

Memorandum 78-47

Subject: Study D-39.200 - Enforcement of Judgments (Comprehensive Statute--Redemption From Execution and Foreclosure Sales)

This memorandum considers the comments we have received concerning the Tentative Recommendation Relating to Redemption From Execution and Foreclosure Sales of Real Property (copy attached) which was distributed in January. Copies of the letters are attached as exhibits to this memorandum. We have not summarized all of the points made, so you should read the attached letters. A complete staff draft of the levy, notice, and sale provisions of which the tentative recommendation is a part is attached to Memorandum 78-46. General provisions are in the draft attached to Memorandum 78-37.

The tentative recommendation proposes to eliminate the statutory right of redemption from execution and foreclosure sales of real property. Existing law permits the debtor and junior lienholders to redeem for up to a year after the sale of the property, a factor which makes the property highly unattractive to potential purchasers. In order to give the debtor a chance to save the property by refinancing or otherwise paying off the judgment, the tentative recommendation would provide for a 90-day grace period between notice of levy on the property and notice of sale. This is analogous to the three-month cure period between giving of the notice of default and the notice of sale under a deed of trust or a mortgage with a power of sale. The proposed law would also permit the judgment creditor to collect reasonable costs for advertising the sale in a manner other than that required by law.

Most of the 13 letters we received are favorably disposed toward the tentative recommendation. Two letters, however, found little or nothing of redeeming value in the proposal. In general, the unfavorable comments derive from the belief that elimination of redemption will not in itself result in higher prices at execution and foreclosure sales of real property. The staff agrees that further revision of the notice and sale procedures is needed to soften the sacrifice nature of such sales. However, the staff remains unconvinced that post-sale redemption is beneficial to most judgment debtors.

Notice of Levy

Several letters expressed dissatisfaction with the provisions concerning notice of levy and notice of sale. (Notice of sale is discussed below.) Mr. Ronald Javor suggests that a notice of levy be served on the judgment debtor and on the resident of the property at least 90 days before notice of sale is given. (See Exhibit 10, p. 5.) Notice of levy is governed by a provision which was not included in the tentative recommendation. Section 703.310 provides that the levying officer shall mail a copy of the writ and a notice of levy to the judgment debtor at the time of levy or promptly thereafter. The 90-day delay of notice of sale under the tentative recommendation runs from the date of mailing of notice of levy to the judgment debtor. It should be noted that mailing includes personal delivery pursuant to Section 702.510. In addition, Section 703.310 requires the levying officer to serve a copy of the writ and a notice of levy on one occupant of the real property (or post if no one is found) at the time of levy or promptly thereafter. We believe these notice of levy provisions are adequate.

Mr. Daniel Reith suggests that notice of levy also be given to persons who have requested notice of sale and to interest holders of record. (See Exhibit 4, p. 1.) Presumably, these persons are more likely to be interested in the sale or other disposition of the property and would benefit by the additional 90 days' notice. The staff thinks this is a good suggestion, with the reservation that additional notices result in additional costs, and proposes to revise Section 703.310 accordingly. In two other instances--levy on motor vehicles and vessels required to be registered and on joint deposit accounts and safe deposit boxes--nondebtor interest holders of record are required to be notified of the levy.

Notice of Sale

Mr. Frederick Bailard suggests that the notice of sale provisions be conformed to the extent possible with the procedures under Civil Code Section 2924b(3) for notice of default and notice of sale under a deed of trust or mortgage with power of sale. (See Exhibit 1--a copy of Section 2924b is attached hereto as Exhibit 14.) The staff believes that the list of persons to be given notice under Section 2924b(3)(b) is

overly restrictive in the execution context. For example, paragraph (B) refers to prior mortgages and deeds of trust which are subject to a recorded subordination agreement. However, at least as the law stands now, all prior interest holders, as well as subsequent interest holders, should receive notice because their interests are required to be paid off. See Civil Code § 1256; Code Civ. Proc. § 690.31(j). (Other aspects of the distribution of proceeds from the sale of real property are discussed in Memorandum 78-48 relating to the homestead exemption and in Memorandum 78-46 relating to execution procedures in general.) However, to clarify a point raised by Mr. Bailard, we have revised a portion of Section 703.640 in Memorandum 78-46 to make clear that the persons required to receive notice are those who have an interest in the property to be sold and that notice of sale is required to be given only if the county records indicate a mailing address of the interest holder of record:

§ 703.640. Notice of sale of real property

. . . .

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

(1) The judgment debtor.

(2) A person who has requested notice 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.

. . . .

Two persons find the manner of description of the property in the notice of sale to be inadequate. Mr. Richard Wolford is troubled by the provision of existing law (continued in the tentative recommendation) that inclusion of a legal description of the property is optional. (See Exhibit 3.) Mr. Javor finds that the option of using a legal rather than a common description is an impediment to effective notice to persons other than speculators. (See Exhibit 10, pp. 2, 5-6.) The staff proposes to require both a legal description and a street address or other common designation. If there is no street address or other common

designation, Civil Code Section 2924f (sale under a power--see Exhibit 14) and Code of Civil Procedure Section 692, paragraph 3, (presumably sale after a judicial foreclosure) provide that the name and address of the "beneficiary" (of a deed of trust) shall be given along with a statement that directions for finding the property may be obtained by submitting a written request to the beneficiary within 10 days after the first publication of notice. The staff proposes to revise Section 703.640(a) as follows:

§ 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. If a legal description of the property is given, the validity of the notice is not affected by the fact that the street address or other common designation given is erroneous or omitted. 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.

. . . .

Where a levying officer has levied upon and has been instructed to sell the property, it is more appropriate that he, rather than the creditor, should furnish the information concerning the location of the property. It also seems unnecessary to require submission of a written request within the limited time currently provided by Section 692.

Two persons suggested that the notice of sale be personally served on the debtor. Judge Jenkins suggests this be attempted first and that notice could be mailed if personal service could not be accomplished. (See Exhibit 5.) Mr. Javor would require personal service of a notice of sale on the record owner and the resident and also service by certified mail. (See Exhibit 10, p. 6.) The staff notes that, under the draft statute, both the notice of levy and notice of sale are required to be served on an occupant of the property if one can be found and that notice is mailed to the judgment debtor by first-class mail. We believe these notice provisions are sufficient.

Mr. E. Stanley Weissburg asks several questions concerning the notice of sale. (See Exhibit 2.) The language he cites concerning the

optional personal delivery of the notice to the judgment debtor has been removed because the general provision on mailing notice in the draft statute provides that, when notice is to be mailed, it may be personally served. Where there are a number of judgment debtors, they should all be mailed notice. The staff is uncertain about the import of Mr. Weissburg's question concerning the nature of proof of service that will satisfy the title companies since the draft provides that the levy is valid notwithstanding failure to mail notice of levy and that the sale is valid notwithstanding failure to give notice of sale as provided. The levying officer is liable, however, for damages caused by failure to give notice of sale.

Advertising for Sale

Mr. Reith wonders if the purpose of the provision regarding advertising in the classified or other advertising section of a periodical is only to enable the judgment creditor to recover costs of such advertising. (See Exhibit 4.) That is the only substantive change since presumably a creditor could take out advertising under existing law; but the presence of the provision in the statute may also have the effect of encouraging such advertising. We could add language to the statute stating that such costs, if reasonable, are a recoverable cost under Section 1933.7; this is now stated in the Comment in the tentative recommendation.

Mr. Reith also expresses some concern that such advertising may be subject to abuse by embarrassing the debtor or serving as advertising for the creditor's attorney. We do not know whether this provision would result in any abuse. Presumably in a particularly egregious case the creditor would be liable in tort and the attorney involved might be subject to discipline. We could add a reasonableness standard or a requirement that the content of any advertising be dignified if the Commission feels it is needed.

Mr. Javor would require publication of the notice of sale once a week for four weeks in the classified section of at least two newspapers of general circulation in the county, one of them being the paper with the largest circulation. (See Exhibit 10, p. 6.) This would, of course, increase the costs of selling real property and, accordingly, increase the liability of the judgment debtor. There is some appeal,

however, in the suggestion that the notice of sale be published in the paper with the largest circulation. This would, for obvious reasons, meet with some opposition from the legal newspapers and smaller papers of general circulation.

Manner of Sale

The tentative recommendation does not deal with the procedures for sale of property on execution, although the preliminary text discusses other means of attempting to increase the price obtained at execution sales. (See the tentative recommendation, at 10.) Two commentators found the tentative recommendation to be seriously defective for not proposing reform of the sale procedures. (See Exhibits 9 and 10.) Mr. William Leifer suggests that sales should not be made for less than 90 percent of the value of the property as appraised by an independent agent. (See Exhibit 9, p. 3.) He suggests the procedure in Probate Code Sections 784 and 785 as an example. (A copy of these provisions is in Exhibit 15.) In probate, the decedent's personal representative appraises liquid assets and an inheritance tax referee appointed by the court appraises all other property, including real property. Prob. Code § 605. The referee is entitled to expenses plus a fee of 0.1 percent of the first \$500,000 and 0.05 percent of amounts over \$500,000, subject to a \$5,000 limitation unless otherwise ordered by court. Prob. Code § 609. Mr. Javor suggests, as part of a detailed scheme outlined in his letter, that the right of redemption be cut off only if the sale price exceeds 90 percent of the appraised value of the property. (See Exhibit 10, p. 6.) If the price fell below this percentage, the debtor would be afforded a one-year redemption period. Mr. Javor would also permit overbids within three days after the sale.

As the preliminary text of the tentative recommendation indicates, the Commission discussed these and other schemes in the course of its consideration of this topic. Material from Memorandum 77-35 discussing procedures followed in other states is set forth in Exhibit 16 attached hereto. The Commission may want to give further consideration to these other procedures. The staff has nothing further to add concerning these procedures except that a post-sale appraisal on petition would be much less procedurally burdensome than an automatic appraisal in every case.

The staff also suggests that the Commission consider adding an antideficiency scheme for residential property patterned on the Pennsylvania procedure outlined on page 2 of Exhibit 16.

A major impediment to competitive bidding at execution sales is the requirement that bidders other than the judgment creditor must pay in cash or its equivalent. Mr. Javor suggests that buyers be permitted to post 10 percent of the amount bid and complete the payment within 20 days or forfeit the deposit. (See Exhibit 10, p. 6.) Dean William D. Warren, formerly a consultant to the Commission, suggested in a 1974 memorandum concerning foreclosure of real property security interests that the levying officer be allowed to accept an amount such as 10 or 20 percent of the bid in cash with the understanding that the remainder be paid within one month or the deposit would be forfeited. In 1975, Section 3693.1 was added to the Revenue and Taxation Code to permit credit bids at sales of tax-deeded property to private parties. Under Section 3693.1, a credit bid may be made if the high bid is in excess of \$5,000, in which case \$5,000 or 10 percent of the amount bid, whichever is greater, must be deposited in cash and the balance paid in cash within 60 days after the auction. Failure to complete payment results in forfeiture of the deposit. The staff recommends adoption of a similar provision applicable to execution and foreclosure sales but would shorten the period for completion of the purchase to 30 days:

§ 703.680. Manner of payment

703.680. (a) Except as provided in ~~subdivision~~ 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 within 30 days from the date of the sale in cash or by certified check or cashier's check. If the high 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 there-after shall be returned to the bidder.

Postponement of Sale

Mr. Javor suggests that sales should be postponed only upon a showing of good cause to prevent the exclusion or discouragement of outsiders who attend the sale as scheduled. (See Exhibit 10, pp. 2, 6.) The staff does not believe any change is needed since Section 703.670 in the draft statute requires concurrence of the judgment debtor and the judgment creditor to obtain a postponement.

Setting Sale Aside

Mr. Leifer and Mr. Javor suggest that rules for setting sales aside should be established that provide more protection than the doctrine of equitable redemption, which requires some showing of unfairness, fraud, or undue advantage in addition to inadequate price. (See Exhibit 9, p. 5, Exhibit 10, pp. 3, 6.) The staff agrees that this is not a very effective remedy, but we also believe that enforcement proceedings should come to an end some time and not be subject to being overturned for minor procedural irregularities or for somewhat deficient sale prices. Of course, the statute could provide the court with authority to overturn a sale where the price paid was grossly insufficient without the necessity of showing unfairness, fraud, or undue advantage. And, as suggested above, the debtor could be afforded the opportunity to petition for an appraisal after the sale and a court order annulling the sale if the price was not two-thirds, or three-fourths, or 90 percent of the appraised value. Some protection would also be afforded by an antideficiency feature like that available under Pennsylvania law. (See the discussion in Exhibit 16, p. 2.)

Duration of Delay of Sale

Several persons found the 90-day delay of notice of sale to be too short. (See Exhibit 9, p. 3, Exhibit 10, pp. 4-5, Exhibit 12.) While the 90-day figure is arbitrary, it is based on the three-month cure period between notice of default and notice of sale under a deed of trust or a mortgage with a power of sale. Does the Commission wish to extend the recommended period?

Relation to Antideficiency Legislation

Mr. G. Michael Grant mentions that a question was raised by members of his firm concerning the effect of the recommended legislation upon

the availability of deficiency judgments and correctly concludes that the availability of such judgments is not intended to be affected. (See Exhibit 11.) Professor Edward Rabin, however, suggests that elimination of statutory redemption might encourage resort to judicial foreclosure after which the creditor may in certain cases obtain a deficiency judgment, whereas under existing law creditors may opt for the more expeditious remedy of sale under a power of sale and forego judicial sales which are subject to redemption. (See Exhibit 8.) It is impossible to know whether the burden on the courts of having to hear more foreclosure actions would materialize in any significant degree. Perhaps these related areas of the law need to be studied. In this connection, consider the following remarks of Dean William D. Warren from the 1974 memorandum mentioned above:

Perhaps the most difficult aspect of revising California redemption law lies in the relationship of the debtor's right to redeem to his liability for deficiency judgments. Under present law if the secured creditor proceeds by power of sale foreclosure there is no right to redeem and, under CCP Section 580(d) no right to a deficiency judgment. If the secured creditor proceeds by judicial action there is a right of redemption and the debtor may, generally speaking, be subject to a deficiency judgment so long as it is not a purchase money transaction. Hence, if all rights of redemption were abolished in foreclosure proceedings, the contention might be made that there would be no rational basis for distinguishing between power of sale foreclosure and judicial action foreclosure with respect to deficiency judgments. Surely the trustee is able to get as good a price for property as the sheriff. This might lead to the conclusion that deficiency judgments should be allowed in all non-purchase money secured transactions whatever the method of foreclosure. The proposed Uniform Land Transactions Act makes deficiency liability depend solely on whether the transaction is purchase money or not -- the method of foreclosure is irrelevant, as is the question of redemption.

Frankly, it is my judgment that opening up the application of the anti-deficiency judgment legislation in this state -- though clarification and even reorientation are both needed in the anti-deficiency judgment area -- is a legislative "can of worms" that should only be attempted after a full assessment of the positions of the powerful interests involved -- debtor (labor unions) as well as creditor (banks, saving and loan associations) interests. In short, I would not recommend at this time legislation disturbing in any substantial way the present balance in California that allows the secured creditor a quick and relatively inexpensive method of foreclosure (power of sale) at the cost of giving up deficiency judgment claims (which in residential cases are usually not worth much) and that allows the secured creditor a deficiency judgment

only if he goes through the more burdensome judicial action foreclosure. An economist might argue that it should be the other way around; that is, that we should encourage creditors to use the cheapest method of foreclosure and reward them if they do so, while discouraging them from using the more expensive and burdensome method of foreclosure by action by denying them a deficiency judgment. But the AFL-CIO is unlikely to see it that way.

My personal conviction is that it would be desirable to abolish post-sale redemption in judicial foreclosures and to safeguard the interests of debtors and junior lien holders by allowing them to "cure" the default until the time of trial and to avoid foreclosure sale by paying the selling creditor the full amount of his claim plus his costs of foreclosing at any point before he sells or contracts to sell the property on foreclosure. As appears below, I would make it easier for junior lien holders to bid at foreclosure sales. Having a title that is clean and invulnerable to redemption at the time of foreclosure sale outweighs, in my opinion, any theoretical advantage that might result from a three month to one year period of redemption. I would hope that any consultant studying this area would consider whether some method might be worked out to abolish redemption without stirring up the hornet's nest of anti-deficiency law. At present, I see no readily available method of accomplishing this. The traditional relationship in California between the right to redeem and the existence of deficiency judgment liability, together with the political realities attending any tinkering with the anti-deficiency judgment legislation, makes dealing with redemption law on any rational basis a most difficult exercise.

The Commission may want to consider these subjects at some future point, but we do not believe the enforcement of judgments project should be delayed just because the law relating to foreclosure, power of sale, and deficiency judgments merits study.

Multilingual Notices

Mr. Javor suggests that notices be required to be multilingual. (See Exhibit 10, pp. 5, 6.) The draft statute requires the Judicial Council to prescribe the form of notices. We propose to add a sentence to the Comment to this provision to the effect that certain notices should be written in other languages in the discretion of the Judicial Council. We do not want to enact detailed statutory forms in English and Spanish, such as was done in Section 690.31 (dwelling exemption). We note that A.B. 2023, a copy of which follows Mr. Javor's letter, was amended on June 28 to delete the requirement that the various notices provided therein be in English and Spanish.

Redemption from Sales to Collect Taxes and Assessments

The tentative recommendation would eliminate the right of redemption after a judicial sale of real property. It would not affect special post-sale rights of redemption arising under the Revenue and Taxation Code or the Streets and Highways Code. However, in cases where the taxing authority elects to use the remedies available to general creditors (as permitted by existing Section 722.5 and continued in draft Section 702.130), the tax debtor would not be permitted to redeem after the sale because the provisions of Title 9 would be applicable. We have added a statement to the Comment to draft Section 703.760 (attached to Memorandum 78-46) to make clear that other redemption rights are not affected.

Purpose of Statutory Redemption

Two writers criticized the statements in the preliminary text of the tentative recommendation to the effect that the primary purpose of statutory redemption is to force the purchaser to bid an amount near the property's fair value--a purpose it is generally admitted has not been achieved. (See Exhibit 9, pp. 1-2, Exhibit 10, pp. 2-3.) Mr. Leifer states that the authorities cited do not support the proposition. We have reexamined these authorities and believe that they do support the proposition. The Durfee and Doddridge article concludes after the excerpt quoted at the bottom of page 1 of Mr. Leifer's letter as follows:

But when all has been said regarding the advantages in this direction of the statutory right of redemption, it must be confessed that these purposes might have been accomplished in a simpler way by a statute requiring a generous lapse of time between the filing of the bill for foreclosure and the foreclosure sale, and between notice of sale under a power and exercise of the power, a familiar type of legislation. . . . If, then, the only purposes of the redemption statutes are those which we have examined, it could be said that the statutes are unwise legislation.

It is clear, however, that redemption statutes have another purpose and effect, that which was aimed at by appraisal and the upset price, the prevention of the hardship of a sacrifice sale.

And, at page 851, Durfee and Doddridge state:

We have seen that the principal purpose of the redemption statute, and the only purpose which it serves in a superior way, is the encouragement of adequate bidding at the sale.

We could also cite the following in the besieged footnote:

The statutory right of redemption was created, in part to give the mortgagor or other person entitled to exercise the right additional time to refinance and save his property, but mainly to put pressure on the mortgage creditor (usually the chief if not the only bidder) to bid for the property on foreclosure sale its value, at least up to the amount of the mortgage debt. [G. Osborne, Handbook on the Law of Mortgages § 8, at 17-18 (2d ed. 1970).]

The staff is open to editorial suggestions.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

EXHIBIT 1

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TELEX 67 4254

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February 14, 1978

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OUR FILE NUMBER

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Attention: John H. DeMouilly
Executive Secretary


Gentlemen:

I have reviewed your tentative recommendation relating to redemption from execution and foreclosure sales of real property. I couldn't agree more with your analysis and conclusions as far as redemption itself is concerned. However, in going through the proposed changes to the Code of Civil Procedure, I would like to make a recommendation.

The phrase in proposed Section 703.630(f) "and to persons holding interests recorded in the Office of the County Recorder" is vague. Virtually everybody who owns property has an interest recorded in the Office of the County Recorder. May I suggest that you try to unify as much as possible the procedures for a non-judicial foreclosure and those for a judicial foreclosure and include the provisions for notification set forth in Section 2924b(3) of the Civil Code which spells out the nature of an interest a person must have before he is entitled to notice of a non-judicial sale.

The comments contained in this letter are my own. They do not represent those of Gibson, Dunn & Crutcher.

Very truly yours,


Frederick N. Bailard

FNB:rr

Memorandum 78-24

Study D-49,200

E. STANLEY WEISSBURG
ATTORNEY AT LAW

EXHIBIT 2

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REPLY TO: San Clemente

February 14, 1978

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Re: Redemption from Execution and
Foreclosure Sales of Real Property

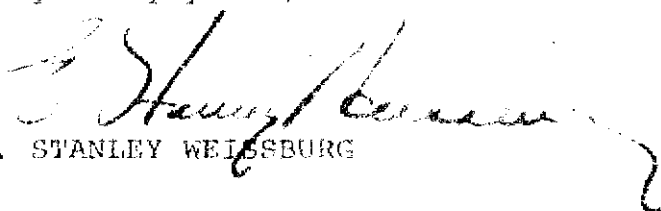
Gentlemen:

Thank you for sending me the above tentative recommendation.

I believe the proposal is an excellent one.

My only inquiry is as to the meaning of and the proof of "delivered personally to the judgment debtor". Does this require personal service? What if there are a number of judgment debtors? What if their interest may be hostile, such as in the divorce context, or if there may be a number of attorneys? What kind of proof of such notice will satisfy the title company?

Very truly yours,


E. STANLEY WEISSBURG

ESW:cmv

EXHIBIT 3

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RICHARD CHERNICK

WAS. A. GIBSON, JR. 1927
W. L. DUNN, 1951-1924
ARTHUR L. CRUTCHER, 1950-1951

REPT. A. LEWIS
MAX 1927-1931
W. 1951

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WRITER'S DIRECT DIAL NUMBER

OUR FILE NUMBER

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Re: Comments on Tentative Recommendation
Relating to Redemption From Execution
and Foreclosure Sales of Real Property

Dear John:

In principle I think the revision of the foreclosure statute is highly desirable and I am very much in favor of the proposed amendment.

With respect to the form of the wording of the amendment it seems to me that some further attention might be given to some matters. For example, if I read proposed Section 703.630(b) correctly, the inclusion of a legal description in the Notice of Sale is optional. In some instances, such as a city lot, this might work satisfactorily, but serious problems and confusion could arise in connection with a street address which actually relates to multiple lots or parcels. Whether or not all of them are included in the lien, ambiguity arises as to what the notice actually covers. This is not an uncommon situation.

Sincerely,

Regards —

Rich Wolford
Richard H. Wolford

EXHIBIT 4

REITH, WELLINGTON & BEBERMEYER

ATTORNEYS AT LAW

444 PEARL STREET

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DANIEL J. REITH
ROBERT P. WELLINGTON
ROBERT H. BEBERMEYER

AREA CODE 408
TELEPHONE 75 3181

February 22, 1978

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Re: Execution & Foreclosure Sales of Real Property

Gentlemen:

I approve of your tentative recommendation to substitute a 90-day waiting period before sale for the present one year redemption period after an execution and foreclosure sale of real property as meeting the legitimate needs of the debtor and junior lienors while enabling the judgment creditor to obtain final recovery more expeditiously in the typical sale in which the judgment creditor is also the purchaser. I do have a couple of suggestions, however.

First, I would recommend that notice of the levy be given to any person who has requested notice and all persons holding interests recorded in the office of the County Recorder 90 days before notice of sale could be given, in addition to such notice of levy to the judgment debtor as proposed in subparagraph (g) of your proposed section 763.630. Otherwise, such persons will only have the short 20-day notice of the date of sale, which would greatly limit their ability to protect their interests.

Secondly, I have some concern regarding subparagraph (h). If the only purpose of the provision is to assure that such advertising will be recoverable costs of suit, why not say so in the code section? Also, you may want to provide some restrictions on the contents of the advertising, to prevent the use of such advertising to embarrass the judgment debtor by including his name or the circumstances of the litigation and judgment against him. Considering the animosity that frequently accompanies litigation, a judgment creditor (and his or her attorney) may be inclined to advertise the victory, as much for personal as judgment satisfaction purposes.

To change the subject, in your annual report I noted that you will be undertaking a study of certain problems that have arisen in community property law with the provision for equal

California Law Revision Commission
February 22, 1978
Page 2

management and control by husband and wife. A problem that exists but has not been addressed by legal scholars to my knowledge is the question of whether a creditor should be required to sue and recover judgment against both husband and wife in order to levy on the community property for a contractual obligation incurred by one spouse during the marriage. This presents serious questions of due process to the non-contracting spouse, as he or she may have no opportunity to defend if not named as a party, and would thereby lose his or her interest in the community property. I have a case that illustrates the point. Husband and wife were engaged in dissolution proceedings, and while separated the wife incurred substantial attorney's fees and accounting fees in addition to those which the husband was ordered to pay in the dissolution proceedings. The parties thereafter more or less reconciled and dismissed the dissolution proceedings. Although there was substantial question concerning the reasonable value of the services, the attorneys and accountant obtained judgment by default against the wife and have levied upon and sold real property in both names as community property. Is this fair?

Very truly yours,



Daniel I. Reith

DIR/mk

Thomas M. Jenkins
Judge



In Chambers
Hall of Justice
Redwood City, California 94063
364-5600

February 28, 1978

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear Mr. DeMouilly:

I have received the Tentative Recommendation Relating to Redemption From Execution and Foreclosure Sales of Real Property. This is an area which I have long felt needed clarification and understanding. Both in the practice of the law and as a judge, this has been an area of confusion, to both buyers and sellers.

Thus, I would wholeheartedly support the suggested changes that have been made in your tentative recommendations.

The only place that I might have a question is on the mailing of notice to the judgment debtor at the address last known to the judgment creditor. This is, of course, in accord with the usual methods of service. Here, however, where rights are being so seriously affected, I would prefer a real attempt to make personal service and have the mailing only as a secondary alternative. Obviously, that's difficult, both to write and to carry out, but it does occur to me.

I hope this is helpful.

Sincerely,

Memorandum 78-24

Study D-39.200

EXHIBIT 6

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MICHAEL ATHERTON

A PROFESSIONAL CORPORATION

ROBIN D. FAISANT

March 3, 1978

California Law Revision
Commission
Stanford Law School
Stanford, CA 94305

Attention John H. DeMouilly
Executive Secretary

Dear Mr. DeMouilly:

I have had the opportunity to receive and review the Law Revision Commission's tentative recommendation relating to redemption from execution and foreclosure sales of real property. Having had the unusual experience of going to sale on a judicial foreclosure for a Homeowners Association lien, I strongly support the recommendation with regard to foreclosure sales.

My experience with the foreclosure for the Homeowners Association lien was that although I received telephone inquiries from prospective purchasers for the judicial foreclosure sale, when I informed them that the sale was subject to a right of redemption, they quickly lost interest. It quickly became apparent that the only prospective purchaser was my client. The recommendation which you have made will not only aid a judgment debtor on a foreclosure, but will also aid the judgment creditor, who, in many cases, as with my client, does not want to buy the property, but sees no choice if the creditor wants to collect his or its judgment.

Sincerely yours,


Constance K. Heneke

CKH:nak

EXHIBIT 7

SHEPPARD, MULLIN, RICHTER & HAMPTON

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March 22, 1978

ORANGE COUNTY OFFICE

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PLEASE REPLY TO
ORANGE COUNTY OFFICE

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California Law Revision Commission
Stanford Law School
Stanford, California 94305

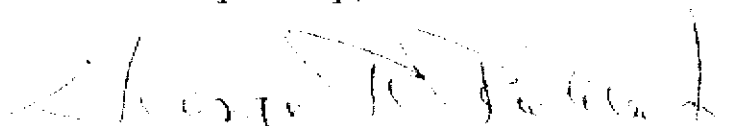
Re: Tentative Recommendation Relating
to Redemption From Execution and
Foreclosure Sales of Real Property

Gentlemen:

I have submitted the January 1978 Tentative Recommendation Relating to Redemption From Execution and Foreclosure Sales of Real Property to the members of our office who handle real property matters.

They were unanimous in thinking that the proposed recommendation was good and much preferable to the present statutory provisions for right of redemption from execution and foreclosure sales.

Yours very truly,



George R. Richter, Jr.

for SHEPPARD, MULLIN, RICHTER & HAMPTON

UNIVERSITY OF CALIFORNIA, DAVIS EXHIBIT 8

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SANTA BARBARA • SANTA CRUZ

SCHOOL OF LAW

DAVIS, CALIFORNIA 95616

March 28, 1978

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Dear Commission:

Subject: Tentative Recommendation Relating to Redemption From
Execution and Foreclosure Sales of Real Property

Although I am in agreement that the abolition of statutory redemption is probably sound, I am concerned that the Commission's study apparently did not consider the effect of the antideficiency legislation in this context. At present creditors are deterred from using judicial foreclosure to obtain deficiency judgments. This is because judicial foreclosure subjects the property to the statutory post-foreclosure redemption rights of the mortgagor. Creditors normally prefer to forego their right to a deficiency judgment and utilize nonjudicial foreclosure under power of sale.

Is it not possible that if statutory post-foreclosure redemption is abolished creditors will tend to use judicial foreclosure to obtain deficiency judgments more often than they do now? Such a development would put an extra burden on the courts, as well as place an additional burden on debtors. If the Commission's proposal to abolish post-foreclosure redemption is adopted perhaps we should consider either (a) limiting or abolishing deficiency judgments, at least with respect to residential property for personal use, or (b) permitting deficiency judgments following nonjudicial foreclosure. Either course would tend to prevent the frequent use of judicial foreclosure with the consequent additional load on the courts. Another alternative would be to rewrite the antideficiency legislation so as to protect more completely homeowners from deficiency judgments while making such judgments more available in the commercial context.

I do not pretend to have the answers to these questions, but I do believe they require additional study.

Sincerely,

A handwritten signature in cursive script, reading "Edward H. Rabin".

Edward H. Rabin
Professor of Law

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ELAINE J. HARRIS
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April 19, 1978

CALIFORNIA LAW REVISION COMMISSION
STANFORD LAW SCHOOL
Stanford, California 94305

Re: Tentative Recommendation Relating to Redemption
From Execution and Foreclosure Sales of Real
Property

Dear Friends:

Thank you for sending me the Tentative Recommendation on the above entitled subject. I do not entirely agree with either your statement regarding the purpose of redemption statutes nor do I entirely agree with your conclusions with regard to how to "improve" the situation.

A. Contrary to your assertions, the purpose of the redemption statutes is not primarily to force a purchaser at the forced sale to bid a reasonable amount for the real estate.

1. Your background section lists a number of articles for the proposition that:

"The primary purpose of statutes permitting redemption from judicial sales of real property is to force the purchaser at the sale...to bid an amount near the property's fair value."
pages 4-5 of your comments.

Reading the articles cited, however, [Durfee & Doddridge, Redemption from Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825 839-41 (1925); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964)] the articles do not support this contention. In fact, the intent to force higher bids is merely additional to the other mentioned purposes.

"At first glance, its [the statute's] purpose and effect might seem to be merely to give the mortgagor more time and another chance. It may be conceded at once that this is one of the purposes and effects of the state (sic) and it is not insignificant. One of its important aspects is that it gives time for refinancing." Durfee and Doddridge, supra, at page 839 (emphasis added).

Durfee and Doddridge go on to state that there is another purpose and effect to encourage bidders to bid higher. Clearly the authors do not state that the primary purpose of the redemption statutes is merely to get better money at the sale.

The comment by Darryl A. Hart, cited above in the California Law Review also does not say that the primary purpose of the statute is merely to get a better sale price.

In his comment, Hart states, at page 848, as follows:

"Such purposes [of the redemption statute] include protecting persons who purchase the property subject to the mortgage, allowing time for the mortgagor to refinance and save his property, permitting additional use of the property by a hard-pressed mortgagor, and probably most important, encouraging those who do bid at the sale to bid in at a fair price." (emphasis added)

The quote then cites to the Durfee and Doddridge article and the case of Christensen v. Forst 153 Cal. App. 2d 465; 314 P 2d 746 (1957).

In Christensen, the court states as follows:

"The purpose of the statute permitting a redemption of the property within a limited time is to protect the debtor and enable him to save his property by paying the amount for which the property was sold, with interest and expense." 153 CA 2d at 471

Further, in the case of Moore v. Hall 250 Cal App 2529 58 CR 70, 73 (cited by the Commission to support the contention that the primary purpose of the statute is to get higher bids) that case refers to a prior case Salsberry v. Ritter, 48 Cal. 2d 1; 306 P 2d 897 (1957). In Salsberry the court states in 48 Cal 2d at Page 11:

"It thus appears that one of primary purposes [not the purpose] of statutory redemption is to force the purchaser at the execution sale to bid the property in at a price approximating its fair value." (Cites to 23 Mich Law Review and Durfee and Doddridge article [emphasis added]).

Clearly the historical analysis of redemption statutes and the cases that rely on the reviews, state that insuring high bids is only one of many reasons for the statutes. The court in Moore v. Hill as well as the commission misread Salsberry and the law review articles.

Since the commission is so interested in the need to bring better prices to forced sales, why not require that the property be appraised by an independent agent and require that the premises be sold for at least 90% of its appraised value such as required for probate sales? (See California Probate Code Sections 784, 785) It would seem that the commission should investigate ways of encouraging people to make use of the statute.

B. The proposed "new-improved" 90 day grace period and sale procedure is illusory and will not produce any better prices.

In an informative note by Ellen Barrie Corenswet, I Can Get It For You Wholesale; The Lingering Problem Of Automobile Deficiency Judgments, 27 Stan L. R. 1081 (1975) the author substantiates the fact that the choice of the resale market the seller is using to sell the vehicle will affect the sale price. That is, repossessed vehicles sold to other commercial dealers will not bring in as high a sale as a sale to individual consumers. The article exposes the abuses of auto deficiency sales and encourages open sales and penalties for non-commercially reasonable sales.

Ms. Corenswet's criticism of the court's treatment of deficiency sales applies to the commissions tentative recommendation. The recommendation tends to emphasize the notice requirements of the sale but fails to scrutinize the resale methods which consistently result in low proceeds. I suggest that the commission conduct a study similar to that conducted by Ms. Corenswet.

This idea of choice of resale market clearly does apply to real property. In an article entitled "Beneficiary's Underbid --A Neglected Tool", by Benjamin S. Crocker, the author, an experienced attorney in this field, confirms that in nonjudicial foreclosures there really is no competitive bidding that the bids are generally low, that the beneficiary can offset the debt outstanding and that the sales are final (emphasis added). Therefore, the author advises the readers and creditors to bid below the amount owing in the hopes of getting at other secured collateral that may exist. Evidently there is no difference between the selling a car and real estate, the choice of market place will affect the sale price.

C. The tentative recommendation is really nothing innovative. The sale of the premises is not subject to competitive bidding. No where does the public get real notice of the sale.

The giving of twenty days' notice of sale clearly won't give any one a chance to know about the property. First of all, in order to properly sell the house, the owner should have more time to approach realtors to get the house listed in the multiple listing. Second, by limiting the grace period to 90 days you ignore the realities of escrow periods, negotiations, searching for financing and bad months for selling, etc.

Clearly if a party is having their house executed on, getting an institutional loan or any loan within 90 days is remote if not impossible. Additionally, a buyer, knowing that the seller has to sell in 90 days or less will use this to bargain. The buyer is less likely to put the seller in a box if the grace period is one year.

One of the limiting factors to higher bids at these sales is the limited notices which are required. At present, notice requirements do not encourage many prospective purchasers to participate in bidding for the property. Realtors, the creditors and/or mortgage and speculators, will certainly be watching the usual places for notices but the general public will not. The people who do attend these "noticed" sales will be bidding with the intent to resell at a profit.

The Commission failed to recognize this problem and the tentative recommendation as it stands cannot improve the sale price much nor has the commission given any support or hope for such improvement.

The tentative recommendation envisions a resale procedure identical to that of a nonjudicial foreclosure (Civil Code 2924, et seq). Yet that procedure has already been shown not to encourage market prices at foreclosure sales.

It is recommended that the procedure for all forced sales, including non judicial forced sales, be changed to require an improved sale procedure so that the general public is made aware of and can bid at forced sales.

Encouraging more bidding at these sales may increase the sale price. By encouraging consumers who intend to live in the premises to come in to bid also may assure market value. As long as the time needed to sell the place is short (i.e. twenty days from notice to sale) a reasonable sale is illusory.

It almost seems absurd to think that any reasonable sale can take place after only twenty days of advertising. Each commissioner who owns a house should consider how fair a price they could get for their house if they only had twenty days to sell.

D. If one of the purposes of the statute is to encourage higher sale prices of the premises, then to this purpose another should be added and that purpose is to guarantee to the debtor that the debtor will receive the full equity in the premises after the debts are paid off.

Notwithstanding the fact that the debtor has failed to maintain some obligation, the debtor should not be further punished by depriving the debtor of any equity remaining after the sale.

E. Setting Sales Aside

It is acknowledged that setting aside sales after nonjudicial forced sales is almost impossible Smith v. Allen (1968) 68 Cal. 2d 93 96 65 Cal. Rptr. 153, 436 P 2d 65. Therefore the Commission should include in its proposed recommendation more established rules protecting the debtor's right with regard to what facts will allow for setting aside the sale and what minimum sale prices are required to avoid invalidation of the sale.

In addition, the proposed tentative proposal should include some due process rights for the debtor including a right to request a hearing at any time, contesting the sale, the underlying debt (as long as not barred by the Statute of Limitations) or the sale price.

It has been argued in a previous case, that the 90 day grace period as applied in nonjudicial foreclosures is jurisdictional and no action may be brought after that time to enjoin the sale. I strongly disagree and would hope that this point is clarified in your draft. If, in fact, the commission accepts the proposition that the statute was created to encourage protection of homes and to back up the policy against forfeiture (See Civil Code §§3275, 3369) the commission should add specific rights encouraging redemption. These additions include allowing the debtor to notice a motion for installment payments for past amounts due, stays of execution of the judgment and tax incentives for redeeming.

CONCLUSION:

The commission may wish to reconsider its mission in light of the conflict regarding the real purposes for redemption statutes. Further the commission should add to the proposed draft to clearly outline requirements to insure higher bids.

The commission has the opportunity to resolve legal disputes as to what rights a debtor has with regard to contesting low sales of their premises and converting judgments to installment judgments.

I do believe that where debtors are about to lose their house, 90 days grace period is just not enough. Your proposals do not really give that much protection against loss and yet fail to guarantee the best forced sale price for their home.

Yours truly,



WILLIAM H. LEIFER

WHL:am

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT



April 24, 1978

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, CA, 94305

RE: Comments regarding Tentative Recommendation
Relating to Redemption From Execution and
Foreclosure Sales of Real Property, #39.220

Dear Mr. DeMouilly:

I have carefully reviewed the aforementioned Recommendation, many of its sources and citations, and similar statutory schemes, and as a result of that research and several years of representing clients with redemption problems, believe that the proposed solution would work greater hardships on debtors and be of only minimal benefit to creditors. The clearest beneficiary would be the speculative purchaser of foreclosed properties.

Following are comments on the existing statutes, your proposed statutes, and my suggested alternatives. I strongly urge you to consider those before making any recommendation to the Legislature.

Existing Statutory Pattern

As noted by the Recommendation, there is no doubt that there are serious problems with the operation of the present execution, foreclosure, and redemption statutes: most sales are grossly below market value, and there are few redemptions. The Commission argues that the low sales prices are due to the threat of redemption; the Commission noticeably fails to explain the low redemption rate. Both problems should be thoroughly analyzed and confronted before any recommendations are made to ameliorate this situation.

a. Low sales prices: The low sales prices cannot be blamed on the threat of redemption. Given the phenomenal increase in the cost of houses in recent years, one would expect the sales prices to similarly increase--yet, they have generally remained at the level of the debt due. In addition, since so few homeowners redeem, it would be expected that the fear of redemption would be minor and this would drive up prices--yet it has not. Finally, the sum paid at an execution sale appears to be an excellent investment--at worst, the buyer receives back his/her funds, including interest and expenses; at best, he/she has a windfall profit many times greater than the investment.

Mr. John H. DeMouilly
April 24, 1978
Page 2

If the threat of redemption does not depress prices, what does? It appears that a more valid focus of blame (and corrective attention) are the technical rules of sale (including permission for postponements), the few speculators who are involved (due to poor and unintelligible publicity), the limited time prior to sales for publicity, the poor notice which prevents debtors/homeowners from soliciting buyers, and the cash-in-hand requirements (thus forcing lower prices). It has also been alleged that certain speculators work together and make prior agreements as to prices; outsiders are eliminated from sales due to postponements and other schemes.

b. Brief notice prior to sale: Already noted is the problem of brief notice prior to sale, which detrimentally affects both speculative purchasers as well as homeowner-solicited buyers. Not only is the notice period too brief to attract any purchasers other than those speculators who specifically watch for execution and foreclosure sales, but it is stated (in both letters and public notices) in such a way as to confuse anyone other than trained speculators; in particular, the lack of a common street address requires time by anyone to discover the true nature of the real property being sold.

c. Low rate of redemption: The low rate of redemption by homeowners is a critical matter which has not been explored by the Commission. If the sales prices were reasonable, a low rate of redemption would be expected and would be appropriate. But, particularly since the sale prices are so low, a very high rate of redemption should exist. This low rate can be attributed to several factors: improper and/or incomprehensible notice of sales and redemptions; inability to raise sufficient funds in the 180 to 365 days permitted to redeem; and purchaser tactics such as waiting for the redemption period to end prior to moving to evict "homeowners," thus cutting-off any defense.

Notwithstanding the Commission's reliance on Moore v. Hall (1967), 250 Cal.App.2d 25, 29, which states that the primary purpose of the right to redeem is to increase the sales price, a better definition appears in Christensen v. Forst (1957), 153 Cal.App.2d 465, 314 P.2d 746, which reviews the entire transaction and notes,

The purpose of the statutes permitting property to be sold at an execution sale, in order to make a judgment effective, is to enable the creditor to recover the amount to which he is entitled under the judgment. The purpose of the statutes permitting a redemption of the property within a

Mr. John H. DeMouilly
April 24, 1978
Page 3

limited time is to protect the debtor and enable him to save his property by paying the amount for which the property was sold, with interest and expenses (at p. 750)

As this court observes, the primary purpose of redemption is to protect the debtor by permitting him to regain his property. Other statutes and cases uniformly resolve conflicts during the redemption period in favor of the equitable owner (debtor) rather than the legal owner (purchaser): the debtor may tender payment at any time during the redemption period; the debtor may collect or have credited to the redemption amount any use or rents of the property (House v. Lala (1963) 214 Cal. App.2d 238, 29 Cal.Rptr. 450); the equitable interest of redemption is transferable and may be the subject of a lien (Salsbery v. Ritter, 48 Cal.2d 1, 306 P.2d 297); and, among others, an equitable interest of redemption is sufficient to support a partition action (Watson v. Sutro, 86 Cal. 500, 24 P. 172).

On the other hand, notwithstanding the Commission's assertions, the right to set aside a sale as a result of unfairness and/or undue advantage is much more limited than suggested; a merely grossly low price alone is clearly not grounds for equitable redemption. As noted in Smith v. Kessler (1974) 43 Cal.App. 3d 26, 117 Cal.Rptr. 470, which affirms many years of decisions, "mere inadequacy of price" is not sufficient grounds to set aside a sale. Instead, there must be manifest unfairness resulting in gross inadequacy of price and consequent injury to the owner.

Any solution to the problem of low prices and low redemption rates must more effectively protect the rights of the homeowner/debtor in this transaction. There is no question but that he/she is not adequately protected at present.

d. Prevention of low prices: The existing statute has no protection against low prices at sales, and an unwary creditor could further lose whatever protection he foresaw in a lien against real property; this, of course, is also true as it affects homeowners. As the Commission notes, there are numerous safeguards on sales in this state as well as others, any of which would be preferable to the lack of safeguards now present. Such safeguards would also act to drive up prices to more reasonable levels.

In short, the existing statutory pattern offers great benefit to those willing and able to gamble at execution/foreclosure sales, but does little to protect the actual creditors and homeowners. A more equitable balance must be struck in any legislation intended to correct the present deficiencies.

Commission's Recommended
Statutory Pattern

The proposed "reform" of the forced sale and redemption procedures by the Commission can be expected to achieve little besides a small, incremental increase in sales prices and relatively fixed title. It will clearly increase litigation with respect to the adequacy of sales price. It will also deprive homeowners of any reasonable opportunity to protect or regain their homes. It does almost nothing to ensure a fairer sale or higher sale price.

a. Improvement of sale prices. The provision of a longer period before sale and the exclusion of redemption rights may have some effect on the sales price, but this will be minimal. There is no assurance that any more than the same speculators will be buying: even at present, the homeowner/debtor has several weeks to furnish buyers, and increasing this to 90 days will have little added effect. Similarly, added advertising, without better public contact, will attract no more prospective purchasers than presently attracted.

Even the lack of redemption will not assure title, but, in fact, where there has been a low sales price, will probably increase litigation over its validity and, equitably, the courts will probably grant more additional equitable redemptions due to the lack of homeowner protection. Therefore, the exclusion of redemption will not cause a significant increase in sales prices.

In addition, there is still no protection against very low sales prices. As noted by the Recommendation, many such protective measures exist, here and in other states, and their cost is relatively minimal. As far as adding a cost to the debtor/consumer, if the sale is proper, the appearance or hearing will be pro forma and inexpensive; if the sale is not proper, it is an appropriate time, before title vests, to ensure its permanence.

Finally, there are no steps taken to affirmatively encourage higher prices, such as those listed below. In those situations where a minimal number of bidders appear (particularly where they often speculate together), not only are they still free to bid the cost of the underlying debt, but outsiders, without special expertise or funding, cannot enter into the bidding (or will be excluded by postponements) and therefore cannot affect the sales price.

b. Protection of the homeowner/debtor: There is nothing done to assist or protect the homeowner/debtor. As already noted, it is doubtful that a significant difference in price will be obtained at the sale. In addition, since the debtor already cannot obtain a buyer or financing in the period before the sale or the 365 days of redemption after the sale, it is incom-

Mr. John H. DeMouilly
April 24, 1978
Page 5

prehensible how one can assume that he/she can do so within the 90 days prior to sale (a time when the debtor is probably in the worst condition of the entire period).

In addition, there is no action taken to improve the notice to the debtor as to the sale--even the use of the street address is made, essentially, optional. There is little assurance that the debtor will be able to receive, understand, or be able to react to notice. There is no protection for real property residents who may be purchasing property pursuant to a land sale contract. There is no recommendation as to either appropriate sales prices or new guidelines to courts to protect consumers against unreasonably low sales prices.

In short, the consumer/debtor/homeowner is completely ignored by the new process. At a time when the Legislature and courts have increased their awareness of and protection of consumers and debtors--adding homestead protection as an exemption, increasing homestead amounts, considering increasing sale and redemption notices under the Improvement Act of 1911 (see attached copy of bill), etc.--the Commission proposes to take a great step backwards in this process. There are means to achieve the ends of this legislation--and assist both creditors as well as homeowner/debtors--and any recommendations should be held until both can be done. It is clear that the Commission has primarily looked only to the creditor and purchaser in its recommendations and review, and some modicum of research should be completed with respect to the potential redemptioner as well before any recommendations are made to the Legislature.

Proposed Suggestions For Forced Sales and Redemptions

As I have attempted to stress, fairness to both creditors and debtors (and speculators in real estate as well) will require a complete overhaul of the sale and redemption system. The goal of a creditor receiving his/her judgment or money owed requires either a fair sales price or an achievable right to redeem. By concentrating on clearing title to property, neither goal is achieved; by seeking to balance the rights and responsibilities of all the parties, both can be achieved. The following, in non-statutory language, and for purposes of discussion, are my recommendations for actual reform of the process.

The sale: There should be a 90-day notice of levy to the debtor/homeowner, served by a marshall (and, in the case of a home, served on the resident as well to protect land sale contract purchasers). This notice should be in clear and understandable language, be multi-lingual, and should explain

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the underlying transaction causing the levy (i.e., a copy of the judgment papers or summary of a mortgage). The notice must cite the street address of the property if such exists.

There should be a Notice of Sale, no less than 20 days prior to the sale, again in clear language, multi-lingual, and with a street address. Attached to it should be a copy of the Notice of Levy and all papers attached to it. It should be: (a) posted in a public place in the property's jurisdiction; (b) posted in a conspicuous place on the property; (c) published once a week for four weeks in the classified section of at least two newspapers of general circulation, at least one of which has the largest circulation of the county; (d) personally served and mailed by certified mail by the marshall to the record owner and resident; and (e) mailed to the debtor's/homeowner's attorney of record if any exists.

The sale itself should be in a public place in the area of the property being sold. Buyers need only post 10% of the bid sales price, with 20 days to complete any necessary financing; if the transaction is not completed in 20 days, the deposit is forfeited and used to advertise for and conduct another sale. There can be no postponements of the sales without good cause, and higher bids may be made during the next three business days after the sale (with the highest bidder at the auction having the last opportunity to purchase).

Where the final sales price is in excess of 90% of the appraised value of the property, the sale would be final and there would be no right to redeem. Where the price were under 90% of the appraised value, a 12-month period to redeem would begin running after notice as set forth below.

The Right to Redeem

Within ten days of a sale which resulted in a price of less than 90% of the appraised value, an understandable, multi-lingual notice would be sent certified and personally served on the debtor/homeowner, informing him/her of the sale, including the date, sales price, and process of redemption including the final date and cost of redemption.

Within 30 days of the final day to redeem, a similar notice would be mailed by certified mail to the debtor/homeowner, with a copy of the former notice and notice of sale. At this time, the final cost of redemption would be provided and the place(s) of redemption would be specified, including the marshall of the jurisdiction in which the debtor lives.

If no redemption is completed by the debtor or an assignee of the debtor by the last day, the purchaser could immediately apply for processing of title. A sale can be set aside for an additional six months if a court finds that the procedure has been violated.

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These suggestions will ensure the goals of both the creditor and debtor, with minimal additional cost. Where property sells at a reasonable price (90% of appraised value), the sale is final (thus, the only additional costs are the improved notice to the debtor and the cost of appraisal). Where a new sale is necessary after a buyer backs out, the deposit will cover that cost. Where the cost is low (below 90%), a redemption period will ensue, with improved notice. Given the process, it will almost be impossible to result in the manifest unfairness noted by the courts; with the improved redemption period, the creditor still obtains its money, and the homeowner has a fair chance to save his/her home.

Similarly, the sale procedures ensure a higher price by affirmative enactments. If the threat of redemption is of any consequence, the price will be sufficiently high. And sufficient time will be given to ensure either better notice and solicitation of bidders and/or opportunities for refinancing or repayment of the debt.

These suggestions require a thorough overhaul of the sale and redemption statutes, but they will also result in the achievement of the goals sought by the Commission. I am enclosing, as attachments, newspaper articles detailing the circumstances of two clients I represented, both of whom were able to pay the debt at the time of sale and could have paid the debt during the redemption period, but, notwithstanding grossly low sales prices, did not do so because of faulty redemption notice and sales notice procedures. I am also enclosing a copy of AB 2023 to demonstrate what could be appropriate notice; the bill has passed the Assembly and the Senate policy committee, and appears to be on its way to enactment.

Finally, I would point out that litigation is still in process in a number of execution situations which might be relevant. In particular, there is litigation regarding the right to a hearing prior to sale (or the end of the redemption period) where a public agency is the recipient of the sale proceeds or has some other vested interest. See, for example, Dupuy v. Superior Court (1975) 15 Cal.3d 410, 124 Cal.Rptr. 900, and T. M. Cobb Company v. County of Los Angeles (1976) 16 Cal.3d 606, 128 Cal.Rptr. 655.

If I can be of any further assistance in this matter, please feel free to call on me. In the interim, I would appreciate being kept informed of any further action or studies being undertaken in this matter.

Very truly yours,


RONALD S. JAVOR
Legal Counsel

Enc: (3)

ASSEMBLY BILL

No. 2023

Introduced by Assemblywoman Maxine Waters

August 1, 1977

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT

An act to amend Sections 6443, 6501, 6550, 6570, and 6571 of, to add Sections 6505 and 6530.5 of, and to repeal Section 6506 of, the Streets and Highways Code, relating to the Improvement Act of 1911, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2023, as introduced, Maxine Waters (L.Gov.). Improvement Act of 1911: Bonds.

(1) Under the Improvement Act of 1911, the treasurer is required to send a card, not later than April 1st and October 1st, to the owner of property for which assessments are delinquent stating the amount due and the date when payment is due from him on the assessment and stating that the payment is subject to penalty if not paid on or prior to the due date.

The bill would require the card to include, in English and Spanish in 14 point boldface type, stating that the property will be sold if the assessments are not paid and that the assessments are not related to property tax.

(2) Under the act, the treasurer is required to send a notice of sale to any owner of property to be sold for nonpayment of assessment.

The bill would require that the notice include, in English and Spanish in 14-point boldface type, a warning that the property will soon be sold unless payment is made. The tele-

phone number of the foreclosure clerk at the treasurer's office would be included in the notice.

(3) Under the act, the day specified in the notice of sale may not be less than 30 days from the date of the first publication of the notice. At least 15 days prior to the sale, the treasurer is required to send a copy of the notice to the bondholder and to the property owner as shown on the last equalized roll and the person to be shown as the owner on the next roll.

The bill would revise the above periods to 45 days and 30 days respectively.

The treasurer would be required to send, with the copy of the notice of sale, to the property owner and such person another notice in English and Spanish in 14-point boldface type, stating that the treasurer has arranged to sell the property at a specified date unless the delinquency debt is paid by that date. The telephone number of the foreclosure clerk would be included in the second notice.

(4) Under the act, the owner of any property sold for non-payment of assessment may redeem the property within 12 months from the date of sale or before application by the purchaser for a deed.

The bill would require the treasurer, within 10 days of the issuance of a certificate of sale, to send by first class mail to the owner of the property as shown on the last equalized assessment roll and the person to be shown as the owner on the next roll a notice, in English and Spanish in 14-point boldface type, stating that the property was sold for failure to pay for street improvement, but that there is still at least 11 months to make the necessary payment to save the property. The telephone number of the foreclosure clerk would be included.

(5) Under the act, the purchaser of the property is required, at least 30 days prior to the expiration of the time of redemption or 30 days before his application for a deed, to request the treasurer to send, by certified mail, to the property owner a notice stating the intention of the purchaser to apply for a deed. The treasurer is required to mail or post the notice by such 30-day period.

The bill would increase the above period from 30 days to 60 days.

The bill would also require the notice to state, in English

and Spanish in 14-point boldface type, that the property has been sold, but may be saved by paying what is owed by a specified date. The notice would include the telephone number of the foreclosure clerk.

(6) Under the act, the purchaser, within 60 days of the purchase of property for delinquency, may send to the person to whom the property is assessed for taxation as shown on the last equalized assessment roll and to the legal owner as shown in the recorded deed a copy of the certificate of sale by registered mail. If a copy is so sent, no action may be commenced to attack the validity of the sale after 1 year of the date of sale.

The bill would require that the copy of certificate of sale be sent by first-class mail also and would bar any such action 1 year after the date of mailing the copy. The bill would require that a notice be sent also. The notice would be in English and Spanish in 14-point boldface type stating that the property has been sold for nonpayment of assessments and that the validity may be contested within 1 year of the date of the mailing of the notice.

(7) Under the act, any action contesting the validity of a deed issued for the purchase of property because of nonpayment of assessment, or the validity of the proceedings subsequent to the issuance of the certificate of sale, is required to be brought within 6 months after the issuance of the deed.

The bill would extend the above period to 12 months.

(8) The bill would provide that neither appropriation is made nor obligation created for reimbursement of any local agency for any costs incurred by it pursuant to this bill.

(9) The bill would take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6443 of the Streets and
- 2 Highways Code is amended to read:
- 3 6443. At least 15 days before each respective ~~fifteenth~~
- 4 ~~15th~~ day of April and October, until the assessment is paid
- 5 in full, the treasurer shall mail, postage prepaid, to each

1 owner of property described in the assessment, at his last
2 known address, as appears upon the tax rolls current at
3 the time of ~~mailing~~ *mailing*, a postal card notifying him
4 of the amount due and the date when payment is due
5 from him on the assessment and stating that the payment
6 is subject to penalty if not paid on or prior to the due date.
7 The failure of the treasurer to mail the ~~card~~ *card*, or the
8 failure of the property owner to receive ~~it~~ *it*, shall not
9 affect the validity of any penalty or invalidate any act or
10 proceeding. *The card shall contain the following in*
11 *English and Spanish in at least 14-point boldface type:*
12 *If you do not pay this bill, at the request of the*
13 *bondholder, your property will be sold by the treasurer.*
14 *This bill is not related in any way to your property tax*
15 *bill. It must be paid separately.*

16 SEC. 2. Section 6501 of the Streets and Highways
17 Code is amended to read:

18 6501. The treasurer shall mail a notice of sale to the
19 owner of any property to be sold for nonpayment of
20 either principal or interest upon any delinquent bond.
21 The notice shall be sent by certified mail to the owner of
22 the property as shown on the last equalized assessment
23 roll and to any person whose name appears as an owner
24 on the records of the county assessor's office which the
25 county assessor will use to prepare the next assessor's roll.
26 The notice shall be substantially in the following ~~form~~
27 *form and the first paragraph shall be printed in English*
28 *and Spanish in at least 14-point boldface type:*
29

30 **IMPORTANT NOTICE**

31
32 *Your property will soon be sold by the city (or county)*
33 *unless you pay what you owe for street improvement*
34 *made in your area. To obtain information on how to*
35 *prevent the sale of your property, immediately call the*
36 *foreclosure clerk at the city (or county) treasurer's office.*
37 *The telephone number is _____ to arrange for*
38 *payment. For more detailed information regarding this*
39 *matter, read the following:*

**"Notice of Sale of Property Delinquent for
Nonpayment of
Street Improvement Bond**

"You are hereby notified that Bond _____, Series _____, representing a lien against Parcel Number _____ (or the legal description of the property in said bond) located at _____, for an improvement in the City (or County) of _____, is delinquent. Unless the amount of the unpaid principal on said bond, together with interest, penalties, and recordation fee for filing notice of pendency, is paid to the city (or county) treasurer on or before six months after the mailing of this notice, the date of which being this _____ day of _____, 19____, or unless the bond is reinstated as provided by Section 6631, the undersigned will proceed to advertise and sell the lot or parcel of land in the manner prescribed by law to satisfy the amount of the bond, interest, penalties, and costs."

SEC. 3. Section 6505 of the Streets and Highways Code is repealed.

6505. The day named in the notice for the sale shall not be less than 60 days from the date of the first publication of the notice.

At least 15 days prior to the sale a copy of such notice shall be transmitted by the treasurer by certified mail to:

(a) The bondholder at his last known address.

(b) The property owner as shown by the last equalized roll for taxes and any persons whose name appears as owner on the records of the county assessor's office which the county will use to prepare the next assessor's roll.

SEC. 4. Section 6505 is added to the Streets and Highways Code, to read:

6505. (a) The day specified in the notice of sale shall not be less than 45 days from the date of the first publication of the notice.

(b) At least 30 days prior to the sale, a copy of the notice of sale shall be transmitted by the treasurer by certified mail to the bondholder at his last known address.

(c) At least 30 days prior to the sale, the treasurer shall

1 mail, by first-class mail, a copy of the notice of sale and the
2 following notice which shall be printed in both English
3 and Spanish in at least 14-point boldface type to the
4 property owner as shown on the last equalized roll for
5 taxes and to any other person whose name appears as
6 owner on the records of the county assessor's office which
7 the county will use to prepare the next assessor's roll.

8
9 **IMPORTANT NOTICE**

10
11 Because you have not paid the money you owe to the
12 city (or county) treasurer for street improvements made
13 in your area, the treasurer has arranged to sell your
14 property in order to pay off this debt by (day before sale)
15 or your property will be sold.

16 If you wish to stop this sale and save your property, call
17 the foreclosure clerk at the treasurer's office, telephone
18 number _____, to arrange for payment of this debt.
19 See the attached notice for further details regarding this
20 sale.

21 SEC. 5. Section 6530.5 is added to the Streets and
22 Highways Code, to read:

23 6530.5. The treasurer, within 10 days of the issuance of
24 the certificate of sale, shall mail a notice to the owner of
25 the property sold pursuant to this chapter. The notice
26 shall be sent by first-class mail to the owner of the
27 property as shown on the last equalized assessment roll
28 and to any person whose name appears as an owner on
29 the records of the county assessor's office which the
30 county assessor will use to prepare the next assessor's roll.
31 The notice shall state the following in English and
32 Spanish in at least 14-point boldface type:

33
34 **IMPORTANT NOTICE**

35
36 Your property located at _____ has been sold by the
37 city (or county) treasurer because you did not pay for
38 street improvements made in your area. You still have at
39 least 11 months to pay \$ (amount) which you owe plus
40 penalties, interests, and costs. You can still save your

1 property. Contact the foreclosure clerk at the treasurer's
2 office to find out the exact amount due. The telephone
3 number is _____. If you do not pay this debt, you will
4 lose your property and all the money you have invested
5 in it. Act now!

6 SEC. 6. Section 6550 of the Streets and Highways
7 Code is amended to read:

8 6550. In order to obtain a deed, the purchaser of the
9 property or his assignees shall, ~~30~~ **60** days prior to the
10 expiration of the time of redemption, or ~~30~~ **60** days before
11 the date of his application for a deed, request the
12 treasurer to send a written notice by certified mail,
13 postage prepaid, to the owner of the property purchased,
14 stating his intention to apply for a deed to the owner of
15 the property purchased. *In addition, the treasurer shall*
16 *have the notice described in this section served upon the*
17 *property owner by a process server pursuant to Section*
18 *415.10 of the Code of Civil Procedure and verified*
19 *pursuant to Section 2009 of that code. The term "owner"*
20 *"owner", as used herein in this section, is the name and*
21 *address of the property owner as shown on the last*
22 *equalized roll for taxes, and any person whose name*
23 *appears as owner on the records of the county assessor's*
24 *office, office which the county will use to prepare the*
25 *next assessor's roll. At the time of making such request,*
26 *the purchaser or his assignee shall pay to the treasurer the*
27 *following sums:*

28 (i) For issuance of the notice and mailing the same by
29 certified mail and for cost of preparation of the affidavit
30 required by Section 6552, the sum of three dollars (\$3).

31 (ii) For search of the last equalized assessment roll to
32 determine the name and address of the owner, as
33 ~~hereinafter~~ defined, the sum of three dollars (\$3).

34 (iii) *For service of the notice and verification thereof.*

35 (iv) For posting the notice as ~~hereinafter provided,~~
36 *required by this section, the fees provided by Sections*
37 *26725 and 26746 of the Government Code. The notice*
38 *shall state, include all of subdivisions (a) to (f), inclusive,*
39 *with subdivision (a) printed in both English and Spanish*
40 *in at least 14-point boldface type.*

IMPORTANT FINAL NOTICE

1
2
3 (a) Your property located at (address) was sold by the
4 city (or county) treasurer on (date of sale) because you
5 did not pay for street improvements made in your areas.
6 You can still save your property, but you must pay what
7 you owe by _____. Contact the foreclosure clerk at the
8 treasurer's office at telephone number _____ to
9 arrange for payment of this debt. You will receive no
10 further notices regarding this matter.
11 (b) That the property has been sold to satisfy the bond
12 lien, lien.
13 ~~(b)~~ (c) The date of sale, sale.
14 ~~(c)~~ (d) The date, number number, and series of the
15 bond, bond.
16 ~~(d)~~ (e) The amount then due, and due.
17 ~~(e)~~ (f) The time when the right of redemption will
18 expire, or when the purchaser will apply for a deed.
19 The treasurer shall immediately, upon such request
20 being made and payment of the fees ~~hereinbefore~~
21 ~~provided, required fees~~, send a copy of the notice
22 addressed to the owner of the property purchased as
23 shown on the last equalized roll for taxes, and any person
24 whose name appears as owner on the records of the
25 county assessor's office, office which the county will use
26 to prepare the next assessor's roll. Such notice shall be
27 mailed at least ~~30 60~~ days before the expiration of the time
28 for redemption, or ~~30 60~~ days before the purchaser
29 applies for a deed. The treasurer also shall post a copy of
30 such notice in a conspicuous place upon the property, if
31 a survey is not required to identify and locate the
32 property. Any travel fees incurred in attempting to post
33 such notice shall be charged in the same amount as is
34 provided for an actual posting in Section ~~26746~~ of the
35 Government Code. Such notice shall be posted at least ~~30~~
36 ~~60~~ days before the expiration of the time for redemption.
37 SEC. 7. Section 6570 of the Streets and Highways
38 Code is amended to read:
39 6570. Within 60 days after the sale of the property for
40 delinquency, the purchaser may send to the person to

1 whom the property is assessed for purposes of taxation as
2 shown upon the last equalized assessment roll of the
3 county in which the property lies, and to the person in
4 whose name, on the date the sale is made, the legal title
5 to the property appears by deed duly recorded in the
6 office of the county recorder of the county in which the
7 property lies, by registered *mail and first-class mail*,
8 postage prepaid, a copy of the certificate of sale.
9 *Together with the copy of the certificate of sale, a notice*
10 *shall be sent that is printed in English and Spanish in at*
11 *least 14-point boldface type in the following form:*

12
13 *YOUR PROPERTY HAS BEEN SOLD*

14
15 *Your property located at _____ has been sold by the*
16 *treasurer's office of the city (or county) for nonpayment*
17 *of street improvement assessment.*

18 *You have one year from the date this notice was mailed*
19 *to contest the validity of the sale.*

20
21 If a copy of the certificate of sale is sent as provided in
22 this section, no action, ~~suit~~ *suit*, or proceeding to set aside,
23 ~~cancel~~ *cancel*, or in any manner attack or question the
24 validity of any sale for delinquency, or any proceedings
25 prior thereto, shall be commenced or maintained by any
26 person unless the same shall be commenced within one
27 year after the date of sale, ~~and after the above notice was~~
28 *mailed. After the year has expired expired*, all persons
29 shall be barred from commencing or prosecuting any
30 such action, ~~suit~~ *suit*, or proceeding, and any and all
31 persons shall be barred from asserting or maintaining in
32 any action, ~~suit~~ *suit*, or proceeding that the sale, or any
33 proceedings prior thereto, was invalid.

34 SEC. 8. Section 6571 of the Streets and Highways
35 Code is amended to read:

36 6571. Any action, ~~suit~~ *suit*, or proceeding attacking or
37 contesting the validity of any deed issued under the
38 provisions of this division, or the validity of the
39 proceedings subsequent to the issuance of the certificate
40 of sale, ~~must~~ *shall* be brought within ~~the~~ *12* months after

1 the issuance of the deed, and if the validity of the deed
2 or of the proceedings is not contested within that ~~the~~ 12
3 months' period, it shall not be thereafter contested or
4 questioned in any action, ~~suit~~ suit, or proceeding.

5 SEC. 9. No appropriation is made by this act, nor is
6 any obligation created thereby under Section 2231 of the
7 Revenue and Taxation Code, for the reimbursement of
8 any local agency for any costs that may be incurred by it
9 in carrying on any program or performing any service
10 required to be carried on or performed by it by this act.

11 SEC. 10. This act is an urgency statute necessary for
12 the immediate preservation of the public peace, health,
13 or safety within the meaning of Article IV of the
14 Constitution and shall go into immediate effect. The facts
15 constituting such necessity are:

16 In order to reduce the possibility of loss of property by
17 owners through failure to pay assessments in time
18 through inadvertence and failure to understand the
19 notices presently sent to them, it is necessary that this act
20 take effect immediately.

O

She didn't want lights, didn't pay; home sold

Associated Press

Because she disdained streetlights and misunderstood a \$173 bill, William V. Moore is about to lose the Watts home where she has lived 23 years.

The reason: The Improvement Act of 1911, a law intended to give California cities an easy way to improve neighborhood streets.

But Legal Aid Foundation lawyers, who are challenging the act in Superior Court, say the law gives people like Mrs. Moore inadequate notice that their property is being sold out from under them.

Mrs. Moore, a 53-year-old hospital clerk, bought the duplex for \$30,000 in 1954 and paid it off in 1963, according to attorney Ron Javor. Four of her six children and two grandchildren live with her.

The city put streetlights on her street in 1971 and assessed the residents. Mrs. Moore said she saw no need for the new lights and ignored her bill. She said she was told by Councilman John Gibson that she would have 10 years to pay. Gibson's office denies this.

"Had I known I had to pay up, I would have," Mrs. Moore said Monday. "But I was informed I had 10 years to pay."

She also ignored notices her property was being foreclosed. The home was sold in 1974 for \$173.79 and then resold to

Pauline Rust for \$500. Mrs. Moore said she was unaware of either sale until Ms. Rust sent her an eviction notice in January. Ms. Rust now wants \$6,000 for the house.

The Legal Aid lawyers say 143 Los Angeles residents lost their homes in the past year because of the 1911 law.

Under the law, property owners have 30 days to pay an assessment. If they don't pay, the city treasurer's office sells the unpaid bill to anyone interested and must notify the original owner within 30 days of the sale. The original owner can buy back the property within one year by paying the new owner the sales price plus interest.

Javor, whose suit challenges both the sale of Mrs. Moore's house and the 1911 law, said an untrained legal mind would have difficulty understanding the notices that the house has been sold and can be redeemed.

Javor met Monday with city officials, who agreed the language of the notices should be clearer, he said. But he said the city treasurer blocked his requested moratorium on similar sales until new regulations can be written.

A Superior Court hearing has been scheduled June 20 on the matter.

In the meantime, Mrs. Moore has refused to move.

ESTIMATED \$15,000 EQUITY

LOS ANGELES

4/15/77

Couple Lose Home Over Unpaid \$309 Medical Bill

1721

BY WILLIAM C. REMPEL

Times Staff Writer

An unpaid \$309.50 medical bill from 1973 has cost an illiterate Wilmington couple with four children their home.

The house, with an estimated \$15,000 equity, was purchased at a marshal's debt sale for \$448.05 by a Long Beach collection agency, then sold last fall to a real estate speculator to satisfy the medical debt.

Roma and Lupe Owings now face eviction and the loss of their equity, according to a civil suit filed in their behalf, in part because they could not read the many written legal notices sent to warn them their property would be seized unless they paid the bill.

They said they did not pay the medical bill because they thought it would be paid by Medi-Cal.

The suit, filed by Legal Aid Foundation attorneys in Long Beach Superior Court, seeks to prevent the eviction and to cancel the debt sale of the house.

The suit was filed after efforts to recover the property from the new owner failed. The owner, Redondo Beach attorney Rodney Buck, rejected a \$1,200 settlement offered last month by Owings' attorney, Harley Searcy. Buck asked for \$7,500.

"I'm a speculator. I paid my money for the house and I'm going to keep it," Buck told The Times.

"I don't feel sorry for them (the Owingses). Things like this happen every day. I lost 40 houses in the 1973 recession and no one felt sorry for me," Buck said.

He added he had about \$2,000 invested in the house already because he paid a finder's fee to a client who put the house deal together for him.

The Owingses, with the help of a real estate agent acquaintance and "an aunt who filled out the papers" bought the modest two-bedroom house near the Harbor Freeway for \$18,000 five years ago this week.

The family has since made regular mortgage payments of \$214 a month—even since the title was transferred to Buck in October. Both Buck and Legal Aid Attorney Searcy agree the house has a market value today of about \$32,000.

Owings, 39, disabled the last two months with a broken arm, loads trucks on a dock. Mrs. Owings has done occasional work cleaning fish in canneries. Neither finished the ninth

grade. Owings quit school as a teenager to milk cows.

"It's unbelievable that here in Los Angeles in 1977 we can have uneducated, illiterate adults," attorney Searcy said, "but that's what we have. They can sign their names and that's it."

The Owingses' four children, age 7 to 13, also suffer from a variety of learning disabilities and attend remedial classes.

Searcy said the family's illiteracy was known to employees of the Seaview Medical Clinic in Wilmington (where the \$309.50 debt was incurred) because nurses there had to help the family fill out medical forms on a number of occasions.

That information should have been given to the collection agency and the marshal's office (which handled the debt sale), Searcy said, so that the Owingses could have been informed verbally of the medical debt and the marshal's sale. This argument is at the heart of his legal case.

"It may be a long shot," Searcy conceded, "but it looks like the only hope we have to save the house. Every procedure was properly followed. All the proper forms were filed. But in this case the system was grossly unfair."

In apparent agreement was Robert Launder, assistant manager of the medical clinic, who expressed strong regrets that the Owingses had lost their home. He said he did not know about it until contacted by The Times.

"That is pitiful," he said. "It just doesn't sound reasonable. If I had known they would lose their house over a \$300 bill, I would have wiped

'That is pitiful. If I had known, I would've wiped out the debt.'

out the debt. I've done that many times.

"The guy (Owings) got the shaft and I feel lousy about it. The collection agency never told us about a hardship," Launder said.

Farrest Hayden, vice president of the Doctors Business Bureau of Southern California, the collection agency, said the Owingses had ample opportunities to pay their bill.

"We sent many letters," he said. "I can't go out and give a literacy test every time we get an account."

Hayden, as well as Buck, questioned the Owingses' illiteracy claim. He said it is inconceivable that a man can buy a house and drive a car without being able to read.

Owings told The Times he does have problems unknown to most adults. For example, he said, he frequently gets lost driving in unfamiliar neighborhoods because he cannot read street signs.

He was able to get his driver's license, he confessed, by "sneaking out the (written) test" and going over it with a friend at work who can read.

The Owingses seek help reading notes or forms sent from school by going to neighbors. They pay all their bills with cash. Owings said he can tell his telephone bill from his gas bill because one has a bell symbol and the other a flame.

Owings shrugs at the prospect of eviction. He is not sure what the family would do.

"I guess we'd be stuck," he said. "We ain't got no money hardly. These days you need a lot of money to get a home."

Buck has given the Owingses until April 1 to move, but Searcy has asked the court to stay the eviction demand until hearing arguments in the civil suit. No date for court consideration has been set.

EXHIBIT 11

LAW OFFICES OF

BEST, BEST & KRIEGER

4200 ORANGE STREET

POST OFFICE BOX 1028

RIVERSIDE, CALIFORNIA 92502

TELEPHONE (714) 686-1450

April 27, 1978

EUGENE BEST
JAMES B. CORISON
WILLIAM R. DEWOLFE
CHARLES D. FIELD
TERRY BRIDGES
DALLAS HOLMES
CHRISTOPHER L. CARPENTER
LEE R. MOHR
RICHARD S. WOLFE
WILLIAM C. EALY
GARTH O. REID
RICHARD S. RUBEN
MICHAEL T. RIDDELL
KENNETH J. GERARD
ROBERT J. SEPE
STEPHEN C. JONES

ARTHUR L. LITTLEWORTH
OLEN E. STEPHENS
BARTON C. GAUT
PAUL T. SELZER
CHARLES O. WHITE
NELVILLE HIRSCHI
RICHARD T. ANDERSON
JOHN D. WAHLIN
MICHAEL D. HARRIS
THOMAS S. SLOVAK
JOHN E. BROWN
KENNETH H. ORING
MEREDITH A. JURY
MERRILL F. STORMS
GEORGE M. GRANT
KEITH B. BARDELLINI

RAYMOND BEST (1966-1967)
JAMES H. KRIEGER (1913-1975)

PALM SPRINGS OFFICE
800 EAST TAHQUITZ-HSCALLUM WAY
PALM SPRINGS, CALIFORNIA 92262
(714) 325-7264

SUN CITY OFFICE
26820 CHERRY HILLS BOULEVARD
POST OFFICE BOX L
SUN CITY, CALIFORNIA 92381
(714) 672-2335

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Re: Tentative Recommendation Re Redemption from
Execution and Foreclosure Sales of Real Property

Gentlemen:

This firm has reviewed with interest the above-mentioned tentative recommendation of the California Law Revision Commission. All members of the firm were favorably impressed with the substance of the recommendation and view it as a very positive step in the area of execution and foreclosure sales.

Some reservations were voiced with respect to the possible effect of this legislation on deficiency judgments. Upon detailed reading of the recommendation, it is my opinion that the enactment of a 90-day grace period for redemptions prior to judicial sale as opposed to the present 1-year redemption period subsequent to judicial sale would in no way affect the right of a judgment creditor to obtain a deficiency judgment if appropriate under Code of Civil Procedure § 726. Presuming that this availability of deficiency judgments will be unaffected by the proposed legislation, we support it wholeheartedly.

Parenthetically, the application of this proposed legislation in the area of mortgages appears to be a significant step towards the realization of Professor Hetland's

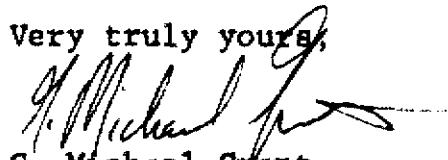
LAW OFFICES OF
BEST, BEST & KRIEGER

California Law Revision Commission
April 27, 1978
Page Two

desires for a unification of real property security devices in California. Obviously, a 3-month redemption period prior to the judicial sale, which would then be final, has the effect of making judicial sales under mortgages and the exercise of a power of sale under a deed of trust much more similar.

We hope that these comments will have been of some assistance to you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "G. Michael Grant", with a stylized flourish at the end.

G. Michael Grant
For Best, Best & Krieger

GMG:lh



EXHIBIT 12

of the AMERICAN ASSOCIATION OF RETIRED PERSONS, Inc.

5861 Hollister Avenue, Goleta, CA 93017
Phone (805) 964-8011

April 28, 1978

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Attention: John H. DeMouilly
Executive Secretary

Dear Sir:

I have been studying the recommendations of the California Law Revision Commission's relating to foreclosure and redemption of Real Property. I have drawn this matter to the attention of my committee, which of course is composed of retired citizens from many walks of life and great depth of experience (including some attorneys).

Unanimously they feel that the proposed 90 days is far too short a period of time for redemption proceedings. Despite the feeling of your commission that this procedure is not often used, I can assure you there have been many cases where people have lost property through pure accident of circumstances, ignorance of procedures and on more than one occasion the dilatory action of their attorney, who was supposedly handling the case. Three such instances were recently reported in depth in an L.A. paper.

We feel that protection should extend not just to run of the mill cases on which you admit you have few statistics but also that we must make sure that the exceptional and unusual case is afforded protection under the law.

Bearing in mind the slowness with which legal and bureaucratic procedures are conducted we feel that the term should not be less than one year.

Yours very sincerely,

Derek Wordsworth, Chairman
Legislative Committee
A.A.R.P. Chapter No. 72

DW:mk

Exhibit 13
FOONBERG & PRANDZEL

A LAW CORPORATION

JAY S. FOONBERG
ROBERT D. PRANDZEL
RICHARD HUDSON SHARE
BARRY A. SMITH
STANLEY W. W. KESSELMAN
STANLEY SILBERMAN
ALAN R. JAMPOL
THOMAS M. ROBINS, III
RANDOLPH L. HOWARD
RICHARD M. MARCUS
RICHARD A. SPAFFORD
GERALDINE MUND
STEVEN S. PINK
JOHN A. GRAHAM

May 1, 1978

NATHAN PACKLER
OF COUNSEL

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SAN FRANCISCO OFFICE
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TELEX: F&P LAW U.S.A. B.V. HL.

California Law Revision Commission
Stanford Law School
Stanford, California 94305



PLEASE REPLY TO SAN FRANCISCO OFFICE
IF THIS BOX IS CHECKED

OUR FILE # _____

Re: California Law Revision Commission's
Tentative Recommendation Relating to
Redemption from Execution and Foreclosure
Sales of Real Property

TO WHOM IT MAY CONCERN:

The tentative recommendation seems to be well-drafted, and a step in the right direction, i.e., to economize, simplify and expedite execution and foreclosure sales, without depriving the debtor of any substantial rights. As a creditor's attorney, I feel that the 90-day delay is of little or no significance, and would be readily accepted by my clients.

In line with this recommendation, it seems in order to both review and revise the homestead provisions (Civil Code §§1237 et seq.) and the residential exemption statute (Code of Civil Procedure §690.31). Both of these sections suffer from problems analogous to the redemption sections, and are equally pointless.

With respect to the homestead provisions, the sections having been adequately interpreted by the courts, the principal problem is one of application, best exemplified by the recent bankruptcy decision, In Re Goldberg (November 18, 1977, N.D.Cal.) as set out in the Bankruptcy Law Reporter, Paragraph 66727, a copy of which decision is attached hereto for your information. While the Goldberg decision is justifiable on the basis of existing authorities, a result that allows the bankrupt to pass through bankruptcy with \$13,000.00 in equity, in addition to his exemption, seems inappropriate at best.

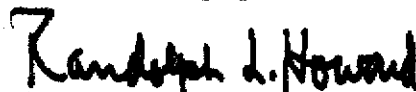
The problem with the residential exemption statute is one of ambiguity, and lack of interpretation. At best, the statute is poorly drafted.

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It would seem to be entirely appropriate, and consistent with the Commission's mandate to consider these areas as a potential topic for future study, with an aim toward a unified, concise, statutory approach, which adequately protects the debtor without providing gross inequities to the creditors.

Your attention to this suggestion will be greatly appreciated.

Respectfully yours,

A handwritten signature in dark ink, reading "Randolph L. Howard". The signature is written in a cursive style with a large initial "R".

RANDOLPH L. HOWARD

RLH:mtl
Enc.

Bankruptcy for

motion to dismiss for lack of jurisdiction is denied. See Sec. 2a at ¶4041.

—CCH—

[[66,727] IN RE GOLDBERG.

United States District Court, Northern District of California. No. 3-76-1098, November 18, 1977. [Summary of opinion of King, Bankruptcy Judge.]

Bankrupts—Exemptions of Bankrupts—Title to Property—California—Encumbered, Commonly Owned Property

Since the California statutory scheme for homesteads does not anticipate execution sale of the interest of a joint tenant spouse who is not a judgment debtor, Section 6 of the bankruptcy Act will not allow a trustee in bankruptcy to sell that spouse's interest. Thus, under Section 70c of the Bankruptcy Act, the trustee can only look to the bankrupt's one-half interest. The bankrupt had filed a voluntary petition and claimed a head of family homestead exemption from his undivided one-half interest in the realty. The trustee objected to the allowance of the exemption from the one-half interest and claimed the right to sell the property, pay the liens and then give the bankrupt and his spouse the exemption. The parties agreed that the property was worth \$100,000, the liens amounted to \$44,000 and the appropriate exemption amounted to \$20,000. Under the bankrupt's theory, his interest in the property was \$50,000 from which the \$44,000 worth of liens must be subtracted. The remainder of \$6,000 being less than the \$20,000 exemption, nothing is left for the trustee. The bankrupt's position is based upon a California case which held that the interest subject to sale must exceed in value both the statutory homestead exemption and the amount of encumbrances against the property. Rather than directly assault that holding, the trustee attempts to avoid it by viewing himself as a successor in interest to the non-exempt portion of the bankrupt's interest in the property. Thus, the trustee's arithmetic calls for subtracting from the \$100,000 value of the property the \$44,000 in liens and encumbrances and the bankrupt's \$20,000 homestead exemption. The remainder, \$36,000, is to be divided between the trustee and the bankrupt's spouse. However, the trustee's position overlooks the fact that one cannot decide what the trustee owns until it is decided what is exempt since title to exempt property does not pass to the trustee. The California statutory scheme does not

anticipate execution sale of the interest of a joint tenant spouse who is not a judgment debtor. The bankrupt is entitled to claim the homestead exemption from property held in joint tenancy with his spouse even though his right to possession is not exclusive. Thus, the trustee can only look to the bankrupt's one-half interest. See Secs. 6 at ¶4094 and 70 at ¶6079.

—CCH—

[[66,728] UNITED STATES OF AMERICA v. SAGE.

United States Court of Appeals, Ninth Circuit. No. 75-1316. December 30, 1977. Appeal from the United States District Court for the Northern District of California.

Estates—Title to Property—Mortgages—Levy and Sale—Surplus—Senior Mortgagees

A trustee in bankruptcy is entitled to the surplus remaining after a levy and sale of a bankrupt's yacht since the only other liens against that property were held by a senior mortgagee. Foreclosure affects the rights of all mortgagees junior to the foreclosing mortgagee and requires them to look to the proceeds for satisfaction, but it has no effect upon the interest of senior mortgagees. Any surplus after sale and payment to the foreclosing mortgagee and all junior mortgagees goes to the mortgagor. Since the bankrupt was the mortgagor, the surplus passes to the trustee. See Sec. 70 at ¶6079.

Bruce T. Thurston, Ritchie & Thurston, Seattle, Washington, for Appellants.

John Maddex, pro per, Oakland, California, for Appellee.

Before: HUSTENBERGER, SHEED and KENNEDY, Circuit Judges.

[Opinion in Full Text]

PER CURIAM: This is an action in interpleader brought by the United States to determine the rights of John Maddex and of S. M. Sage, trustee in bankruptcy for Guy O. Foss. Each claims the surplus proceeds of about \$7,500 from the tax sale of Foss's yacht "Princess Mary," sold by the Internal Revenue Service to Maddex for \$27,500, pursuant to 26 U.S.C. § 6335.

The government's tax lien was junior to a mortgage held by Marc Venable. Maddex paid \$15,000 to Venable to discharge the senior mortgage, and \$27,500 to the government, out of which the IRS satisfied

EXHIBIT 14

CIVIL CODE

§ 2924b. Notices of default and of sale; mailing upon request for copies and to certain interested persons

(1) Request; recording; contents; form; recorder's duties

(1) Any person desiring a copy of any notice of default and of any notice of sale under any deed of trust or mortgage with power of sale upon real property, as to which deed of trust or mortgage the power of sale cannot be exercised until such notices are given for the time and in the manner provided in Section 2924 may, at any time subsequent to recordation of such deed of trust or mortgage and prior to recordation of notice of default thereunder, cause to be filed for record in the office of the recorder of any county in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any such notice of default and of sale. This request shall be signed and acknowledged by the person making the request, specifying the name and address of the person to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation thereof and the book and page where the same is recorded or the recorder's number and shall be in substantially the following form:

"In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any notice of default and a copy of any notice of sale under the deed of trust (or mortgage) recorded _____, 19____, in Book _____ page _____ records of _____ County, (or filed for record with recorder's serial number _____ County) California, executed by _____ as trustor (or mortgagor) in which _____ is named as beneficiary (or mortgagee) and _____ as trustee be mailed to

at _____
Name _____ Address _____ Signature _____"

Upon the filing for record of such request, the recorder shall index in the general index of grantors the names of the trustors (or mortgagor) recited therein and the names of persons requesting copies.

(2) Mailing notices to persons who request copy

(2) The mortgagee, trustee, or other person authorized to record the notices of default shall do each of the following:

(a) Within 10 days following recordation of such notice of default, deposit or cause to be deposited in the United States mail an envelope, registered or certified with postage prepaid, containing a copy of such notice with the recording data shown thereon, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in such request.

(b) At least 20 days before the date of sale, deposit or cause to be deposited in the United States mail an envelope, registered or certified with postage prepaid, containing a copy of the notice of the time and place of sale, addressed to each person whose name and address are set forth in a duly recorded request therefor, directed to the address designated in such request.

(3) Mailing notice of default to certain persons

(3) The mortgagee, trustee, or other person authorized to record the notice of default shall do each of the following:

(a) Within one month following recordation of such notice of default, deposit or cause to be deposited in the United States mail an envelope, registered or certified with postage prepaid, containing a copy of such notice with the recording data shown thereon, addressed to each person set forth in paragraph (b) of subdivision (3), provided that the estate or interest of any person entitled to receive notice under this subdivision is acquired by an instrument sufficient to impart constructive notice of such estate or interest in the land or portion thereof which is subject to the deed of trust or mortgage being foreclosed, and provided such instrument is recorded in the office of the county recorder so as to impart such constructive notice prior to the recording date of the notice of default and provided such instrument as so recorded sets forth a mailing address which the county recorder shall use, as instructed within the instrument, for the return of such instrument after recording, and which address shall be the address used for the purposes of mailing notices herein.

(b) The persons to whom notice shall be mailed under this subdivision are:

(A) The successor in interest, as of the recording date of the notice of * * * default, of the estate or interest or any portion thereof of the trustor or mortgagor of the deed of trust or mortgage being foreclosed.

(B) The beneficiary or mortgagee of any deed of trust or mortgage recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with such deed of trust or mortgage being foreclosed but subject to a recorded agreement or a recorded statement of subordination to such deed of trust or mortgage being foreclosed.

(C) The assignee of any interest of the beneficiary or mortgagee described in subparagraph (B) above, as of the recording date of the notice of default.

(D) The vendee of any contract of sale, or the lessee of any lease, of the estate or interest being foreclosed which is recorded subsequent to the deed of trust or mortgage being foreclosed, or recorded prior to or concurrently with such deed of trust or mortgage being foreclosed but subject to a recorded agreement or statement of subordination to such deed of trust or mortgage being foreclosed.

(E) The successor in interest to such vendee or lessee described in subparagraph (D) above, as of the recording date of the notice of default.

(F) The Controller where, as of the recording date of the notice of default, a lien for postponed property taxes has been recorded against the real property to which the notice of default applies.

(c) At least 30 days before the date of sale, deposit or cause to be deposited in the United States mail, an envelope, registered or certified with postage prepaid, containing a copy of the notice of the time and place of sale addressed to each person to whom a copy of the notice of default is to be mailed as provided in subdivisions (a) and (b).

(d) The mailing of notices in the manner set forth in subdivision (c) shall not impose upon any licensed attorney, agent, or employee of any person entitled to receive notices as herein set forth any duty to communicate such notice to such entitled person from the fact that the mailing address used by the county recorder in the address of such attorney, agent, or employee.

(4) Request in instrument; publication; service

(a) Any deed of trust or mortgage with power of sale hereafter executed upon real property may contain a request that a copy of any notice of default and a copy of any notice of sale thereunder shall be mailed to any person or party thereto at the address of such person given therein, and a copy of any notice of default and of any notice of sale shall be mailed to each such person at the same time and in the same manner required as though a separate request therefor had been filed by each of such persons as herein authorized. If any deed of trust or mortgage with power of sale executed after September 10, 1939, except a deed of trust or mortgage of any of the classes excepted from the provisions of Section 2924 does not contain a request of the trustor or mortgagor for special notice at the address of such person given therein or does contain such request but no address of such person is given therein and if no request for special notice by such trustor or mortgagor in substantially the form set forth in this section has subsequently been recorded, a copy of the notice of default shall be published once a week for at least four weeks in a newspaper of general circulation in the county in which the property is situated, such publication to commence within 10 days after the filing of the notice of default. In lieu of such publication a copy of the notice of default may be delivered personally to the trustor or mortgagor within such 10 days or at any time before publication is completed.

(5) Effect of request upon title or as notice

(a) No request for copy of any notice filed for record pursuant to this section nor any statement or allegation in any such request nor any record thereof shall affect the title to real property or be deemed notice to any person that any person requesting copies of notice has or claims any right, title or interest in, or lien or charge upon the property described in the deed or trust or mortgage referred to therein.

(Amended by Stats.1970, c. 1140, p. ---, § 1, operative July 1, 1971; Stats.1977, c. 1242, p. ---, § 2, urgency, eff. Oct. 3, 1977.)

2924f. Sale of property; notice; contents; posting and publication

As used in this section and Sections 2924g and 2924h "property" means real property or a leasehold estate therein.

Before any sale of property can be made under the power of sale contained in any deed of trust or mortgage notice of the sale thereof must be given by posting a written notice of the time and place of sale, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy thereof once a week for the same period, in some newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in some newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in some newspaper of general circulation published in the county in which the property or some part thereof is situated. A copy of such notice of sale shall also be posted in some conspicuous place on the property to be sold at least 20 days before date of sale. In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any; but if the property has no street address or other common designation, the notice shall contain the name and address of the beneficiary at whose request the sale is to be conducted and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of such notice. Directions shall be deemed reasonably sufficient to locate the property 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. If a legal description of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, * * * other common designation * * *, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address,

* * * other common designation * * *, name and address of the beneficiary or directions obtained therefrom are omitted. The term newspaper of general circulation as used herein is as defined in Article 1 (commencing with Section 8000) of Chapter 1, Division 7, Title 1 of the Government Code.
(Amended by Stats.1977, c. 109, p. ---, § 1.)

PROBATE CODE**§ 704. Private sale; confirmation; minimum price; reappraisal; appointment of new referee**

No sale of real property at private sale shall be confirmed by the court unless the sum offered is at least 50 percent of the appraised value thereof, nor unless such real property has been appraised within one year of the time of such sale, which value must be the appraised value of such real property within one year prior to the date of such sale. If it has not been so appraised, or if the court is satisfied that the appraisement is too high or too low, a new appraisement must be had. This may be done at any time before the sale or confirmation thereof. Such new appraisement may be made by the * * * referee who made the original appraisement without further order of the court or further request for the appointment of a new * * * referee. In the case of * * * death, removal or other disability to act of the original * * * referee, or if for just cause, a new * * * referee is to be appointed, proceedings for his appointment shall be had as in the case of an original appraisement of an estate.
(Amended by Stats.1937, c. 800, p. 2070, § 1; Stats.1970, c. 1282, § 15, operative July 1, 1971.)

§ 705. Private sale; confirmation hearing; increased bids; agent's commission; determination of amount of bid

Upon the hearing the court must examine into the necessity for the sale, or the advantage, benefit and interest of the estate in having the sale made, and the efforts of the executor or administrator to expose the property to the market, and must examine the return and witnesses in relation to the sale; and if it appears to the court that good reason existed for the sale, that the sale was legally made and fairly conducted, and complied with the requirements of the previous section, that the sum bid is not disproportionate to the value, and it does not appear that a sum exceeding such bid at least 10 percent on the first ten thousand dollars (\$10,000) bid and 5 percent on the amount of the bid in excess of ten thousand dollars (\$10,000), exclusive of the expenses of a new sale, may be obtained, the court shall make an order confirming the sale and directing conveyances to be executed; otherwise it shall vacate the sale and direct another to be had, of which notice must be given and the sale in all respects conducted as if no previous sale had taken place. But if a written offer in an amount at least 10 percent more on the first ten thousand dollars (\$10,000) bid and 5 percent more on the amount of the bid in excess of ten thousand dollars (\$10,000) is made to the court by a responsible person, and the offer complies with all provisions of the law, the court shall accept such higher offer, confirm the sale to such person and fix a reasonable compensation for the services to the estate of the agent, if any, producing the successful bidder, or, in its discretion, order a new sale. If more than one written offer in an amount at least 10 percent more on the first ten thousand dollars (\$10,000) bid and 5 percent more on the amount of the bid in excess of ten thousand dollars (\$10,000) is made to the court by responsible persons, and if any such increased bid complies with all the provisions of the law, the court shall accept such highest increased bid, confirm the sale to the person making such increased bid, and fix a reasonable compensation for the services to the estate of the agent, if any, producing the successful bidder or, in its discretion, order a new sale. The compensation of the agent producing the successful bidder shall not exceed one-half of the difference between the amount of the bid in the original return and the amount of the successful bid, but such limitation shall not apply to any compensation of the agent holding the contract with the executor or administrator.

For the purposes of this section the amount of a bid shall be determined by the court without regard to any commission on the amount of such bid to which an agent may be entitled by virtue of a contract with the executor or administrator. It shall be determined without regard to any condition of the bid that a certain amount thereof be paid to an agent by the executor or administrator, but notwithstanding that a bid contains such a condition, only such compensation to an agent as is proper under the preceding provisions of this section shall be allowed, and acceptance of the bid by the court binds the bidder though the compensation so allowed is less than the compensation to which the agent would be entitled had the condition been observed.

Higher offers and bids are subject to the provisions of Section 785.1.
(Amended by Stats.1971, c. 948, p. 1850, § 1; Stats.1974, c. 961, p. 2006, § 1, operative July 1, 1975.)

EXHIBIT 16

Measures Designed to Protect Against Sacrifice Sales

Court confirmation. All sales could be required to be confirmed by a court which would be able to throw out inequitable sale prices. It appears that the standard applied by courts of equity in the absence of statutory standards is that the bid must be so grossly inadequate as to shock the conscience or raise a presumption of fraud or unfairness. See *Ballentyne v. Smith*, 205 U.S. 285 (1907) (bid one-seventh of property's value). Requiring confirmation in every case would obviously be burdensome, and the lack of standards would probably result in little protection and varying results. Accordingly, in states where court confirmation is required, it is combined with an upset price, advance bid, or antideficiency feature.

Upset price. A procedure may be provided for determining in advance the minimum price for which the property may be sold or for making claims within a particular time after sale that the price paid did not meet the statutory standard. In Ohio, for example, the property must be sold for at least two-thirds of its appraised value which, according to the statute, is to be determined by three freeholders of the vicinity. Ohio Rev. Code Ann. §§ 2329.17, 2329.20 (Page 1954). The sale must be confirmed, at which time the equity of redemption is cut off. *Id.* Sections 2329.31, 2329.33. In Kansas, which also provides for statutory redemption, the sheriff is required to make a return to the court which then confirms the sale if it is in conformity with law and equity. The court may decline to confirm if the bid is "substantially inadequate" or may fix an upset price. Kan. Stat. § 60-2415(a), (b) (1976). Three other states provide for upset prices. See the table infra. California provides for upset prices at 90 percent of the appraised value in private sales by an executor or administrator. Prob. Code § 784. The drawback of any upset price statute is that it will require an appraisal. A procedure could be devised where the judgment debtor could petition the court for an appraisal which, if it showed that the property had been sold for less than two-thirds of its appraised value (or some other standard), would be grounds for ordering a resale.

Advance bids. A sale may be continued for a certain length of time so the judgment debtor may seek a buyer who will pay a specified amount over the high bid. In California, a private probate or partition sale will be continued if a bid 10 percent higher on the first \$10,000 and five percent higher on additional amounts is obtained. Code Civ. Proc. §§ 873.730, 873.740; Prob. Code § 785. North Carolina law provides for advance bids on execution sales of 10 percent of the first \$1,000 and five percent of the excess, with a minimum increase of \$25, to be made within 10 days after the sale. The increase must be deposited and an undertaking for the remainder may be required by the clerk. A resale is then ordered and, upon sale, is subject to another advance bid within 10 days. N.C. Gen. Stat. §§ 1-339.64 to 1-339.68 (repl. vol. 1969).

Antideficiency. An antideficiency feature may be applied to execution sales to prevent the judgment debtor from remaining liable where the value of the real property should have been sufficient to satisfy the judgment. In Pennsylvania, if real property is sold on execution to the judgment creditor and it is not sufficient to satisfy the judgment, the judgment creditor must petition the court within six months of sale to fix the fair market value of the property. Satisfaction of the judgment is granted to the extent of the fair market value. If the petition is not timely filed, the debtor is released from any further liability. Pa. Stat. Ann. tit. 12, §§ 2621.1-2621.10 (1967). Kansas provides, apparently at the court's discretion, for crediting the fair market value of the property on the judgment in a case where the court holds a hearing to determine value. Kan. Stat. § 60-2415(b) (1976). An antideficiency provision is not a complete protection where the value of the property exceeds the amount of the judgment.

Note. The information presented in the following table is derived from S. Riesenfeld, Creditors' Remedies and Debtors' Protection 150-151 (2d ed. 1975) and G. Osborne, Handbook on the Law of Mortgages § 307 (2d ed. 1970). In some instances, these sources do not purport to be comprehensive. Hence, for example, the list of states providing for upset prices may be incomplete and, accordingly, the last column indicating states without any protective measures may be overinclusive.

	Redemption From Foreclosure Sales	Execution Sales							
		Redemption From Execution Sales				Other Protective Measures			
		Some Type of Redemption From Execution Sales	Type of Redemption Scheme				Upset Price	Resale at Higher Bid	Antideficiency in Execution Sales
			Judgment Debtor	Judgment Debtor & Creditors in Order of Priority	Scramble (or Staggered)	Variations			
Alabama	X	X				X			
Alaska	X	X			X				
Arizona	X	X		X					
Arkansas	X	X				X			
Calif.	X	X			X				
Colorado	X	X		X					
Conn.									X
Delaware									X
Florida									X
Georgia									X
Hawaii									
Idaho	X	X			X				
Illinois	X	X				X			
Indiana	X						X		
Iowa	X	X				X			
Kansas	X	X				X	X		X
Kentucky	X	X	X						
La.									X
Maine	X								X
Maryland									X
Mass.		X	X						
Michigan	X	X			(X)				
Minnesota	X	X		X					
Miss.									X
Missouri	X								X
Montana	X	X			X				
Nebraska									X
Nevada	X	X			X				
N.Hamp.		X	X						
N.Jersey								X	

		Execution Sales									
		Redemption From Execution Sales					Other Protective Measures			No Statutory Protective Measures in Execution Sales	
		Some Type of Redemption From Execution Sales	Type of Redemption Schema				Upset Price	Resale at Higher Bid	Antideficiency in Execution Sales		
Judgment Debtor	Judgment Debtor & Creditors in Order of Priority		Scramble (or Staggered)	Variations							
N. Mexico	X	X	X				X			X	
New York								X			
No. Caro.											
No. Dakota	X	X			X		X				
Ohio											
Oklahoma							X				
Oregon	X	X			X						
Penn.									X		
R. I.										X	
So. Caro.								X			
So. Dak.	X	X			X						
Tenn.	X	X				X					
Texas										X	
Utah	X	X			X						
Vermont	X	X	X								
Virginia										X	
Wash.	X	X			X						
W. Va.										X	
Wisconsin		X			(X)						
Wyoming	X	X			(X)						
		27	27	5	3	13	6	3	2	2	17

* One-year delay of sale in foreclosure cases.

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CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL

STANFORD, CALIFORNIA 94305

(415) 497-1731



LETTER OF TRANSMITTAL

Attached to this letter is a copy of the California Law Revision Commission's Tentative Recommendation Relating to Redemption From Execution and Foreclosure Sales of Real Property. The recommendation proposes to repeal the statutory right of redemption of real property from execution and foreclosure sales and, in its place, to provide for the delay of judicial sales of real property for 90 days after levy.

The Law Revision Commission would appreciate the benefit of any comments you might have concerning the tentative recommendation. Comments should be submitted as soon as convenient, but no later than May 1, 1978. Please send comments to:

California Law Revision Commission
Stanford Law School
Stanford, CA 94305

Thank you for your attention to this matter.

Sincerely,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

REDEMPTION FROM EXECUTION AND FORECLOSURE SALES
OF REAL PROPERTY

JANUARY 1978

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you object to the tentative recommendation or that you believe that it needs to be revised. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN MAY 1, 1978.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

TENTATIVE RECOMMENDATION

relating to

REDEMPTION FROM EXECUTION AND FORECLOSURE SALES OF REAL PROPERTY

INTRODUCTION

The Law Revision Commission is currently preparing a proposed revision of the laws pertaining to the enforcement of judgments.¹ This tentative recommendation involves one aspect of the overall study--judicial sales of real property and redemption from sale. This tentative recommendation is being separately distributed for review and comment in order to determine the reaction to these proposals which represent a significant departure from existing law.

BACKGROUND

Statutory Redemption From Judicial Sales

In California, statutes providing a right of redemption from execution sales were first enacted in 1851.² This system, patterned after the Field Code proposed for New York,³ has been described as the "scramble" type of redemption.⁴ Under this system, the right to redeem is

1. The full recommendation will be primarily concerned with the general laws pertaining to enforcement of judgments contained in Title 9 (Sections 681-724e) of Part 2 of the Code of Civil Procedure. The Commission is authorized to study creditors' remedies in general, and the enforcement of judgments and the right of redemption in particular, by 1972 Cal. Stats., Res. Ch. 27, at 3227.
2. 1851 Cal. Stats., Ch. 5, §§ 229-236. Statutory redemption from execution and foreclosure sales is currently governed by Code Civ. Proc. §§ 700a-707.
3. 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).
4. 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).

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.⁵ Redemption may take place at any time within twelve months after the sale of the property.⁶ 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.⁷ Redemption by the judgment debtor or a successor in interest terminates the effect of the sale so that the judgment debtor or successor in interest is restored to his estate.⁸ However, liens which have not been paid off in the process of redemption reattach,⁹ and a judgment lien under which the property is

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5. Code Civ. Proc. § 701. Creditors entitled to redeem are termed "redemptioners" by this section.
 6. 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).
 7. 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.
 8. Code Civ. Proc. § 703; *Bateman v. Kellogg*, 59 Cal. App. 464, 474-78, 211 P. 46, 51-52 (1922).
 9. Code Civ. Proc. § 703; *Kaiser v. Mansfield*, 160 Cal. App.2d 620, 628-29, 325 P.2d 865, 870-71 (1958).

sold reattaches to the extent it has not been satisfied when the debtor redeems.¹⁰ 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.¹¹

These provisions apply as well to foreclosure sales under a mortgage or deed of trust.¹² 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.¹³ If the property is sold at 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.¹⁴ There is, however, no statutory right of redemption after a private sale under a power of sale in a mortgage or deed of trust.¹⁵

10. 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).

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

12. 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).

13. 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).

14. Code Civ. Proc. § 725a.

15. *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).

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.¹⁶ 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.¹⁷ If the debtor redeems, rents and profits paid to the purchaser are a credit on the redemption price.¹⁸ 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.¹⁹

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 always the judgment creditor or mortgagee)²⁰ to bid an amount near the

16. Code Civ. Proc. § 706; *First Nat'l Trust & Sav. Bank v. Staley*, 219 Cal. 225, 227, 25 P.2d 982, 982 (1933).
17. 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.
18. Code Civ. Proc. § 707.
19. *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).
20. 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; Note, Redemption From Judicial Sales: A Study of the Illinois Statute, 5 U. Chi. L. Rev. 625, 626 (1938). 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).

property's fair value.²¹ The theory behind permitting other lien creditors to redeem is that the property should be used to satisfy as many creditors as possible.²² If the property is valuable enough, subordinate lienholders are enabled to protect security that they would otherwise lose.²³ 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.²⁴

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;²⁵

21. See Moore v. Hall, 250 Cal. App. 25, 29, 58 Cal. Rptr. 70, 73 (1967); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 839-41 (1925); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964).
22. S. Riesenfeld, Creditors' Remedies and Debtors' Protection 149 (2d ed. 1975).
23. See Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964).
24. 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 para. 5236.02, at 52-675 (1976).
25. 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.

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.²⁶

RECOMMENDATIONS

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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26. 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); Prather, Foreclosure of the Security Interest, 1957 U. Ill. L. F. 420, 432, 452; 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). It is interesting to note that one commentator has argued that, if the redemption statute works properly, there will be no redemptions because the possibility of a redemption acts as a threat to coerce adequate bids at the sale. See Note, Redemption From Judicial Sales: A Study of the Illinois Statute, 5 U. Chi. L. Rev. 625, 627 (1938). However, for redemption to work in this model fashion, the complicated scheme would have to be understood by the parties involved, there would have to be adequate notice, and potential redeemers would have to have adequate resources so that they can make the threat of redemption meaningful.

another year or, in certain cases, three months.²⁷ The right of redemption thus makes "sacrifice" sales even more sacrificial. There are, no doubt, exceptional cases in which the purchase price is unreasonably

27. 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 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."); Madsen, Equitable Considerations of Mortgage Foreclosure and Redemption in Utah: A Need for Remedial Legislation, 1976 Utah L. Rev. 327, 353 (The "statutory right of redemption in reality tends to depress foreclosure sale prices and to create other inequities."); 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. Public participation at the sale was one of the chief benefits that was expected to follow when foreclosure by judicial sale was first originated, but it is clear that long redemption statutes have eliminated this benefit."); Prather, Foreclosure of the Security Interest, 1957 U. Ill. L. F. 420, 432 ("When [the redemption period] is added to the period required to foreclose, the period of suspense in times of economic uncertainty can become an almost intolerable burden."); Shattuck, Washington Legislation 1961--Real Property Mortgage Foreclosure--Redemption, 36 Wash. L. Rev. 239, 309, 310-11 (1961) ("Persons interested in buying land are not attracted to the sale. . . . The most they can acquire is a chance. Bidding is stifled by the risk, however remote, of redemption."); 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).

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 Commission recommends that the statutory right of redemption from judicial sale be eliminated. This recommendation 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.²⁸

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 90-day grace period should be provided between the time when notice of a levy on the property is given²⁹ and the time when notice of sale is first given.³⁰ This 90-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.³¹ 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.

28. 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).

29. The forthcoming recommendation concerning enforcement of judgments will provide for a levy in all cases of execution and foreclosure. 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). Furthermore, notice of levy will be required in every case.

30. 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 110 days after notice of levy is given to the judgment debtor.

31. Civil Code §§ 2924, 2924f.

The delay of sale provision should 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.³²

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. The proposal would benefit judgment creditors and mortgagees since they would have to wait only 90 days rather than a year before receiving satisfaction in the amount of the value of the property. Junior lienholders may protect their interests by redeeming from the superior lien before the property is sold and thus being subrogated to the benefits of the superior lien.³³ 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.³⁴

32. See Code Civ. Proc. § 700a.

33. 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.

34. 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.

In the course of preparing this recommendation, the Commission considered several other alternatives to statutory redemption--the most important being: requiring court confirmation of sale,³⁵ fixing an upset price,³⁶ allowing advance bidding,³⁷ and extending antideficiency legislation to cover execution sales.³⁸ 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

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35. 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.
 36. 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.
 37. 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.
 38. 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.

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 statute is most likely to forward the interests of both debtors and creditors.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following provisions, to be included in the forthcoming Tentative Recommendation Relating to Enforcement of Judgments:³⁹

39. Section numbers in brackets in the proposed legislation are references to sections in the forthcoming comprehensive recommendation. Where appropriate, corresponding provisions of existing law are cited. Matter in the proposed legislation unrelated to the subject under consideration in this recommendation has been omitted.

Code of Civil Procedure § [703.630] (to be added). Notice of sale

[703.630.] (a) Before property levied upon may be sold, the levying officer shall give notice of sale as provided in this section.

(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. Where an interest in real property is to be sold, the notice shall describe the real property by giving its street address or other common designation, if any. If a legal description of the real property is given, the validity of the notice is not affected by the fact that the street address or other common designation given is erroneous or omitted.

. . . .

(f) Notice of sale of an interest in real property shall be given as provided in this subdivision not less than 20 days before the date of sale. Notice of sale shall be posted (1) in 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, then in one public place in the judicial district in which the interest in the real property is to be sold and (2) in a conspicuous place on the real property. A copy of the notice shall be published once a week for the same period 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, then 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. Not less than 20 days before the date of sale, notice of the sale shall be mailed to any person who has requested notice pursuant to Section [702.270, to replace Section 692a] and to persons holding interests recorded in the office of the county recorder, and shall be delivered personally to the judgment debtor or mailed to the judgment debtor at the judgment debtor's business or residence address last known to the judgment creditor or mailed to the judgment debtor's attorney. 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.

(g) 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 until after the expiration of 90 days from the date notice of levy was mailed to the judgment debtor.

(h) In addition to the notice required by this section, the judgment creditor may advertise the sale in the classified or other advertising section of a newspaper of general circulation or other periodical publication.

Comment. Subdivisions (a) to (f) of Section [703.630] would continue the substance of portions of the first three subdivisions of existing Section 692 (to be repealed).

Subdivision (g) would have the effect of delaying the sale of interests in real property (other than leasehold estates with unexpired terms of less than two years at the time of levy) for 90 days in addition to the period provided for notice of sale.

Subdivision (h) is new. It provides for the publication of advertisements concerning the sale of the property in other periodicals. Reasonable expenses of advertising in this manner would be a recoverable cost under Section 1033.7. Subdivision (h) is permissive, not restrictive. The judgment debtor may also desire to advertise the sale.

The provisions of this section pertaining to sales of real property would also apply to sales pursuant to foreclosure judgments. Section 726.

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Code of Civil Procedure § [703.770] (to be added). Absolute sales

[703.770.] A sale of property pursuant to this article is absolute.

Comment. Section [703.770] would supersede the first sentence of subdivision (a) of existing Section 700a (to be repealed) which makes absolute only sales of personal property and of leasehold estates with unexpired terms of less than two years. Section [703.770] reflects the proposed repeal of the statutory right of redemption from execution and foreclosure sales. See existing Sections 700a-707 (to be repealed). Sales of interests in real property (except for leasehold estates of less than two years' unexpired term at the time of levy) would be delayed 90 days. See Section [703.630(g)]. This will be done in order to provide an opportunity for the judgment debtor to redeem the property from the judgment creditor's lien before sale or for the judgment debtor and judgment creditor to advertise the sale and give notice to potential buyers. See Civil Code § 2903 (equity of redemption); Code Civ. Proc. § [703.630(h)].

This provision would not eliminate the equitable right to redeem from defective execution and foreclosure sales. See *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 would not affect a right to redeem afforded by federal law. See, e.g., I.R.C. § 6337 (120-day redemption period after sale of real property to collect federal taxes).