

Memorandum 80-63

Subject: Study D-300 - Enforcement of Judgments (Execution Sale and Distribution of Proceeds)

Attached to this memorandum is a copy of the portion of the enforcement of judgments recommendation relating to execution sales and distribution of proceeds of sale and collection. This comprises Articles 6 and 7 (Sections 701.510-701.830) of Chapter 3 of Division 2. This draft implements decisions made at the September 1979 meeting and the June 1980 meeting.

§ 701.520. Collection; sale of collectable property

This section has been revised to implement the decision at the June 1980 meeting that the judgment creditor should be able to sell otherwise collectable property if the judgment debtor does not apply for an order restraining sale within 10 days after being served with a notice of intended sale. The Tentative Recommendation required the judgment creditor to apply to the court for an order permitting sale of otherwise collectable property.

§ 701.820. Schedule of proposed distribution of proceeds

The staff proposes the addition of the provision in subdivision (a) permitting the levying officer to aggregate amounts collected for 30 days before preparing a schedule of distribution and paying over to the judgment creditor. This provision is similar to a portion of Section 723.026 in the wage garnishment statute. It is intended to reduce the administrative burden that otherwise might arise where payments are received more often than once a month.

§ 701.830. Hearing on exceptions

This section has been added to implement a decision at the September 1979 meeting.

Respectfully submitted,

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Sale and Collection

Sale in General

The general assumption of existing law is that property levied upon will be sold to satisfy the money judgment.¹ This principle is continued in the proposed law subject to some modifications. The proposed law makes clear that cash or the equivalent of cash are not to be sold. Certain types of property that are especially susceptible to sacrifice sales--accounts receivable, chattel paper, general intangibles, rights to payment under judgments, and instruments that are not of a type customarily transferred in established markets or that arise out of consumer transactions--may not be sold unless the judgment creditor first serves a notice of intended sale on the judgment debtor. The property may be sold if the judgment debtor does not apply to the court for an order restraining sale within 10 days after service of the notice of intended sale. The court may determine that the property should continue to be collected or may order its sale on conditions designed to obtain a fair consideration. The court may condition an order restraining sale on an assignment of the property by the judgment debtor to the judgment creditor to the extent necessary to satisfy the judgment.²

Collection

If the judgment creditor does not seek to have collectable property sold or if the court restrains the sale upon the judgment debtor's application, amounts due on a right to payment are to be collected under the proposed law during the period of the lien of execution which lasts for one year from the date of issuance of the writ of execution unless renewed by another levy.³ This represents a significant change from existing law under which the writ of execution has active force only for a maximum 60-day period after delivery to the levying officer after

1. See Section 691.

2. See the discussion under "Order to Assign Rights to Payment" infra.

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

which it must be returned.⁴ By permitting collection over a year's time or longer, the proposed law should save enforcement costs and result in much less disruption of the relation between the debtor and the debtor's debtors.

Sale Procedure

Notice of sale. Except as noted, the proposed law would continue the substance of existing law governing the notice of sale. In order to reach potentially interested bidders at an execution sale more effectively, the proposed law would permit the judgment creditor to advertise the sale in an advertising section of a newspaper of general circulation or other periodical and recover reasonable costs of such advertising. The proposed law would afford the judgment debtor an opportunity to claim any available exemption for personal property by precluding its sale until 10 days after the notice of levy was mailed to the debtor. Under existing law the 10-day period runs from the date of levy,⁵ but since the debtor may not be aware of the levy, it provides little protection. If real property is to be sold, the proposed law requires both a legal description and a street address, other common designation, or directions to the location of the property, whereas existing law permits the omission of the street address and apparently provides for a designation of the location of property only in cases of a foreclosure sale.⁶ The proposed law also requires notice of sale to be served on lienholders of record, to be personally served on the judgment debtor, and to be personally served on an occupant of the property or left at the premises. The notice of sale of real property is delayed under the proposed law until 120 days after the notice of levy is served on the judgment debtor. This provision gives the judgment debtor time to redeem the property from the judgment creditor's lien before the sale, to sell the property, or to seek the attendance of other potential purchasers at the judicial sale. This delay provision compensates for the proposed elimination of the statutory right to redeem real property for one year after a judicial sale.⁷

4. See Section 683.

5. See Section 690.50(a).

6. See Section 692.

7. See the discussion under "Repeal of Statutory Redemption From Judicial Sales" infra.

Manner of sale. The existing law pertaining to the time, place, and nature of sale is largely continued in the proposed law.⁸ However, the requirement that personal property be in view of those attending the sale is subject to an exception where the court orders otherwise. This option avoids the expense of moving bulky objects or large lots of items to the place where the sale is to be held. Under the proposed law, the judgment debtor may request that property be sold in certain lots or in a particular order, but the levying officer is not bound to follow the request unless it is likely that the requested manner of sale will yield an amount equal to any other manner of sale. Under existing law, it appears that the judgment debtor has absolute control over this aspect of sale.

Manner of payment. Existing law requires bidders at an execution sale other than the judgment creditor to pay in cash or by certified check or cashier's check; the judgment creditor may credit the judgment on any bids but must pay cash to cover the expenses of the levying officer, preferred labor claims, exempt proceeds, and other superior claims that are required to be satisfied.⁹ The proposed law continues this general requirement, but also would permit a high bidder to elect to treat a bid of over \$5,000 as a credit transaction by paying \$5,000 or 10 percent of the amount bid, whichever is greater, in cash, and paying the balance and additional accruing costs within 30 days after the date of the sale.¹⁰ This provision should encourage outside bidding at execution sales of valuable property, particularly real property, whereas under existing law it was difficult for interested bidders to have the necessary cash at a sale. If the credit bidder does not complete payment of the amount bid within the 30-day period allowed, the amount paid would be applied to the satisfaction of the judgment and any excess would be returned to the bidder.

8. See Section 694.

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

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

Minimum bid. The proposed law would specifically preclude the sale of property at an execution sale if the amount bid does not exceed the total of superior claims that are required to be satisfied, third-party claims that have been paid off by the judgment creditor¹¹ and any proceeds exemption.¹² This provision is intended to enforce the principle that the debtor's property should not be sold, particularly at a sacrificial sale, if none of the proceeds would go toward the satisfaction of the judgment.

Liability where sale set aside. Under existing law, if a sale is set aside because of irregularities in the proceedings or because the property was not subject to levy and sale, the purchaser is authorized to recover against the judgment debtor.¹³ Since the purchaser may be unable to recover against the judgment debtor, the proposed law also permits recovery from the judgment creditor, in which case the parties are restored to their respective positions before the sale, and the judgment creditor's judgment is revived for the purpose of eventual recovery against the judgment debtor.

Distribution of Proceeds of Sale and Collection

Existing law contains several incomplete and somewhat contradictory provisions relating to the distribution of the proceeds of sale and collection.¹⁴ The proposed law contains a general section governing the distribution of proceeds resulting from sale or collection under a writ of execution.¹⁵ Proceeds are applied as follows: first, to the satisfaction of liens and claims that are required by statute to be paid off,

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

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

13. See Section 708.

14. See Civil Code § 1255; Code Civ. Proc. §§ 689c, 690.2(c), (d), 690.31(j), 691.

15. Special treatment is afforded proceeds from the sale of a homestead. See the discussion under "Homestead Exemption" infra.

including a third-party claim that the judgment creditor has satisfied; second, to the judgment debtor in the amount of any applicable exemption of proceeds except to the extent such proceeds are required to satisfy voluntary encumbrances subordinate to the judgment creditor's lien; third, to the levying officer for the reimbursement of costs which have not been advanced; fourth, to the judgment creditor to satisfy costs advanced to the levying officer, costs and interest accruing after entry of judgment but before issuance of the writ, the fee for issuance of the writ, and the amount remaining unsatisfied on the judgment; fifth, to any other judgment creditor who has delivered a writ of execution to the levying officer with instructions to levy on the same property and to other persons entitled to a share of the proceeds of sale;¹⁶ finally, to the judgment debtor in the amount remaining. Under existing law, proceeds of sale apparently may be distributed immediately, but the proposed law would delay the distribution of proceeds of collection for at least 10 days after the date notice of levy was served on the judgment debtor to permit the debtor to claim any available exemption while the proceeds are still in the hands of the levying officer.

Repeal of Statutory Redemption From Judicial Sales

Existing Law

In California, statutes providing a right of redemption from execution sales were first enacted in 1851.¹⁷ This system, patterned after the Field Code proposed for New York,¹⁸ has been described as the

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

17. 1851 Cal. Stats. ch. 5, §§ 229-236. Statutory redemption from execution and foreclosure sales is currently governed by Sections 700a-707.

18. 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).

"scramble" type of redemption.¹⁹ Under this system, the right to redeem is afforded the judgment debtor who owns the land, the successors in interest of the judgment debtor, and persons holding liens on the land which are subordinate to the lien under which the sale takes place.²⁰ Redemption may take place at any time within twelve months after the sale of the property.²¹ 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.²² 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

19. 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).

20. Section 701. Creditors entitled to redeem are termed "redemptioners" by this section.

21. Section 702. A redemption by a redemptioner must occur within 60 days after a redemption by a prior redemptioner. Section 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).

22. See Sections 702-703. A person redeeming from the purchaser must pay two-thirds of one percent per month interest. Section 702. A person redeeming from a redemptioner must pay, in addition, two percent of the amount paid by the prior redemptioner. Section 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. Sections 702-703. Rents and profits or the value of the use and occupation of the property may be set off against the redemption price. Section 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.

restored to his estate.²³ However, liens which have not been paid off in the process of redemption reattach,²⁴ and a judgment lien under which the property is sold reattaches to the extent it has not been satisfied when the debtor redeems.²⁵ 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.²⁶

These provisions apply as well to foreclosure sales under a mortgage or deed of trust.²⁷ 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.²⁸ If the property is sold at

23. Section 703; *Bateman v. Kellogg*, 59 Cal. App. 464, 474-78, 211 P. 46, 51-52 (1922).

24. Section 703; *Kaiser v. Mansfield*, 160 Cal. App.2d 620, 628-29, 325 P.2d 865, 870-71 (1958).

25. 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).

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

27. Subdivision (a) of 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).

28. Section 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 Sections 580b, 580d, 726; *Roseleaf Corp. v. Chierighino*, 59 Cal.2d 35, 40-44, 378 P.2d 97, 99-101, 27 Cal. Rptr. 873, 875-77 (1963).

a foreclosure sale under a deed of trust or a mortgage with the power of sale at a price sufficient to satisfy the judgment, including interest, costs, and expenses of sale, the redemption period is three months.²⁹ There is, however, no statutory right of redemption after a private sale under a power of sale in a mortgage or deed of trust.³⁰

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.³¹ 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.³² If the debtor redeems, rents and profits paid to the purchaser are a credit on the redemption price.³³ 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.³⁴

29. Section 725a.

30. *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).

31. Section 706; *First Nat'l Trust & Sav. Bank v. Staley*, 219 Cal. 225, 227, 25 P.2d 982, 982 (1933).

32. Section 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.

33. Section 707.

34. *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).

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)³⁵ to bid an amount near the property's fair value.³⁶ The theory behind permitting other lien creditors to redeem is that the property should be used to satisfy as many creditors as possible.³⁷ If the property is valuable enough, subordinate lienholders are enabled to protect security that they would otherwise lose.³⁸ 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.³⁹

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35. The defeasible title obtained at a sale subject to redemption, the lack of notice, and the requirement of cash payment by outside bidders, while the judgment creditor or mortgagee can bid the amount of the judgment, are the major factors discouraging bidding. See National Conference of Commissioners on Uniform State Laws, Handbook 258-59 (1922); G. Osborne, Handbook on the Law of Mortgages § 8, at 18 (2d ed. 1970); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 832-33 (1925); Madsen, Equitable Considerations of Mortgage Foreclosure and Redemption in Utah: A Need for Remedial Legislation, 1976 Utah L. Rev. 327, 335. In a study in New York in 1938, it was reported that, out of 40,853 foreclosures, the mortgagee bid in the amount of the obligation in 40,570 cases. Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 40 n.13 (1953).
36. See Moore v. Hall, 250 Cal. App. 25, 29, 58 Cal. Rptr. 70, 73 (1967); G. Osborne, Handbook on the Law of Mortgages § 8, at 17-18 (2d ed. 1970), Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 839-41, 851 (1925); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964).
37. S. Riesenfeld, Creditors' Remedies and Debtors' Protection 149 (2d ed. 1975).
38. See Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964).
39. 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

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;⁴⁰ 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.⁴¹

Conference of Commissioners on Uniform State Laws, Handbook 270 (1922). A commentary on the law of New York, where statutory redemption was eliminated in 1962, terms the "desire to give judgment debtors every opportunity to recover their real property . . . a form of paternalism predicated in part on the special status accorded ownership of real property." 6 J. Weinstein, H. Korn, & A. Miller, *New York Civil Practice* ¶ 5236.02, at 52-675 (1976).

40. 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.
41. G. Osborne, *Handbook on the Law of Mortgages* § 8, at 18 (2d ed. 1970); Brodkey, Current Changes in Illinois Real Property Law, 10 DePaul L. Rev. 567, 578 (1961) (fewer than one percent of foreclosed properties are redeemed); Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 42 n.25 (1953) (reporting a 1938 study showing that, out of 22,000 properties foreclosed, only 204 were redeemed); Stattuck, Washington Legislation 1961--Real Property Mortgage Foreclosure--Redemption, 36 Wash. L. Rev. 239, 309, 311 n.3 (1961) (reporting a four-year study showing that, out of 276 foreclosures, one redemption was made by a mortgagor and two by other persons). The records of the San Francisco Sheriff's Department from mid-1970 through mid-1975 show that there were three redemptions out of 86 sales of real property. Letter from Carl M. Olsen, County Clerk, City and County of San Francisco (October 20, 1975) (on file at office of California Law Revision Commission).

Proposed Law

The Commission has concluded that statutory redemption from execution and foreclosure sales has failed to achieve its purposes. The very existence of the right of redemption operates as the greatest impediment to the achievement of the primary purpose of obtaining a fair bid at the sale because the purchaser can only obtain title which is defeasible for another year or, in certain cases, three months.⁴² The right of redemption thus makes "sacrifice" sales even more sacrificial. There are, no doubt, exceptional cases in which the purchase price is unreasonably low and in which the debtor manages to obtain the money necessary to save the property. The Commission has concluded, however, that whatever protection is afforded debtors by the right to redeem in these exceptional cases does not justify the detrimental effect in the vast majority of cases of the right to redeem. Accordingly, the proposed law

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

eliminates the statutory right of redemption from judicial sales. This change would not affect the equitable right of a debtor to redeem from a sale at a grossly inadequate price where the purchaser is guilty of unfairness or has taken undue advantage.⁴³

The Commission recognizes that a hurried, forced sale of real property may result in a depressed price even where the sale is absolute. Consequently, the proposed law provides a 120-day grace period between the time when notice of a levy on the property is given⁴⁴ and the time when notice of sale is first given.⁴⁵ This 120-day period is analogous to the three-month period before notice of sale afforded a mortgagor or trustor for the purpose of curing the default under a mortgage or deed of trust containing a power of sale.⁴⁶ During this time, the judgment debtor may refinance the property in order to pay off the lien under which it would otherwise be sold, sell the property privately subject to valid liens in order to realize a higher price than would be obtained at a forced sale, or acquiesce in the judicial sale but seek potential buyers by advertising and personal contact.

The provision for delay of sale would not apply to leasehold estates with less than two years' unexpired term at the time of levy. This exception is consistent with existing law which provides that sales of such interests are absolute, that is, not subject to redemption.⁴⁷

43. 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).

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

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

46. Civil Code §§ 2924, 2924f.

47. See Section 700a.

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.⁴⁸ 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.⁴⁹ The proposed law eliminates the speculative aspect of existing law which results from the fluctuation in land values during a year's time. It should achieve a more equitable balance between the interests of the debtor and the creditor and has the added virtues of simplicity and ease of administration.⁵⁰

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

48. The proposed law would also improve the chances of obtaining a fair price by permitting credit bids (see the discussion under "Manner of Payment" supra) and providing more extensive notice of levy and notice of sale (see the discussions under "General Rules Governing Levy" supra and "Notice of Sale" supra).

49. 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.

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

of sale,⁵¹ fixing an upset price,⁵² allowing advance bidding,⁵³ and extending antideficiency legislation to cover execution sales.⁵⁴

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

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51. 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, Section 568.5 provides for court confirmation of sales by receivers and there is no right of redemption after a sale by a receiver.
52. 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.
53. 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.
54. 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. Sections 580b, 580d, 726.

Article 6. Sale and Collection§ 701.510. Sale of property levied upon

701.510. (a) Except as otherwise provided in this section and in Section 701.520, the levying officer shall sell all property that has been levied upon.

(b) The levying officer may not sell tangible personal property that has been levied upon in the hands of a third person until custody of the property is delivered to the levying officer.

(c) The levying officer may not sell cash or property described in Section 687.020 (execution of certain commercial paper by levying officer) that has been levied upon.

Comment. Subdivision (a) of Section 701.510 continues the general authority of the levying officer to sell property after levy. See former Section 691. If sale is not made during the period of the lien of execution, the property must be released. Section _____ (extinction of liens). After sale, the proceeds are applied in the manner provided by Section 701.810.

Subdivisions (b) and (c) provide exceptions to the general rule. See also Section 701.520 (sale of collectable property).

CROSS-REFERENCES

Defined terms

Levying officer § 680.____

Tangible personal property § 680.____

Manner of custody § 687.030

Methods of levy §§ 700.010-700.____

28845

§ 701.520. Collection; sale of collectable property

701.520. (a) Except as provided in this section, the following property that has been levied upon shall be collected rather than sold:

- (1) Accounts receivable.
- (2) Chattel paper.
- (3) General intangibles.
- (4) Rights to payment under judgments.

(5) Instruments that are not customarily transferred in an established market or that represent an obligation arising out of the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where the property sold or leased or licensed

for use, the services furnished, or the money loaned was used by an individual primarily for personal, family, or household purposes.

(b) At the time of levy on property described in subdivision (a) or thereafter, the judgment creditor may serve a notice of intended sale of the property on the judgment debtor and on the levying officer. Service shall be made personally or by mail. The notice of intended sale shall describe the property and state that it will be sold at an execution sale unless the judgment debtor applies to the court on noticed motion for an order restraining the sale within 10 days after service of the notice of intended sale.

(c) The judgment debtor may apply to the court on noticed motion for an order restraining the sale within 10 days after service of the notice of intended sale. Notice of motion shall be served on the judgment creditor and the levying officer. Service shall be made personally or by mail. If notice of motion is not served on the levying officer within the time allowed, the levying officer shall proceed to sell the property. If notice of motion is served on the levying officer within the time allowed, the levying officer shall continue to collect the property until otherwise ordered by the court.

(d) At the hearing on the motion, the court may in its discretion order that the property be sold or continue to be collected. If the court orders the property sold, the order shall specify terms and conditions designed to ensure that fair consideration is obtained at the sale. If the court makes an order restraining sale, the court may condition its order on an assignment of the property by the judgment debtor to the judgment creditor pursuant to Article 6 (commencing with Section 708.510) of Chapter 6.

Comment. Subdivision (a) of Section 701.520 provides a degree of protection for types of property that are particularly susceptible to sacrifice and speculative sales. Former law did not contain such exceptions to the general rule that property levied upon is to be sold on execution (see Section 701.510), although former Section 691 directed the levying officer to collect or sell things in action. This section clarifies the manner of applying a judgment in favor of the judgment debtor to the satisfaction of the judgment creditor's money judgment. See subdivision (a)(4). Prior law provided for the attachment of final judgments (see subdivision 5 of former Section 542, superseded by Section 488.420), but appeared to forbid levy and sale under execution (see

former Section 688(f)). Although the judgment creditor might obtain a lien on a cause of action and judgment under former Section 688.1 (superseded by Sections 708.410-708.470), the manner of enforcing the lien was not clear, nor did former law explicitly provide the manner of reaching a final judgment that was not subject to a lien before it became final. See Sections 701.____ (levy on right represented by a judgment), 708.450 (enforcement of lien on judgment). Subdivision (a)(5) is intended to permit sale without court order of negotiable instruments that are regularly transferred on established markets so long as the instruments are not consumer paper.

Subdivisions (b)-(d) provide a procedure through which the judgment creditor may sell the property if the judgment debtor does not object within 10 days. The objection is made in the form of a motion to restrain the proposed sale. Subdivision (d) provides the court with broad authority to specify terms of sale designed to obtain a fair price. Some circumstances, such as a probable lack of interested buyers, may require that no sale be permitted. In other situations, the court may choose to set a minimum price or require court confirmation of sale. A sale pursuant to subdivision (d) may be conducted in the same manner as other execution sales or may be conducted in some other manner, e.g., as a negotiated private sale through a broker or other commercial channel.

CROSS-REFERENCES

Defined terms

Account receivable § 680.____
 Chattel paper § 680.____
 Court § 680.____
 General intangibles § 680.____
 Instrument § 680.____
 Judgment creditor § 680.____
 Judgment debtor § 680.____
 Levying officer § 680.____
 Money judgment § 680.____
 Duties and liabilities of third persons upon levy §§ 701.010-701.____
 Manner of service §§ 684.010-684.080
 Methods of levy §§ 700.010-700.____

15109

§ 701.530. Notice of sale of personal property

701.530. (a) Notice of sale of personal property shall be in writing, shall state the date, time, and place of sale, and shall describe the property to be sold.

(b) Not less than 10 days before a sale of personal property, notice of sale shall be posted and served on the judgment debtor. Service shall be made personally or by mail.

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

(d) A sale of personal property of an individual may not take place until the expiration of the time during which the judgment debtor may make a claim of exemption.

(e) Notwithstanding any other provision of this section, if personal property to be sold is perishable, the notice of sale shall be posted and served at a reasonable time before the sale, considering the character and condition of the property.

Comment. Section 701.530 continues the substance of paragraphs 1 and 2 of former Section 692 with the exception of subdivision (d). Subdivision (d) is intended to provide an individual with an opportunity to claim any available exemptions. See Section 703.520 (exemption claim must be made within 10 days after notice of levy is served).

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.____

Property § 680.____

Manner of service §§ 684.010-684.080

Perishable property § 699.070

Time for claiming exemption § 703.____

15110

§ 701.540. Notice of sale of real property

701.540. (a) Notice of sale of an interest in real property shall be in writing, shall state the date, time, and place of sale, shall describe the interest to be sold, and shall give a legal description of the real property and its street address or other common designation, if any. If the real property has no street address or other common designation, the notice of sale shall include a statement that directions to its location may be obtained from the levying officer upon oral or written request or, in the discretion of the levying officer, the notice of sale may contain directions to its location. Directions are sufficient if information as to the location of the real 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 real property is given, the validity of the notice and sale is not affected by the fact that the street address or other common designation, or directions to its location, are erroneous or omitted.

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

(c) Notice shall be personally served on the judgment debtor.

(d) Notice shall be served on all persons having liens of record on the property at the time of service. Service shall be made personally or by mail. Mailed notice shall be addressed to the person at the address, if any, shown by the records of the office of the tax assessor of the county where the real property is located, and otherwise at the address used by the county recorder for return of the instrument creating the lien after recording.

(e) Notice shall be served or service shall be attempted on one occupant of the real property, at the time notice is posted pursuant to paragraph (2) of subdivision (f). Service on the occupant shall be made by leaving the notice with the occupant personally or, in the occupant's absence, with any person of suitable age and discretion found upon the real property at the time service is attempted and who is either an employee or agent of the occupant or a member of the occupant's family or household.

(f) Notice of sale shall be posted in the following places:

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

(2) A conspicuous place on the real property.

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

(h) Notice of sale shall be published pursuant to Section 6063 of the Government Code, with the first publication at least 20 days prior

to the time of sale, in a newspaper of general circulation published in the city in which the real property or a part thereof is situated, if any part thereof is situated in a city, or, if not, in a newspaper of general circulation published in the judicial district in which the real property or a part thereof is situated. If no newspaper of general circulation is published in the city or judicial district, notice shall be published in a newspaper of general circulation in the county in which the real property or a part thereof is situated.

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

Comment. Section 701.540 supersedes paragraph 3 of former Section 692. The responsibility of the levying officer under subdivision (a) to give directions to the location of property that has no street address or other common designation is derived from the former provision for giving directions by the beneficiary of a deed of trust.

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

Subdivision (c) requires personal service on the judgment debtor whereas paragraph 3 of former Section 692 permitted service by mail.

Subdivision (d) requires more extensive notice than did former law.

Subdivision (e) is the same as a portion of Section 700.010() (notice of levy).

Subdivisions (f) and (h) continue the substance of portions of paragraph 3 of former Section 692.

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

Subdivision (i) delays the giving of notice of a sale of real property for at least 120 days after the notice of levy is served on the judgment debtor in order to provide the judgment debtor with an opportunity to redeem the property from the judgment creditor's lien before the sale or to seek potential purchasers. The statutory right of redemption from judicial sales of real property provided by former Sections 700a-707 is repealed. See Section 701.____ and Comment thereto (sales absolute).

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.____

Levying officer § 680.____

Homestead exemption §§ 704.710-704.____

Manner of service §§ 684.010-684.080

Method of levy on real property § 700.010

§ 701.550. Additional notice of sale

701.550. In addition to the notice of sale required by this article:

(a) The levying officer shall, at the time notice is posted pursuant to Section 701.530 or 701.540, mail notice to any person who has requested notice of any sale at the address noted on the writ. The request for notice shall be in writing and shall be filed with the clerk of the court where the judgment is entered. The request shall specify the title of the court, the case and number of the action in which the judgment was entered, and the date of entry thereof, and shall state the address to which the notice of sale is to be mailed.

(b) The judgment creditor may advertise the sale in the classified or other advertising section of a newspaper of general circulation or other periodical publication, and may recover reasonable costs of advertising.

Comment. Subdivision (a) of Section 701.550 continues the substance of former Section 692a except that subdivision (a) is not limited to writs of execution. The clerk must note the request for notice on the writ. See Sections 699.520 (writ of execution), _____ (writ of possession of personal property), and _____ (writ of sale). Sales of property take place under writs of execution and writs of sale as a matter of course (see Sections 701.510, 716.____) and under writs of possession of personal property as an ancillary matter (see Section 714,____). Notice of sale is required to be given to the judgment debtor and lienholders of record of real property in all cases. See Sections 701.530, 701.540. Failure to give the required notice may subject the levying officer to liability. See Section 701.560.

Advertising under subdivision (b) may be particularly appropriate where certain types of property with a specialized market are to be sold, such as stamps, coins, and rare books. Expenses of advertising in this manner are recoverable if reasonable. Subdivision (b) is permissive, not restrictive. The judgment debtor may also advertise the sale at the judgment debtor's own expense.

CROSS-REFERENCES

Defined terms

Judgment § 680.____
 Judgment creditor § 680.____
 Levying officer § 680.____
 Writ § 680.____

Personal delivery in lieu of mailing § 681.020

§ 701.560. Sale without notice

701.560. (a) Failure to give notice of a sale as required by this article does not invalidate the sale.

(b) A levying officer who sells property without giving the required notice is liable to the judgment creditor and judgment debtor for actual damages caused by failure to give notice.

Comment. Subdivision (a) of Section 701.560 codifies existing law. *Smith v. Randall*, 6 Cal. 47, 50 (1856); *Hamilton v. Carpenter*, 52 Cal. App.2d 447, 448, 126 P.2d 395 (1942).

Subdivision (b) continues the levying officer's liability for actual damages for failure to give proper notice of sale provided by former Section 693. Former Section 693 provided for liability to the "aggrieved party." See *Sheehy v. Graves*, 58 Cal. 449, 455-56 (1881) (judgment creditor as aggrieved party); *Bellmer v. Blessington*, 136 Cal. 3, 4, 68 P. 111 (1902) (judgment debtor as aggrieved party); *Kelley v. Desmond*, 63 Cal. 517, 518 (1883) (purchaser at execution sale not aggrieved party). The forfeiture of \$100 by the levying officer to the aggrieved party under former Section 693 is not continued.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____

Judgment debtor § 680.____

Levying officer § 680.____

Liability of levying officer generally § 687.040

§ 701.570. Place, time, and manner of sale

701.570. (a) A sale of property shall be held at the date, time, and place specified in the notice of sale, which shall be in the county where the property or a part thereof is situated and between the hours of nine in the morning and five in the afternoon.

(b) The sale shall be made at auction to the highest bidder.

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

(d) Property shall be sold separately or in such groups or lots as are likely to bring the highest price. The judgment debtor may request

that the property be sold separately or together and may request that the property be sold in a particular order. If the judgment debtor is not present at the sale, the request may be made in writing and delivered to the levying officer prior to the sale. The levying officer shall honor the request if, in the opinion of the levying officer, it is likely that the requested manner of sale will yield an amount at least equal to any other manner of sale or the amount necessary to satisfy the judgment.

(e) After sufficient property has been sold to yield the amount necessary to satisfy the judgment, no more shall be sold.

Comment. Subdivisions (a) and (b) of Section 701.570 continue the substance of the first sentence of former Section 694.

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

Subdivision (d) supersedes a portion of the fourth sentence and the fifth sentence of former Section 694. See also the last sentence of former Section 691. Although former Section 694 appeared to require that real property must be sold in separate parcels, the cases interpreting that section suggest that sale en masse constitutes at most an irregularity and that the true test is whether separate sale would produce a higher price. See 5 B. Witkin, California Procedure Enforcement of Judgment § 80, at 3451 (2d ed. 1971). There may be cases where sale as a unit will produce a substantially higher price than separate sale. Subdivision (d) permits the judgment debtor to make reasonable requests concerning the manner of sale, but the levying officer is empowered to accept or reject the request. Under former Section 694, the judgment debtor appeared to have absolute control over the order and lots in which the property was sold. The authority for the judgment debtor to make a request in writing when not present at the sale is not found in prior law.

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

CROSS-REFERENCES

Defined terms

Court § 680.____
 Judgment § 680.____
 Judgment creditor § 680.____
 Judgment debtor § 680.____
 Levying officer § 680.____
 Property § 680.____

§ 701.580. Postponement of sale

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

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

Comment. Section 701.580 continues the substance of the second paragraph of former Section 694.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680. ____

Judgment debtor § 680. ____

Levying officer § 680. ____

§ 701.590. Manner of payment

701.590. (a) Except as otherwise provided in this section, the purchaser at a sale shall pay in cash or by certified check or cashier's check.

(b) The judgment creditor may bid by giving the levying officer a written receipt crediting all or part of the amount necessary to satisfy the judgment, except that the levying officer's costs remaining unsatisfied and the amount of preferred labor claims, exempt proceeds, and any other superior claim that is required by statute to be satisfied, shall be paid in cash or by certified check or cashier's check.

(c) If the highest bid for an item, group, or lot of property sold exceeds five thousand dollars (\$5,000), the highest bidder may elect to treat the sale as a credit transaction. A person who makes the election shall deposit at least five thousand dollars (\$5,000) or 10 percent of the amount bid, whichever is greater, and within 20 days after the date

of the sale shall pay the balance due plus costs accruing with regard to the property sold and interest accruing at the legal rate on the amount bid from the date of sale until the date of payment. A person who makes the election is not entitled to possession of the property sold until the amount bid, plus accruing costs and interest, has been paid.

Comment. Subdivisions (a) and (b) of Section 701.590 codify the practice under former law. See Kelley v. Barnet, 24 Cal. App. 119, 140 P. 605 (1914); Marshal's Manual of Procedure § 423.4 (rev. 1980); Cal. State Sheriffs' Ass'n, Civil Procedural Manual 6.10-6.11, 6.20 (1978).

Under subdivision (b), if the judgment creditor bids at the auction, the judgment creditor may use the judgment as a credit to pay all or a portion of the bid instead of cash. However, the judgment creditor must pay in cash the costs of the officer conducting the sale, preferred labor claims, and exempt sale proceeds. See Section 701.810 (distribution of proceeds). Subdivision (b) recognizes that a transfer of cash back and forth between the judgment creditor and the levying officer generally can be dispensed with. Under former law, the levying officer apparently had the discretion to refuse the judgment as a credit and to require cash payment. See Mitchell v. Alpha Hardware & Supply Co., 7 Cal. App.2d 52, 60-61, 45 P.2d 442 (1935); Kelley v. Barnet, 24 Cal. App. 119, 140 P. 605 (1914).

Subdivision (c) is derived from Revenue and Taxation Code Section 3693.1 (sales of tax deeded property to private persons). If additional costs accrue after the sale, such as keeper or storage fees, the credit bidder must satisfy them. The credit bidder must also pay interest on the amount bid to compensate for the delay in payment.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____
Levying officer § 680.____
Exempt proceeds §§ 704.____, 704.____, 704.____
Interest §§ 685.010-685.030
Levying officer's costs §§ 685.050, 685.100
Preferred labor claims §§ 1206-1208, Lab. Code § 4908

15/116

§ 701.600. Defaulting bidder

701.600. If the highest bidder does not pay the amount bid as prescribed by Section 701.590:

(a) The levying officer shall, at the request of the judgment creditor, sell the property either immediately to the next highest bidder at the amount of the next highest bid or to the highest bidder at a new sale. The levying officer may, in the levying officer's discretion, reject any subsequent bid of the defaulting bidder.

(b) The levying officer shall apply the amount of any deposit made pursuant to subdivision (c) of Section 701.590 in the following order:

(1) To the satisfaction of costs accruing with regard to the property sold from the date of the sale until the date the property is resold, including costs of resale.

(2) To the satisfaction of interest at the legal rate on the amount bid from the date of the sale until the date the property is resold.

(3) To the amount necessary to satisfy the judgment in the order of distribution prescribed by Section 701.810.

(c) If there is a sale to the next highest bidder or to the highest bidder at a new sale, the defaulting bidder is liable for the following amounts in an action by the judgment creditor or judgment debtor:

(1) The amount bid, less the amount obtained from the resale of the property and the amount of any deposit applied pursuant to subdivision (b). The amount recovered pursuant to this paragraph shall be distributed in the manner prescribed by Section 701.810.

(2) Any costs accruing with regard to the property sold from the date of sale until the date the property is resold, including costs of resale.

(3) Interest at the legal rate on the amount bid from the date of the sale until the date the property is resold.

(4) Costs and attorney's fees incurred in the action.

Comment. The first sentence of subdivision (a) of Section 701.600 supersedes the first portion of former Section 695. See *Bell v. Redwine*, 98 Cal. App. 784, 787, 277 P. 1050 (1929) (officer must resell property). If a new sale is held, it must satisfy the requirements of notice, time, place, and manner of sale provided by this article. The second sentence of subdivision (a) continues the substance of former Section 696.

Subdivision (b) is designed to handle situations where there is a default by a bidder who elects to treat the sale as a credit transaction pursuant to Section 703.590(c).

Subdivision (c) supersedes the latter portion of former Section 695. This subdivision authorizes the judgment creditor or the judgment debtor to sue the defaulting bidder whereas former Section 695 provided that the officer could recover the amount of the loss, with costs. However, case law under former Section 695 permitted the judgment debtor to recover from the defaulting bidder. See *Meherin v. Saunders*, 131 Cal. 681, 689-91, 63 P. 1084 (1901). Paragraph (1) of subdivision (c) codifies the case law rule that the amount of the loss is the difference between the unpaid bid and a lower price obtained at a later sale. See

Johns v. Trick, 22 Cal. 511, 513 (1863); Meherin v. Saunders, 131 Cal. 681, 687-88, 63 P. 1084 (1901) (dictum). The remaining provisions of subdivision (c) are not found in prior law.

CROSS-REFERENCES

Defined terms

Costs § 680.____
Judgment creditor § 680.____
Judgment debtor § 680.____
Levying officer § 680.____
Interest § 685.010

15/115

§ 701.610. Persons ineligible to purchase

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

Comment. Section 701.610 continues the substance of the third sentence of former Section 694.

CROSS-REFERENCES

Defined terms

Levying officer § 680.____
Officer includes deputy Gov't Code § 24100

10/906

§ 701.620. Minimum bid

701.620. (a) Property may not be sold unless the amount bid exceeds the amount of all claims, liens, and other interests of third persons, that are superior to the judgment creditor's lien and are required by statute to be satisfied, including the amount of any deposit made pursuant to Section 720.260 with interest thereon at the statutory rate from the date of the deposit.

(b) Property for which a proceeds exemption is provided by Section 704.010 (motor vehicle) or 704.060 (tools of trade) may not be sold unless the amount bid exceeds the sum of any amount under subdivision (a) and the amount of the proceeds exemption.

(c) If a minimum bid required for the sale of property pursuant to this section is not received, the levying officer shall promptly release the property.

(d) The sale of a homestead is governed by Section 704.820 rather than this section.

Comment. Section 701.620 is not found in prior law. As to superior interests otherwise required to be satisfied, see Section 701.810 (distribution of proceeds of sale or collection). Subdivision (d) makes clear that this section does not govern minimum bids at a sale of a homestead.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____
Levying officer § 680.____
Property § 680.____
Interest rate § 685.010
Release of property § 699.060

10/909

§ 701.630. Extinction of liens upon sale

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

Comment. Section 701.630 is not found in prior law. See also Civil Code § 2910 (extinction of lien upon sale). Subordinate lienholders are entitled to share in any excess proceeds of sale even though their liens are extinguished. See Section 701.810 (distribution of proceeds).

404/126

§ 701.640. Interest acquired by purchaser

701.640. The purchaser of real or personal property at an execution sale acquires the following interests in the property held on or at any time after the effective date of the lien under which the property was sold:

- (a) The interest of the judgment debtor in the property sold.
- (b) The interest of the judgment debtor's spouse in the property sold, if it is subject to enforcement of the money judgment pursuant to Section 695.020.

Comment. Section 701.640 supersedes portions of former Sections 698 and 699 and former Section 700. It makes clear that the sale on

execution conveys the interest which the judgment debtor has on the date of levy or the date that the judgment became a lien on the property and any interest that the judgment debtor thereafter acquires up to the date of sale, assuming that the lien has been maintained throughout such period. See Section 697.____ (relation back of liens); *Kenyon v. Quinn*, 41 Cal. 325, 329-30 (1871); *Frink v. Roe*, 70 Cal. 296, 305, 11 P. 820 (1886). The interest of the execution sale purchaser is no longer subject to the statutory right of redemption formerly provided by Sections 700a-707. See Section 701.680 and the Comment thereto.

CROSS-REFERENCES

Defined terms

Judgment debtor § 680.____

Property § 680.____

15/119

§ 701.650. Delivery or certificate of sale of personal property

701.650. When the purchaser of personal property pays the balance due, the levying officer conducting the sale shall deliver the property to the purchaser. If the property is not tangible personal property or if it is otherwise not capable of manual delivery, the levying officer shall execute and deliver a certificate of sale to the purchaser and sign or endorse any documents or instruments in the levying officer's possession necessary to transfer title to or the right to possession of the property.

Comment. Section 701.650 supersedes portions of former Sections 698 and 699. Unlike former Section 698, Section 701.650 codifies existing practice by requiring the levying officer to deliver a certificate of sale whether or not the purchaser so requests.

CROSS-REFERENCES

Certificate of sale contents § 701.670

Defined terms

Levying officer § 680.____

Property § 680.____

Tangible personal property § 680.____

§ 701.660. Deed of sale of real property

701.660. When the purchaser of an interest in real property pays the balance due, the levying officer conducting the sale shall execute and deliver a deed of sale to the purchaser and record a duplicate of the deed in the office of the county recorder.

Comment. Section 701.660 continues a portion of the third sentence of subdivision (a) of former Section 700a.

CROSS-REFERENCES

Deed of sale contents § 701.670

Defined terms

Levying officer § 680.____

Property § 680.____

§ 701.670. Contents of certificate or deed of sale

701.670. The certificate of sale or deed of sale shall contain all of the following:

(a) The date of entry of the judgment under which the sale was made.

(b) The names of the judgment creditor and the judgment debtor.

(c) A description of the property sold.

(d) The price paid for the property. If the property is sold in groups or lots, the price paid for the entire group or lot shall be stated. If the property is not sold in groups or lots, the price paid for each item or parcel of property shall be separately stated.

Comment. Section 701.670 makes general the requirements for the certificate of sale provided by subdivision (a) of former Section 700a (certificate of sale of real property). The provisions of former Section 700a requiring a statement of the price of property subject to redemption and a notice of the right of redemption are not continued. See Section 701.680 and the Comment thereto.

CROSS-REFERENCES

Defined terms

Judgment § 680.____

Judgment creditor § 680.____

Judgment debtor § 680.____

Property § 680.____

Sale in groups or lots § 701.560

Sale under writ of sale § 716.____

§ 701.680. Sales absolute

701.680. (a) Except as provided in subdivision (c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is discharged, because it is reversed or for any other reason, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the discharged judgment with interest at the legal rate to the extent the proceeds were improperly applied to the satisfaction of the judgment.

(c) If the sale was improper, because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) An action may be commenced within six months after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor.

(2) The judgment debtor may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

Comment. Section 701.680 supersedes former Section 708, which provided rights for the purchaser in case the sale is set aside. Section 701.680 does not permit the sale to be set aside unless the sale was made to the judgment creditor and an action is brought within six months after the date of sale. The judgment debtor is protected by provisions permitting a stay of enforcement pending appeal and a court determination pending sale of whether property is exempt or not subject to enforcement. See Sections 695.040 (release of property not subject to enforcement), 703.510 (determination of exemptions), 918 (stay of enforcement). Proceeds of sale are held at least 15 days before distribution, during which time the judgment debtor may raise objections to their distribution. See Section 701.820.

Section 701.680 also supersedes the first sentence of subdivision (a) of former Section 700a which made absolute only sales of personal property and of leasehold estates with unexpired terms of less than two years. Section 701.680 reflects the repeal of the statutory right of redemption after execution and foreclosure sales. See former Sections 700a-707. Sales of interests in real property (except leasehold estates with less than two years' unexpired term at the time of levy) are delayed at least 140 days, however, in order to provide an opportunity for the judgment debtor to redeem the property from the judgment creditor's

lien before sale, to advertise the sale and give notice to potential buyers, or to make a settlement with the judgment creditor. See Civil Code § 2903; Code Civ. Proc. § 701.540(i). The elimination of the statutory right to redeem after a sale pursuant to this article does not affect rights to redeem afforded by other law. See, e.g., Harb. & Nav. Code § 504 (20-day redemption period after sale of vessel on lien for repairs); Rev. & Tax. Code § 4101 (redemption of tax-deeded real property); Sts. & Hwys. Code § 6530 (12-month redemption period after sale by treasurer to collect assessments under Improvement Act of 1911); I.R.C. § 6337 (120-day redemption period after sale of real property to collect federal taxes).

CROSS-REFERENCES

Defined terms

Judgment § 680.____
 Judgment creditor § 680.____
 Judgment debtor § 680.____
 Levying officer § 680.____
 Property § 680.____
 Interest rate § 685.010
 Property subject to enforcement §§ 695.010-695.040
 Property subject to execution §§ 699.710, 699.720

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Article 7. Distribution of Proceeds of Sale or Collection

§ 701.810. Distribution of proceeds of sale or collection

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

(a) To persons having claims, liens, or other interests that are superior to the judgment creditor's lien and that are required by statute to be satisfied, in the amounts required to be satisfied, or if a deposit has been made pursuant to Section 720.260, to the judgment creditor in the amount of the deposit with interest thereon at the statutory rate from the date of the deposit, in the order of their respective priorities.

(b) To the judgment debtor in the amount of any applicable exemption of proceeds pursuant to Section 704.010 (motor vehicle) or 704.060 (tools of trade), except that such proceeds shall be used to satisfy any consensual liens and encumbrances or liens for labor or materials that

are subordinate to the judgment creditor's lien in the order of their respective priorities.

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

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

(1) First, costs and interest accruing after issuance of the writ pursuant to which the sale or collection is conducted.

(2) Second, the amount due on the judgment with costs and interest as entered on the writ.

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

(f) To persons having claims, liens, or other interests that are subordinate to the judgment creditor's lien and are not otherwise satisfied pursuant to this section, in the order of their respective priorities.

(g) To the judgment debtor in the amount remaining.

Comment. Section 701.810 supersedes former Sections 689c and 690.2(c), a portion of former Section 690.2(d), former Section 690.31(j), a portion of former Section 691, and former Civil Code Section 1255. See also former Sections 682.1 and 682.2. Section 701.810 applies to the distribution of the proceeds of a sale or collection pursuant to the enforcement of a money judgment and, by way of incorporation, to cases where levy takes place under a writ of possession for the recovery of costs and damages or the value of the property, or under a writ of sale for the recovery of costs and damages. See Sections 714.____, 715.____, 716.____. The introductory portion of Section 701.810 recognizes that the court may control distribution of proceeds in some cases. See, e.g., Section 726 (foreclosure of mortgage). The levying officer makes an initial determination of the manner of distribution under this section, subject to exception and court control. See Section 701.820.

Subdivision (a) does not determine which interests are required to be satisfied; it recognizes that such interests may be required by another statute to be paid off. See, e.g., Section 1206 (preferred labor claim). The provisions of former Civil Code Section 1255 and of former Code of Civil Procedure Section 690.31(j) requiring the discharge of "all liens and encumbrances" on homestead property or exempt dwellings are not continued. Subdivision (a) treats the judgment creditor as a third person with a superior interest to the extent that the judgment creditor is subrogated to the rights of a secured party pursuant to Section 706.260. For special rules concerning distribution of proceeds from the sale of a homestead, see Section 704.830.

In certain circumstances, the judgment debtor will be entitled to receive a portion of the proceeds as provided by subdivision (b). The provision for satisfaction of subordinate consensual liens and encumbrances and liens for labor or materials out of exempt proceeds preserves the priority of the judgment creditor in any excess value of the property but recognizes that consensual liens and liens for labor and materials are not subject to exemptions from enforcement of money judgments. See Section 703.015(b). The judgment debtor is free to use a prospective exemption of proceeds as a fund to secure a loan or to finance improvements or repairs of the property.

As a general rule, the costs of the levying officer are required to be prepaid. See Section 685.100. However, in some instances, costs are not prepaid, such as where a governmental agency is the creditor. See, e.g., Labor Code § 101. Subdivision (c) provides for the reimbursement of such costs before any payments are made to the creditor.

Subdivision (d) sets forth the order in which proceeds are allocated to the judgment creditor and is based on former Sections 682.1 and 682.2. This subdivision codifies the existing practice of first satisfying new costs and interest and then the principal amount of the judgment (including previously allowed costs) as entered on the writ. The interest accruing after issuance of the writ is computed on a daily basis as provided by Section 685.050.

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

Subdivision (f) recognizes the priority of general subordinate liens on the property, including liens partially satisfied pursuant to subdivision (b).

CROSS-REFERENCES

Costs and interest generally §§ 685.010-685.100

Defined terms

Costs § 680.____
Judgment § 680.____
Judgment creditor § 680.____
Judgment debtor § 680.____
Levying officer § 680.____
Property § 680.____
Writ § 680.____

Interest rate § 685.010

Levy on property in hands of levying officer § 700.____

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§ 701.820. Schedule of proposed distribution of proceeds

701.820. (a) Promptly after a sale or collection under this title, the levying officer shall prepare a schedule of proposed distribution of proceeds which shall be available for inspection in the office of the

levying officer. Notice thereof shall be served on the judgment debtor, the judgment creditor, and any other person known to the levying officer to have or claim a lien or other interest in the property. Service shall be made personally or by mail. The levying officer may accumulate proceeds received during a 30-day period before preparing a schedule of proposed distribution.

(b) Within 10 days after service of the schedule of proposed distribution of proceeds, any interested person may file exceptions thereto with the levying officer and may apply to the court on noticed motion for a determination of exceptions. Notice of motion shall be served on the judgment creditor, the judgment debtor, and any other person listed in the schedule of proposed distribution of proceeds whose share is affected by the motion. Service shall be made personally or by mail. Any person who has actual notice of the schedule of the proposed distribution of proceeds prior to expiration of the period for filing exceptions and who fails to file exceptions may not thereafter object in any court proceeding to any distributions made in accordance with the schedule.

(c) After the expiration of the time for filing exceptions pursuant to subdivision (b), the levying officer shall:

(1) If exceptions have been timely filed, file the schedule of proposed distribution of proceeds with the court and deposit the proceeds excepted to with the court.

(2) Distribute the proceeds in accordance with the schedule to the extent it is not excepted to.

Comment. Section 701.820 is a new provision intended to provide an orderly manner for distributing proceeds of a sale or collection under this title and for the determination of any disputes concerning the distribution. For the hearing of the disputes, see Section 703.830. Section 701.820 also provides a delay during which the debtor has an opportunity to claim any available exemptions, and during which persons interested in the sale or collection can object.

CROSS-REFERENCES

Defined terms

Judgment creditor § 680.____

Judgment debtor § 680.____

Levying officer § 680.____

Manner of service §§ 684.010-684.080

Time for claiming exemptions § 703.520

§ 701.830. Hearing on exceptions

701.830. (a) Any interested person may request time for filing a response to the motion for determination of exceptions to the schedule of proposed distribution of proceeds, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of these purposes.

(b) Except as provided in subdivision (c), at the hearing on the motion the court shall determine the exceptions and make an order for the distribution of the proceeds deposited with the court.

(c) The court shall not determine the exceptions and shall abate the hearing until the conclusion of the civil action in the following cases:

(1) Where any interested person, at or prior to the hearing, objects to the determination of exception and establishes that the court is not the proper court under any other provision of law for the trial of a civil action with respect to the subject matter of the motion.

(2) Where a civil action is pending with respect to the subject matter of the motion and jurisdiction has been obtained in the court in which the civil action is pending.

(3) Where the court determines that the matter should be determined by a civil action.

Comment. Section 701.830 is drawn from Probate Code Sections 2522-2526 (guardianship and conservatorship).