and not the ownership interest, shall be sold.

(b) All references in this article to the "dwelling" are deemed to be references to the judgment debtor's interest in the dwelling.

Comment. Section 704.860 implements the intent of this article not to restrict the interest of the judgment debtor for which a dwelling exemption is available. A dwelling exemption is available to a judgment debtor regardless whether the judgment debtor's interest is a fee, leasehold, or lesser interest. See Comment to Section 704.710.

CROSS-REFERENCES

Defined terms

Dwelling § 704.710(a)

Judgment debtor § _____

§ 704.870. Extensions of time and appeals

704.870. The provisions of Sections [703.390] and [703.400] apply to proceedings under this article.

Comment. Section 704.870 continues the substance of former Civil Code Sections 1258 (portion incorporating Code of Civil Procedure Section 690.50(1)) and 1259.1, and former Code of Civil Procedure Section 690.31(m) (portion incorporating Code of Civil Procedure Section 690.50(1)) and (n). It incorporates the provisions in the general exemption procedure pertaining to extensions of time and appeals.

§ 704.880. Costs

704.880. Notwithstanding any other provision of this title, the judgment creditor is entitled to recover reasonable costs incurred in a proceeding under this article including attorney's fees, appraisal fees, and expert witness fees necessary to prove the fair market value of the dwelling and the judgment debtor's equity, but shall not recover the costs if the court denies or rescinds the order for sale.

Comment. Section 704.880 supersedes former Civil Code Section 1259.

CROSS-REFERENCES

Costs § 685.010-685.080
 Defined terms
 Dwelling § 704.710(a)
 Equity § 704.710(b)
 Judgment debtor § _____
 Judgment creditor § _____

29204

§ 704.890. Application of exemptions

704.890. (a) It is the intent of the Legislature that this article be applied to all judgments enforced on or after the operative date of this act, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date of this act, and whether the judgment was entered before or after the operative date of this act. If a judgment lien or other enforcement lien was obtained upon a dwelling prior to the operative date of this act, the amount of the dwelling exemption and the amount of the exemption of dwelling proceeds in effect at the time the lien was created apply in an enforcement procedure against the dwelling.

(b) The Legislature finds and declares that generally persons who enter into contracts do not do so in reliance on an assumption that the dwelling exemption in effect at the time of the contract will govern enforcement of any judgment based on the contract, that liens imposed on dwellings are imposed not as a matter of right but as a matter of privilege granted by state statute and no vested rights with respect to exemptions are created by imposition of a lien, that application of exemptions and exemption procedures in effect at the time of enforcement of a judgment is essential to the proper balance between the rights of judgment debtors and judgment creditors and has a minimal effect on the economic stability essential for the maintenance of private and public faith in commercial matters, and that it is the policy of the state to treat all judgment debtors equally with respect to exemptions and exemption procedures in effect at the time of enforcement of a money judgment. To this end the Legislature reserves the right to alter the dwelling exemption and the procedures therefore at any time and intends that any alterations apply upon their operative date to enforcement of all money judgments, whether based upon tort, contract, or other legal theory or cause of action that arose before or after the operative date

of the alterations, whether the judgment was entered before or after the operative date of the alterations, and whether any liens based on the judgment have been imposed on the dwelling before or after the operative date of the alterations.

Comment. Subdivision (a) of Section 704.890 declares the intent of retroactive application of the dwelling exemption provisions, including the amount of the dwelling exemption. This is consistent with the decision in *San Diego White Truck Co. v. Swift*, 96 Cal. App.3d 88, ___ Cal. Rptr. ___ (1979), and reverses cases holding that retroactive changes in the dwelling exemption violate the contract clause of the United States and California Constitutions. See, e.g., *In re Rauer's Collection Co.*, 87 Cal. App.2d 248, 253-54, 196 P.2d 803, ___ (1948); *Daylin Medical & Surgical Supply, Inc. v. Thomas*, 69 Cal. App.3d Supp. 37, 41-42, 137 Cal. Rptr. 826, ___ (1977). See also Comment, The Contract Clause and the Constitutionality of Retroactive Application of Exemption Statutes: A Reconsideration, 9 Pac. L.J. 889 (1978).

Subdivision (b) reserves to the Legislature the power to change the dwelling exemption and to give the change retroactive as well as prospective effect. All contracts entered into and liens obtained after the operative date are entered into and obtained subject to this power.

Note. The question whether this section should apply to all exemptions, not merely to the dwelling exemption, is reserved.

CROSS-REFERENCES

Defined terms

Dwelling § 703.700(a)

Operative date § _____

29214

§ 693.050. Notice of hearing for sale of dwelling

693.050. The notice of the hearing required by Section 703.760 shall be in both English and Spanish, in at least 10-point bold type, and in the following form:

"IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. Your house is in danger of being sold to satisfy a judgment obtained in court. You may be able to protect the house and real property described in the accompanying application from forced sale if you or your family now actually reside on the property. YOU [OR YOUR SPOUSE] SHOULD COME TO THE HEARING TO SHOW THIS FACT.

2. If you [or your spouse] want to contest the forced sale of this property, you [or your spouse] must appear at

_____ on _____
(Location set forth in OSC) (Date and time)

and be prepared to answer questions concerning the statements made in

the attached application. THE ONLY PURPOSE OF THE HEARING WILL BE TO DETERMINE WHETHER THE PROPERTY CAN BE SOLD, NOT WHETHER YOU OWE THE MONEY.

3. If you own this property together with the debtor, any sale of the property will include your interest. The amount of your interest will be determined by the court and you will have the first right to purchase the property. YOU SHOULD COME TO THE HEARING TO PROTECT YOUR RIGHTS.

4. FOR YOUR OWN PROTECTION, YOU SHOULD PROMPTLY SEEK THE ADVICE OF AN ATTORNEY IN THIS MATTER. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD."

"IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y
RESIDENTE

1. Su casa está en peligro de ser vendida para cumplir con una orden judicial obtenida en la corte. Usted podría proteger la casa y los bienes raíces descritos en la solicitud adjunta de la venta forzosa si usted o su familia actualmente residen en la propiedad. USTED [O SU ESPOSO(A)] DEBEN VENIR A LA AUDIENCIA PARA DEMONSTRAR ESTE PUNTO.

2. Si usted [o su esposo(a)] quieren disputar la venta forzosa de esta propiedad, usted [o su esposo(a)] deberán presentarse a

_____ el _____
(Location set forth in O.S.C.) (Date and time)

y estar preparados para contestar las preguntas acerca de las declaraciones puestas en la solicitud adjunta. EL ÚNICO PROPÓSITO DE ESTA AUDIENCIA SERÁ EL DE DETERMINAR SI LA PROPIEDAD PUEDE SER VENDIDA, Y NO SI USTED DEBE DINERO.

3. Si usted es el dueño de esta propiedad junto con el deudor, cualquier venta de la vivienda incluirá su interés. La cantidad de su interés será determinada por la corte y usted tendrá el primer derecho de comprar la propiedad. USTED DEBERÍA ATENDER LA AUDIENCIA PARA PROTEGER SUS DERECHOS.

4. PARA SU PROPIA PROTECCION, USTED DEBERÍA PRONTAMENTE DE BUSCAR EL CONSEJO DE UN ABOGADO EN ESTE ASUNTO. SI USTED ES UN RESIDENTE DE ESTA PROPIEDAD Y NO ES EL DEUDOR(A), ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DESELO A SU ARRENDADOR."

Comment. Section 693.050 continues the substance of former Civil Code Section 1246 and former Code of Civil Procedure Section 690.31(d) and (o).

Note. The question whether the spouse of a judgment debtor may claim an exemption in the separate or community property dwelling is reserved.

29218

§ 693.060. Notice of order for sale

693.060. (a) The notice of order for sale required by Section 703.790 shall be in both English and Spanish, in at least 10-point bold type, and in the following form:

"IMPORTANT LEGAL NOTICE TO HOMEOWNER AND RESIDENT

1. You were recently served with a court order requiring your presence at a hearing to determine why the court should not issue an order for the forced sale of your home. YOU [AND YOUR SPOUSE] FAILED TO APPEAR AT THE HEARING AND THE COURT HAS ORDERED THAT YOUR HOME BE SOLD TO SATISFY A JUDGMENT AGAINST YOU.

2. Your absence at the hearing has contributed to the issuance of the accompanying order for sale. If the absence of you or your attorney at the hearing was legally excusable and you believe in good faith that your home may be entitled to an exemption from execution, you should complete the form below and date, sign, and return the form below no later than _____. (Insert date no later than 10 days after date of service or 15 days if service is by mail.)

3. FOR YOUR OWN PROTECTION, YOU SHOULD IMMEDIATELY SEEK THE ADVICE OF AN ATTORNEY. IF YOU ARE A RESIDENT OF THIS PROPERTY AND ARE NOT THE DEBTOR, THIS NOTICE DOES NOT AFFECT YOU. PLEASE GIVE IT TO YOUR LANDLORD.

.....(Cut Out and Return This Form to).....

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

I declare that my absence from the previous hearing on whether or not this property should be sold was legally excusable. I, or my spouse, currently reside in this property and I wish a further hearing so that I may assert my dwelling exemption and contest the sale of my home. I understand that the clerk of the court will notify me of the

date and place for this hearing if I return this form immediately and that I must attend this hearing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at _____, California
(Date) (City or county)

(Signature of debtor [or debtor's spouse])

"IMPORTANTE AVISO LEGAL AL PROPIETARIO DE CASA Y RESIDENTE

1. Recientemente se le entregó una orden de la corte pidiendo su presencia para una audiencia para determinar el porque la corte no debería de extenderle una orden para la venta forzosa de su casa. USTED [Y SU ESPOSA] NO VINIERON A LA AUDIENCIA Y LA CORTE HA ORDENADO QUE SU CASA SEA VENDIDA PARA SATISFACER EL JUICIO EN CONTRA DE USTEDES.

2. Su ausencia a la audiencia ha contribuido para la emisión de la orden de venta. Si la ausencia de ustedes o de su abogado en la audiencia es excusable legalmente y creen de buena fe que su casa puede tener derecho a estar exonerada de ejecución, debería de completar el formato que está debajo y fecharlo, firmarlo, y devolverlo no a mas tardar del _____. (Insert date no later than 10 days after date of service or 15 days if service is by mail.)

3. PARA SU PROPIA PROTECCION, USTED DEBERIA INMEDIATAMENTE BUSCAR EL CONSEJO DE UN ABOGADO. SI USTED ES UN RESIDENTE DE ESTA PROPIEDAD Y NO ES EL DEUDOR, ESTE AVISO NO LE AFECTA A USTED. POR FAVOR DÉSELO A SU ARRENDADOR.

.....(Corte y Devuelva Este Formato a).....

(Name and title of levying officer)

(Street address and city)

(Area code and telephone number of levying officer)

Declaro que mi ausencia en la pasada audiencia sobre si esta propiedad debería de ser vendida o no fue legalmente excusable. Yo, o mi esposo(a), actualmente residimos en esta propiedad y deseo una audiencia adicional para hacer valer mis derechos de heredad bajo el Primer Capitulo (comensando con la sección 1237) del Quinto Rotulo de la Cuarta Parte de la Segunda Division del Codigo Civil y disputar la venta de mi casa. Entiendo que el oficial de la corte me notificara de la fecha y

del lugar de esta audiencia si devuelvo este formato inmediatamente y que debo asistir a esta audiencia.

Declaro bajo pena de perjurio que lo anterior es verdadero y está correcto.

Firmado el _____ en _____, California
(Fecha) (Ciudad o condado)

(Firma del Deudor(a) [o de la Esposa(o) del Deudor(a)])

(b) Timely completion and return of the return portion of the Spanish language form has the same force and effect as timely completion and return of the English language form.

Comment. Section 693.060 continues the substance of former Civil Code Section 1251 and former Code of Civil Procedure Section 690.31(g) and (p).

Note. The question whether the spouse of a judgment debtor may claim an exemption in the separate or community property dwelling is reserved.