

First Supplement to Memorandum 88-46

Subject: Study D-1000 - Miscellaneous Creditors' Remedies Matters
(Revival of Junior Liens)

Attached to this supplement is a letter from David R. Frank, Shasta County Counsel, suggesting the addition of some language to the proposed amendment of Code of Civil Procedure Section 701.680 set out in Memorandum 88-46 on pages 1 and 2. Mr. Frank would add the words "and priority" in the added language as follows: "Any liens extinguished by the sale of the property are revived and reattach to the property with the same effect and priority as if the sale had not been made."

The staff has no objection to adding this language, if it is thought to be helpful. In our view, "effect" would include "priority," but the added language may be helpful. Note that the last sentence of the proposed comment deals with the priority question. It reads: "Other things being equal, revived liens attach in the amounts and with the priority that they would have had if not extinguished by the sale under the superior lien of the judgment creditor."

It should also be understood that reinstated liens would be reduced by any partial satisfactions that had taken place in the interim and that liens under any judgments that had been satisfied in the interim would not reattach at all. We have not included any language to deal with contractual shifts in priorities between creditors during the interim because it does not seem to be a practical problem.

Respectfully submitted,

Stan G. Ulrich
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Re: Memorandum 88-46
(Miscellaneous Creditors' Remedies Matters)


Dear Mr. Ulrich:

I recently received the above memorandum and understand that it is now scheduled to be considered by the commission during its meeting of July 15, 1988.

Regarding the sentence proposed to be added at the end of paragraph (1) of subdivision (c) of Section 701.680 of the Code of Civil Procedure, I suggest that the words "and priority" be inserted after the words "same effect", so that the sentence reads: "Any liens extinguished by the sale of the property are revived and reattached to the property with the same effect and priority as if the sale had not been made."

Thank you for the opportunity to comment on this proposal.

Very truly yours,


David R. Frank
County Counsel

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