

Memorandum 2014-4

**Trial Court Unification: Publication of Legal Notice
(Introduction of Study)**

Given the significant statutory changes required due to trial court unification, the Legislature requested that the Commission make recommendations “pertaining to statutory changes that may be necessitated by court unification.”¹ The Commission did so through its 1998 recommendation on *Trial Court Unification: Revision of Codes*.²

In that recommendation, the Commission identified a number of issues that would be appropriate for future study, and made suggestions regarding whether those studies should be conducted by the Judicial Council, by the Commission, or by both entities acting jointly.³ The Legislature assigned that work as recommended.⁴ The Commission has since completed work on all but one of the topics assigned to it.⁵

This memorandum initiates a study of the remaining issue identified for future work by the Commission: “[p]ublication of legal notice in a county with a

1. 1997 Cal. Stat. res. ch. 102; see also 1998 Cal. Stat. res. ch. 91.

2. 28 Cal. L. Revision Comm’n Reports 51 (1998) (hereafter, “*Revision of Codes*”). Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

3. *Id.* at 82-86.

4. Gov’t Code § 70219; see also 1998 Cal. Stat. ch. 931, § 257 (former Gov’t Code § 70219).

5. See *Trial Court Unification: Issues Identified for Future Study*, 30 Cal. L. Revision Comm’n Reports 507 (2000) (hereafter, “*Issues Identified for Future Study*”); see also *Authority to Appoint Receivers*, 30 Cal. L. Revision Comm’n Reports 291 (2000); 2001 Cal. Stat. ch. 44 (SB 562 (Morrow)) (implementing Commission recommendation on authority to appoint receivers); *Cases in Which Court Reporter Is Required*, 31 Cal. L. Revision Comm’n Reports 223 (2001); 2002 Cal. Stat. ch. 71 (SB 1371 (Morrow)) (implementing Commission recommendation on cases in which court reporter is required); *Stay of Mechanic’s Lien Enforcement Pending Arbitration*, 30 Cal. L. Revision Comm’n Reports 307 (2000); 2003 Cal. Stat. ch. 22 (SB 113 (Ackerman)) (implementing Commission recommendation on stay of mechanic’s lien enforcement pending arbitration); *Obsolete Reporting Requirements*, 33 Cal. L. Revision Comm’n Reports 267 (2003); 2004 Cal. Stat. ch. 193 (SB 111 (Knight)) (implementing Commission recommendation on obsolete reporting requirements).

unified superior court.”⁶ When the Commission prepared its recommendation on trial court unification, the Commission recognized that its recommended provision⁷ retaining judicial district boundaries for the purposes of publication would need to be revisited.⁸ The Commission has been deferring work on that study, to allow interested parties to gain experience with legal publication in a unified superior court.⁹

Over a decade has passed since all municipal and superior courts in California unified. It thus seems to be an appropriate time to revisit the issue of publication of legal notice. This memorandum provides background on the issue, explains the current approach, describes concerns that the staff has identified with that approach, and discusses general approaches for the Commission to consider in addressing the issue.

BACKGROUND

To understand the nature of this study, it is necessary to provide some background information on:

- (1) Trial court unification generally.
- (2) Pre-unification statutes referring to a “judicial district.”
- (3) The general approach to revising such statutes to accommodate trial court unification.
- (4) The special approach used for statutes requiring publication of legal notice in a “judicial district.”

We discuss each of those points in order below.

Trial Court Unification

In early 1998, each of California’s 58 counties was required to have a superior court (which was divided into districts in Los Angeles County) and at least one municipal court.¹⁰ The number of municipal courts varied from county to county.

In most counties, there was only one municipal court, and municipal court judges were elected countywide. In some of these counties, the superior and

6. *Revision of Codes*, *supra* note 2, at 86; see also *id.* at 72.

7. Gov’t Code § 71042.5 (retaining former municipal court districts for publication purposes if municipal and superior courts unify), see also *Revision of Codes*, *supra* note 2, at 72, 349.

8. *Revision of Codes*, *supra* note 2, at 86, n. 131.

9. *Issues Identified for Future Study*, *supra* note 5, at 514.

10. Former Cal. Const. art. VI, §§ 4, 5 (1997).

municipal courts appear to have consolidated certain operations, while remaining distinct courts in compliance with the constitutional requirement.¹¹

A few years prior to unification, roughly four-fifths of California counties had only one municipal court (which was in some cases consolidated with the superior court).¹² Of the counties that had multiple municipal courts, all but two counties had five or fewer municipal courts, serving different districts of the county. The remaining two counties were Alameda with six municipal courts and Los Angeles with over twenty.¹³ In counties with multiple municipal courts, the municipal court judges were elected in their districts.¹⁴ In general, the county Board of Supervisors was responsible for maintaining judicial district boundaries.¹⁵

Senate Constitutional Amendment 4 (Lockyer) provided “for unification of the municipal and superior courts in a county on a vote of a majority of the municipal court judges and a majority of the superior court judges in that county.”¹⁶ This measure, titled Proposition 220, was approved by the voters at the statewide election on June 2, 1998, and became operative the day after the election.¹⁷

In many counties, the municipal and superior courts unified soon after Proposition 220 was approved. By early 2001, the courts in every county had unified.

Pre-Unification Statutes Referring to a “Judicial District”

Before unification, many statutes referred to a “judicial district” for one reason or another. In general, those statutes were intended to refer to a “municipal court district” in a county. As the Commission explained in its report on trial court unification,

11. See California Courts and Judges 33-75 (James Publishing, 1998 ed.); Trial Court Unification: Proposed Constitutional Amendments and Commentary as Amended and Adopted by the Judicial Council 15-24 (1993) (attached to CLRC Memorandum 93-54); 1995 Cal. Stat. ch. 759, §§ 2, 3 (former Gov’t Code §§ 68112, 68112.5).

12. Judicial Council of California, Administrative Office of the Courts, 1997 Judicial Council Report on Court Statistics 73-77.

13. *Id.* at 73, 74.

14. See former Cal. Const. art. VI, § 16(b) (1997); *Trial Court Unification: Constitutional Revision* (SCA 3), 24 Cal. L. Revision Comm’n Reports 1, 41 (1994).

15. See California Courts and Judges, *supra* note 11, at 32; see also 1953 Cal. Stat. ch. 1130, § 1 (former Gov’t Code § 71040); 1967 Cal. Stat. ch. 1226, § 1 (former Gov’t Code § 71042).

16. *Revision of Codes, supra* note 2, at 59.

17. *Id.* (citing Cal. Const. XVIII, § 4).

Statutes refer to “judicial districts” for various purposes. The references generally intend the “municipal court district” in a county.⁵³

53. See, e.g., Elec. Code § 325. There appear to be only two instances in the codes where “judicial district” might have been intended to mean “superior court district” (see Food & Agric. Code § 31622; Ins. Code § 11542.2), and one where “judicial district” means “court of appeal district” (see Pub. Util. Code § 1756). While the California Constitution does refer to “municipal court districts,” it does not equate them with “judicial districts.”¹⁸

The General Approach to Statutes Referring to a “Judicial District”

Upon a vote to unify, the municipal and superior courts in a county would combine their operations in a unified, countywide superior court.¹⁹ The municipal courts would cease to exist as separate entities, the municipal court judges would become superior court judges, and all future elections for trial court judges would be conducted on a countywide basis. Consequently, unless the Legislature provided some guidance, the pre-unification statutes referring to a “judicial district” would become unclear.

One means of providing the necessary guidance would have been to revise each statutory reference to a “judicial district.” Due to the large number of such references and the need to promptly revise the codes to accommodate unification, that approach was not feasible.

Instead, the Commission proposed to enact a provision that would give general guidance on how to interpret a statutory reference to a “judicial district.” Specifically, the Commission proposed, and the Legislature enacted,²⁰ Code of Civil Procedure Section 38, which states:

38. Unless the provision or context otherwise requires, a reference in a statute to a judicial district means:
- (a) As it relates to a court of appeal, the court of appeal district.
 - (b) As it relates to a superior court, the county.
 - (c) As it relates to a municipal court, the municipal court district.
 - (d) *As it relates to a county in which there is no municipal court, the county.*

18. *Revision of Codes, supra* note 2, at 70.

19. Former Cal. Const. art. VI, § 5(e), approved by the voters June 2, 1998 (Proposition 220).

20. See *Revision of Codes, supra* note 2, at 132, 1998 Cal. Stat. ch. 931, § 20 (SB 2139 (Lockyer)).

Comment. Section 38 is intended for drafting convenience. See also Section 17 (“judicial district” includes city and county). Court of appeal districts and municipal court districts are constitutionally mandated. See Cal. Const. art. VI, §§ 3, 5. Superior court districts do not exist except in Los Angeles County. See Gov’t Code §§ 69640-69650.

By operation of this section, in a county in which the superior and municipal courts have unified, a statutory reference to a judicial district means the county rather than a former municipal court district. This general rule is subject to exceptions. See, e.g., Gov’t Code § 71042.5 (preservation of judicial districts for purpose of publication).²¹

The Commission explained this general approach as follows:

On unification of the municipal and superior courts in a county, the former municipal court districts have little relevance for most purposes. The proposed law treats statutory references to judicial districts as references to the county if there is no municipal court in the county. Exceptions to this rule, and circumstances where application of the rule could result in a significant change, are noted in Comments following relevant provisions in the proposed law.²²

The Special Rule for Publication of Legal Notice

Among the pre-unification statutes that referred to a “judicial district” were several that did so for purposes of specifying where to publish a notice required by law. For example, Business and Professions Code Section 21707 pertains to a sale of property left at a self-storage facility to recover monies (rent and other charges and fees) owed to the owner of the facility. Before unification, the section required that notice of the sale be published in the judicial district where the sale was going to occur:

21707. (a) After the expiration of the time given in the notice of lien sale, pursuant to subdivision (a) of Section 21705, *an advertisement of the sale shall be published once a week for two weeks consecutively in a newspaper of general circulation published in the judicial district where the sale is to be held. The advertisement shall include a general description of the goods, the name of the person on whose account they are being stored, the space number of the occupant, and the name and location of the storage facility. If there is no newspaper of general circulation published in the judicial district where the sale is to be held, the advertisement shall be posted at least 10*

21. Emphasis added (see Exhibit p. 2 for full text of this section).

22. *Revision of Codes*, *supra* note 2, at 70 (footnote omitted).

days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

....²³

By specifying that the notice was to be published “in the judicial district” where the sale was going to occur, the statute helped to ensure that publication would occur in proximity to the sale. Presumably, the objective was to provide notice locally for people who would be interested in the sale, such as potential buyers and the owner of the property being sold. The statutorily authorized alternative approach (posting the notice “in not less than six conspicuous places in the neighborhood of the proposed sale,” if there is no newspaper of general circulation in the judicial district) reinforces that view of the statutory purpose.

In its recommendation on trial court unification, the Commission concluded that special treatment was necessary to address the statutes requiring or permitting publication of legal notice in a judicial district. To avoid modifying publication requirements, the Commission proposed to preserve the use of judicial districts for purposes of publication of legal notice. This was accomplished through the following amendment of Government Code Section 71042.5, which was amended to read:

71042.5. Notwithstanding any other provision of law, upon consolidation of judicial districts or unification of municipal and superior courts in a county, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.

Comment. Section 71042.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). This preserves the effect of statutes that specify publication by judicial district, rather than by county. See, e.g., Bus. & Prof. Code § 21707; Civ. Code §§ 2924f, 3440.1, 3440.5; Code Civ. Proc. §§ 701.540, 1208.5; Com. Code §§ 6105, 7210; Rev. & Tax. Code §§ 3381, 3702. Cf. Code Civ. Proc. § 38 (“judicial district” defined, subject to contrary statute).²⁴

The Commission’s recommendation on trial court unification gives the following explanation of the approach:

23. 1981 Cal. Stat. ch. 439, § 1 (emphasis added).

24. *Revision of Codes*, *supra* note 2, at 349; 1998 Cal. Stat. ch. 931, § 263.

Publication in Former Municipal Court Districts

The general rule that judicial districts are countywide in a county in which the courts have unified is subject to a significant exception for legal publication requirements. Under existing law, if the municipal courts in a county consolidate, the former municipal court districts are preserved for purposes of publication.⁶⁴ The proposed law applies the same principle if the municipal courts in a county unify with the superior court.

64. Gov't Code § 71042.5 (preservation of judicial districts for purpose of publication).²⁵

Although the Commission proposed to retain municipal court judicial districts for the purposes of publication, it recognized that this approach “may be unsatisfactory in the long-term because it would not account for changing demographics.”²⁶

Thus, the Commission included the matter on its list of issues appropriate for future study.²⁷ The Legislature assigned the study to the Commission and directed the Commission to consult with the Judicial Council in conducting the study.²⁸

EXISTING LAW

The statutes in question have changed little since 1998. Code of Civil Procedure Section 38, establishing the general rule for interpreting a statutory reference to a “judicial district,” remains in the codes exactly as it was enacted.

Government Code Section 71042.5, the special rule for publication of legal notice in a “judicial district,” was repealed and reenacted without substantive change in 2002, as part of the Commission’s work on trial court restructuring.²⁹

In its 1998 recommendation on trial court unification, the Commission identified ten statutes with notice requirements circumscribed by judicial district boundaries.³⁰ Since the Commission’s recommendation was prepared, one of

25. *Id.* at 72.

26. *Id.* at 86, n. 131.

27. *Id.* at 86.

28. Gov't Code § 70219; see also 1998 Cal. Stat. ch. 931, § 257 (former Gov't Code § 70219).

29. 2002 Cal. Stat. ch. 784, §§ 343, 344; *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1, 308-09 (2002).

30. Gov't Code § 71042.5 Comment (reproduced on p. 6 of this memorandum).

those statutes has been amended to remove the reference to “judicial district.”³¹ Of the remaining provisions, eight require notice through newspaper publication, and one requires notice through public posting. Each of those provisions is attached to this memorandum (see Exhibit pp. 1-12) and briefly described below.

As a general matter, the staff notes that the provisions in question differ in structure, and may thus call for different treatment if the Commission concludes the use of former judicial districts for publication is no longer appropriate. For instance, to the extent that local publication is deemed the key goal of the publication requirements, a statute where a judicial district is the only option for achieving less-than-countywide, local publication³² may need to be modified differently than one with numerous options for less-than-countywide, local publication.³³

Business and Professions Code Section 21707: Notice Requirement for Self-Storage Facility Lien Sale

The current version of Business and Professions Code Section 21707,³⁴ pertaining to sales of property left at self-storage facilities, is quite similar to the pre-unification version described above. In 2010, the Legislature amended this section to require publication of notice in a newspaper of general circulation in the “county” where the sale is to be held.³⁵ But the Legislature reversed this change the next year and restored the “judicial district” as the notice boundary.³⁶ The staff will discuss this development in detail later in this study.

Civil Code Section 2924f: Home Foreclosure Sales Made under a Power of Sale

Civil Code Section 2924f pertains to home foreclosure sales made under the power of sale contained in a deed of trust or mortgage.³⁷ This section includes both a posting requirement and a newspaper publication requirement that rely on judicial district boundaries. However, both of these requirements have a

31. Com. Code § 7210(b)(5) (now requires that an advertisement of a warehouse owner’s sale of property to enforce a lien be published once a week for two weeks in “a newspaper of general circulation where the sale is to be held”).

32. See, e.g., Civ. Code § 3440.1(h)(2) (Exhibit pp. 7-8).

33. See, e.g., Rev. & Tax Code § 3381 (Exhibit pp. 11-12).

34. Text of the section is reproduced on page 2 of the Exhibit.

35. 2010 Cal. Stat. ch. 439, § 4 (AB 655 (Emmerson)).

36. 2011 Cal. Stat. ch. 65, § 1 (SB 279 (Emmerson)).

37. Text of the section is reproduced on pages 2-7 of the Exhibit.

similar “nested” structure, focusing first on the city, then on the judicial district, then on the county, and finally on a contiguous county.

Specifically, for the newspaper publication, the notice must be published in a newspaper of general circulation in the city in which the property is located. However, if the property is not located in a city, or if the city has no such paper, then notice must be provided in a newspaper of general circulation published in the judicial district. The statute also provides for publication in the county if no newspaper of general circulation exists in the judicial district, and for publication in a contiguous county if no newspaper of general circulation exists in the county.

Civil Code Section 3440.1: Exemption for Debtor’s Conveyance of Personal Property without Delivery from Fraudulent Transfer Rules

Civil Code Section 3440.1 provides exemptions from general rules intended to protect creditors from fraudulent transfers by debtors.³⁸ One such exemption is a transfer of personal property meeting the following conditions:

1. Prior to the transfer, one of the parties files a financing statement with the Secretary of the State and
2. Not less than 10 days before the transfer occurs, one of the parties publishes a notice in a newspaper of general circulation published in the judicial district in which the property is located or, if no such paper exists, in a newspaper of general circulation in the county.

Civil Code Section 3440.5: Exemption of Certain Security Agreements from Fraudulent Transfer Rules

Civil Code Section 3440.5 also involves rules exempting certain transactions from the general rules intended to protect creditors from fraudulent transfers by debtors.³⁹

This section provides that the chapter does not affect the rights of a secured party who acquired a security interest from a transferee so long as the following conditions are met:

1. Prior to the execution of the security agreement, either the intended debtor or the secured party files a financing statement with the Secretary of the State and

38. Text of the section is reproduced on pages 7-8 of the Exhibit.

39. Text of the section is reproduced on pages 8-9 of the Exhibit.

2. Not less than 10 days before execution of the security agreement, either the intended debtor or secured party publishes a notice in a newspaper of general circulation published in the judicial district in which the property is located or, if no such paper exists, in a newspaper of general circulation in the county.

Code of Civil Procedure Section 701.540: Notice of Sale of Interest in Real Property

Code of Civil Procedure Section 701.540 provides the notice requirements for the execution of a sale of real property in enforcement of a judgment.⁴⁰ Section 701.540 contains a “nested” notice structure similar to Civil Code Section 2924f (described above).

In addition to other forms of notice, this section requires the levying officer to publish notice of a sale at least 20 days prior to the sale in a newspaper of general circulation in the city in which the property is located or, if the property is not situated in a city, in a newspaper of general circulation in the judicial district in which the property is located.⁴¹ If no newspaper exists in the city or judicial district, notice must be published in a newspaper of general circulation in the county in which the property is located.⁴²

Commercial Code Section 6105: Notice Requirement for Bulk Sales

Commercial Code Section 6105 pertains to notice requirements for bulk sales (generally, a bulk sale is a sale outside the normal course of business of more than half of the seller’s inventory and equipment⁴³).⁴⁴

This section requires that, at least 12 days before the bulk sale, the buyer must publish notice “at least once in a newspaper of general circulation published in the judicial district in this state in which the tangible assets are located and in the judicial district, if different, in which the seller is located . . . , if in either case there is one, and if there is none, then in a newspaper of general circulation in the county in which the judicial district is located.”⁴⁵

40. Text of the section is reproduced on pages 9-10 of the Exhibit.

41. Code Civ. Proc. § 701.540(g) (see Exhibit p. 10).

42. *Id.*

43. See Com. Code § 6102(a)(3).

44. Text of the section is reproduced on pages 10-11 of the Exhibit.

45. *Id.* § 6105(b)(2) (see Exhibit p. 11).

Revenue and Taxation Code Section 3381: Alternate Means of Notice of Intent to Sell Property of Delinquent Taxpayers

Revenue and Taxation Code Section 3381 provides an alternate means of publication for the tax delinquent list and the notice of power and intent to sell.⁴⁶ Generally, publication of these items must be made in the county.⁴⁷ However, where the tax collector or, in a chartered county, the Board of Supervisors determines that local publication of the delinquent list and notice of power and intent to sell is required, the tax collector or Board of Supervisors has discretion to select among several geographical options for publication, including judicial districts.⁴⁸

Revenue and Taxation Code Section 3702: Notice of Intended Sale of Property of Delinquent Taxpayers

Revenue and Taxation Code Section 3702 addresses a subsequent step in the process of selling the property of delinquent taxpayers.⁴⁹ After the Section 3381 notice described above, the property owner has a right of redemption.⁵⁰ If the property owner does not exercise that right within a certain timeframe, the sale can proceed.⁵¹ Section 3702 specifies that notice must again be provided in advance of the actual sale. This section requires that the tax collector “publish notice of the intended sale once a week for three successive weeks in a newspaper of general circulation published in the county seat and in a newspaper of general circulation published in the judicial district in which the property is situated.” This section also provides special direction if the newspaper in the county seat is the same as that in the judicial district or if either of those locations does not have a newspaper of general circulation.⁵²

CONCERNS ABOUT THE CURRENT APPROACH TO NOTICE PUBLICATION

Currently, former judicial district boundaries are retained for publication of the notices described by the statutory provisions above. This approach ties the

46. Text of the section is reproduced on pages 11-12 of the Exhibit.

47. Rev. & Tax Code §§ 3363 (notice of power and intent to sell), 3373 (delinquent list).

48. *Id.* § 3381 (the list includes, among other items, municipal corporations, K-12 school districts, junior college districts, supervisorial districts, tax districts, areas included in map books, and tax code areas) (see Exhibit p. 12).

49. Text of the section is reproduced on page 12 of the Exhibit.

50. See Rev. & Tax Code § 3362(c).

51. See *id.* § 3362(c), (d).

52. *Id.* § 3702 (see Exhibit p. 12).

notice requirements to a set of static judicial district boundaries. Although those static boundaries were at one time associated with real-world jurisdictional boundaries, those boundaries now simply serve to circumscribe notice publication areas.

The staff has identified several initial concerns with retaining the boundaries, which have been divorced from their original purpose, solely for the purpose of providing notice. The following concerns about the current approach will be described in more detail below:

- Failure of these static boundaries to account for changing demographics;
- Burden of maintaining former judicial district boundaries;
- Challenge of accessing former judicial district boundaries;
- Trap for the unwary created by relying on former judicial district boundaries; and
- Potentially serious consequences of a failure to determine the correct boundaries.

It appears that the statutes calling for publication in a judicial district were intended to ensure local publication. Without amendments to address the concerns listed above, the achievement of this goal may be at risk.

Changing Demographics

As indicated in the Commission's 1998 recommendation, these static boundaries fail to account for changing demographics.⁵³ At this point, the judicial district publication requirements for all counties are tied to district boundaries that are at least thirteen years old and possibly much older.

Prior to unification, the judicial district boundaries could be adjusted to account for significant population shifts.⁵⁴ For instance, a new judicial district could be created in an area of high growth, or an area with declining population could see its judicial district subsumed by a larger district.

Specifically, one of the rules in place prior to unification required that each district have no fewer than 40,000 residents.⁵⁵ Prior to unification, a county Board of Supervisors could act to maintain its judicial districts in line with this

53. *Revision of Codes*, *supra* note 2, at 86, n. 131.

54. See California Courts and Judges, *supra* note 11, at 32; see also 1953 Cal. Stat. ch. 1130, § 1 (former Gov't Code § 71040); 1967 Cal. Stat. ch. 1226, § 1 (former Gov't Code § 71042).

55. Former Cal. Const., art VI, § 5(a) (1997), see Cal. Proposition 191 (1994).

requirement.⁵⁶ After unification, the former judicial district boundaries are locked in place, regardless of population shifts, to serve as boundaries for notice publication under Government Code section 71042.5.

Without the ability to adjust the boundaries of judicial districts as population shifts, these districts may become less and less reflective of population demographics over time.

Burden of Maintaining Former Judicial District Boundaries

Government Code section 71042.6 requires the county recorder to keep on file a map of former judicial districts. Specifically, this section provides:

For the purpose of establishing boundaries under Section 71042.5, a map approved by the county surveyor shall be kept on file with the county recorder showing the boundaries of all consolidated or unified districts and component districts as of the date of consolidation or unification. The map shall be conclusively presumed to be accurate and may be used in evidence in any proceeding involving application of Section 71042.5.

While this statutory requirement seeks to ensure that access to judicial district boundaries is retained, this requirement places a responsibility on local governments to keep and provide access to such a map.

Based on the staff's quick check of several county recorder websites, it appears that these maps are, at a minimum, not easy to find online and may not be available online at all. Thus, local government staff time and resources may be required to answer inquiries about the maps and provide the maps upon request.

Devoting even limited government resources to maintain a map of outdated boundaries for the sole purpose of notice publication strikes the staff as inefficient. There may be other jurisdictional boundaries that (1) are otherwise required to be kept current and maintained by government, (2) are readily accessible by the public, and (3) could serve as appropriate boundaries for publication requirements.

Challenges of Accessing Judicial District Boundaries

As noted above, the staff checked several county recorders' websites for maps of the former judicial districts. Although the staff did not conduct an exhaustive

⁵⁶. See California Courts and Judges, *supra* note 11, at 32; see also 1953 Cal. Stat. ch. 1130, § 1 (former Gov't Code § 71040); 1967 Cal. Stat. ch. 1226, § 1 (former Gov't Code § 71042).

search, the staff did not find any maps of former judicial districts in its review. It appears that such maps may not be available online.

The lack of such maps is unsurprising, given the timing of trial court unification (1998-2001) and the development of local government websites. Further, in places where judicial districts consolidated prior to unification, the relevant map might be older, reflecting the set of judicial districts that existed prior to consolidation.⁵⁷

However, the lack of ready access to judicial district maps places a not-insignificant burden on parties who need to know judicial district boundaries. Accessing the map may require a visit to the county recorder's office, fees for government staff time or copying, or both.

Trap for the Unwary

In a situation where a person is required to publish in a "judicial district," there are many potential pitfalls that could result in failure to comply with statutory requirements. Specifically, it is not obvious on the face of the notice requirement statutes (described previously) that the former judicial district boundaries are the proper boundaries for publication. To correctly determine the boundaries, a person would need to be aware of Government Code Section 71042.5, or be aware that counties set judicial district boundaries and happen to be in a county that still refers to the former judicial districts in its ordinances.

In the absence of such knowledge, there are several ways in which a person who is generally aware of the history of municipal courts and trial court unification might make a mistake. For example, a person could be led astray if the person:

- Searches a county's ordinances and fails to find any reference to a judicial district (counties were formerly responsible for maintaining judicial districts⁵⁸); or
- Searches a county's ordinances and finds an indication that judicial district ordinances have been repealed (some counties⁵⁹ appear to have repealed judicial district ordinances); or

57. Gov't Code § 71042.5 (providing for preservation of former judicial districts when there has been district consolidation).

58. See California Courts and Judges, *supra* note 11, at 32; see also 1953 Cal. Stat. ch. 1130, § 1 (former Gov't Code § 71040); 1967 Cal. Stat. ch. 1226, § 1 (former Gov't Code § 71042)..

59. See Kern County "A" Ordinance List and Disposition Table, *available at* <library.municode.com/index.aspx?clientId=16251> (Ordinance number A-351 "[r]epeals Chs. 2.58, 2.60 and 2.62, judicial districts.")

- Finds references to the elimination of judicial districts on an official court website;⁶⁰ or
- Finds Code of Civil Procedure Section 38 (indicating that “unless the provision or context otherwise requires,” a statutory reference to a judicial district “as it relates to a county in which there is no municipal court” means the county),⁶¹ but does not see the Commission’s Comment to that section, which refers to Government Code Section 71042.5.

In each of these situations, the person may incorrectly assume that the county’s boundaries are the relevant ones for publication, and publish notice in the county as opposed to the former judicial district.

Consequences of Failure to Publish Notice in Correct Area

If a person mistakenly publishes notice countywide rather than in a judicial district, the action might be subject to a due process challenge. Several of the publication requirements relate to the sale of property⁶² of a debtor or delinquent taxpayer. In such cases, significant rights are at issue and strict compliance with due process may be required.⁶³ If the statutory notice requirement is not satisfied, a sale of real or personal property might be subject to litigation and reversed after the fact, even if the sale otherwise fully complied with the applicable requirements.

POSSIBLE APPROACHES TO ADDRESS THE ISSUE OF JUDICIAL DISTRICT PUBLICATION

The staff sees several possible approaches that the Commission could take to address the statutes that require or permit publication of legal notice in a judicial district. We briefly describe those possibilities below. **If the Commissioners have concerns or questions about any of the approaches, the staff would appreciate such input and endeavor to address those points in future memoranda.**

60. See, e.g., Superior Court of California, County of Alameda website, Trial Court Unification, *sited at* <www.alameda.courts.ca.gov/Pages.aspx/Trial-Court-Unification>.

61. Code Civ. Proc. § 38(d).

62. See, e.g., Civ. Code § 2924f, Rev. & Tax Code § 3702.

63. See, e.g., *Healton v. Morrison*, 162 Cal. 668, 670-671, 124 P. 240 (1912) (statutory notice requirements are prerequisites to a valid sale); *Miller v. Cote*, 127 Cal. App. 3d 888, 894, 179 Cal. Rptr. 753 (1982) (“The statutory requirements [setting forth the procedure for foreclosing on security by a trustee’s sale pursuant to a deed of trust] must be strictly complied with....”).

Status Quo – No Change

One possible approach would be to do nothing. While the staff has identified concerns with the status quo earlier in this memorandum, these concerns are practical problems rather than legal deficiencies.

There are benefits to retaining the judicial districts. For repeat players (including the governmental actors obligated to provide notice under the provisions above), the judicial districts are presumably a known quantity. Further, under this approach, no legislative action is required. And, the parties providing notice pursuant to these provisions would be subject to the same requirements that currently govern notice publication.

Improved Status Quo - Retain Judicial Districts for Purposes of Publication, but Make Changes to Clarify and Improve Access to District Boundaries

Another possible approach would be to continue using former judicial districts for purposes of publication, but revise the law to make the requirements more clear and to reduce the possibility of confusion.

As noted previously, the status quo presents several practical problems. The staff has initially identified several potential changes that would ameliorate these problems without disrupting the use of the former judicial districts for publication. For instance, statutory cross-references could help alert practitioners to Government Code Section 71042.5, regarding the retention of judicial districts for publication. It might also be helpful to have a statewide authoritative source map the former judicial districts and provide that map online, so that the district boundaries can be easily ascertained. Further, the former judicial districts could be re-named “publication districts” or something similar to reduce the possibility of confusion.

Eliminate References to Judicial Districts and Replace with Another Set of Boundaries for Notice Publication

Another possible approach would be to find another mechanism, aside from judicial districts, for notice publication.

The staff notes, however, that it will be difficult to find another set of districts with a similar distribution to the former municipal court districts. There were roughly 105 municipal courts⁶⁴ around the time of unification, but those were

64. 1997 Judicial Council Report on Court Statistics, *supra* note 12, at 78.

highly concentrated in a few counties (Los Angeles County alone contained over twenty municipal courts).

What might serve as a suitable substitute for the former municipal court districts? There are many candidates that the Commission could consider. For instance, there are eighty Assembly Districts,⁶⁵ but these districts can cover multiple counties and thus differ from judicial districts, which necessarily are contained within a single county. Supervisorial districts are necessarily within a single county, but, for the most part, there are five supervisorial districts per county (whereas many counties only had a single judicial district).⁶⁶

It seems unlikely, however, that we will find another set of districts with boundaries that largely match the boundaries of the former municipal court districts. But it might be possible to find a set of districts that would effectively achieve local publication.

Eliminate References to Judicial Districts without Replacing Them

Another possible approach would be to eliminate the references to judicial districts in the notice publication statutes, without replacing them.

The effect of such a change is perhaps easiest to describe in the context of the “nested” notice statutes. Consider, for example, a statute that requires publication in:

- (1) A newspaper of general circulation in a particular city, or, if there is no such paper,
- (2) In a newspaper of general circulation in the judicial district, or, if there is no such paper,
- (3) In a newspaper of general circulation in the county.

The Commission could propose to delete the option of publication in a newspaper of general circulation in the judicial district. As revised, the statute would simply require publication in:

65. See California State Legislature, Assembly Districts Map, *available at* <www.legislature.ca.gov/legislators_and_districts/districts/assemblydistricts.html>.

66. Gov’t Code § 25000 (counties are required to have a Board of Supervisors with five members), San Francisco City Charter, art. II, § 2.100 (the legislative branch of the City and County of San Francisco is the Board of Supervisors, which has 11 members elected by district), A. Kinney, *San Mateo County Supervisors Postpone District Lines Vote*, San Jose Mercury News (Oct. 8, 2013) (“This year, San Mateo became the last county in California to abandon at-large elections in favor of district elections.”).

- (1) A newspaper of general circulation in a particular city, or, if there is no such paper,
- (2) A newspaper of general circulation in the county.

In cases where the judicial district is the only relevant boundary for notice, it may be more difficult to re-word the statutes. However, there is precedent for such a change. Commercial Code Section 7210 was recently amended to remove the reference to “judicial district.”⁶⁷ This section now requires “an advertisement of the sale [to] be published once a week for two weeks consecutively *in a newspaper of general circulation where the sale is to be held*” (emphasis added). The annotations to this section do not identify any cases arising after the change was made, so the degree of “localness” afforded by the provision is unclear.

NEXT STEPS

The staff proposes that the next memorandum in this study provide more detail on the different approaches that are described above. The staff anticipates that, unless the Commission selects the status quo approach, there will be at least a few additional memoranda in this study exploring options and determining how to implement the selected approach.

The staff will continue its effort to identify and reach out to potential stakeholders in this study. At this point, the Commission has a mailing list from its previous work on trial court restructuring, and the staff has specifically alerted the Judicial Council and the California Newspaper Publishers Association to this new study. We have also identified several other potentially interested parties. **We encourage the stakeholders to provide input on the approaches described herein and any overarching concerns about the issue of publication by judicial district.**

Respectfully submitted,

Kristin Burford
Staff Counsel

67. Compare 2006 Cal. Stat. ch. 254 § 49 (current Com. Code Section 7210) with 1963 Cal. Stat. ch. 819 § 1 (former Com. Code Section 7210).

STATUTES THAT SPECIFY PUBLICATION BY JUDICIAL DISTRICT

BUSINESS AND PROFESSIONS CODE2
 § 21707. Notice requirement for self-storage facility lien sale.....2
CIVIL CODE2
 § 2924f. Home foreclosure sales made under a power of sale.....2
 § 3440.1. Exemption for debtor’s conveyance of personal property without delivery from
 fraudulent transfer rules7
 § 3440.5. Exemption of certain security agreements from fraudulent transfer rules.....8
CODE OF CIVIL PROCEDURE9
 § 701.540. Notice of sale of interest in real property.....9
COMMERCIAL CODE.....10
 § 6105. Notice requirement for bulk sales10
REVENUE AND TAXATION CODE11
 § 3381. Alternate means of notice of intent to sell property of delinquent taxpayers11
 § 3702. Notice of intended sale of property of delinquent taxpayers12



1 **☞ Staff Note.** In the statutory provisions below, we have added emphasis (bold and italics) to
2 the term “judicial district” to facilitate review of the relevant requirements.

3 **BUSINESS AND PROFESSIONS CODE**

4 **§ 21707. Notice requirement for self-storage facility lien sale**

5 21707. After the expiration of the time given in the notice of lien sale, pursuant
6 to subdivision (b) of Section 21705, or following the failure of a claimant to pay
7 rent or obtain a court order pursuant to Section 21709, an advertisement of the sale
8 shall be published once a week for two weeks consecutively in a newspaper of
9 general circulation published in the *judicial district* where the sale is to be held.
10 The advertisement shall include a general description of the goods, the name of the
11 person on whose account they are being stored, and the name and location of the
12 storage facility. If there is no newspaper of general circulation published in the
13 *judicial district* where the sale is to be held, the advertisement shall be posted at
14 least 10 days before the sale in not less than six conspicuous places in the
15 neighborhood of the proposed sale. The sale shall be conducted in a commercially
16 reasonable manner. After deducting the amount of the lien and costs of sale, the
17 owner shall retain any excess proceeds of the sale on the occupant’s behalf. The
18 occupant, or any other person having a court order or other judicial process against
19 the property, may claim the excess proceeds, or a portion thereof sufficient to
20 satisfy the particular claim, at any time within one year of the date of sale.
21 Thereafter, the owner shall pay any remaining excess proceeds to the treasury of
22 the county in which the sale was held.

23 **CIVIL CODE**

24 **§ 2924f. Home foreclosure sales made under a power of sale**

25 2924f. (a) As used in this section and Sections 2924g and 2924h, “property”
26 means real property or a leasehold estate therein, and “calendar week” means
27 Monday through Saturday, inclusive.

28 (b) (1) Except as provided in subdivision (c), before any sale of property can be
29 made under the power of sale contained in any deed of trust or mortgage, or any
30 resale resulting from a rescission for a failure of consideration pursuant to
31 subdivision (c) of Section 2924h, notice of the sale thereof shall be given by
32 posting a written notice of the time of sale and of the street address and the
33 specific place at the street address where the sale will be held, and describing the
34 property to be sold, at least 20 days before the date of sale in one public place in
35 the city where the property is to be sold, if the property is to be sold in a city, or, if
36 not, then in one public place in the *judicial district* in which the property is to be
37 sold, and publishing a copy once a week for three consecutive calendar weeks.

1 (2) The first publication to be at least 20 days before the date of sale, in a
2 newspaper of general circulation published in the city in which the property or
3 some part thereof is situated, if any part thereof is situated in a city, if not, then in
4 a newspaper of general circulation published in the *judicial district* in which the
5 property or some part thereof is situated, or in case no newspaper of general
6 circulation is published in the city or *judicial district*, as the case may be, in a
7 newspaper of general circulation published in the county in which the property or
8 some part thereof is situated, or in case no newspaper of general circulation is
9 published in the city or *judicial district* or county, as the case may be, in a
10 newspaper of general circulation published in the county in this state that is
11 contiguous to the county in which the property or some part thereof is situated and
12 has, by comparison with all similarly contiguous counties, the highest population
13 based upon total county population as determined by the most recent federal
14 decennial census published by the Bureau of the Census.

15 (3) A copy of the notice of sale shall also be posted in a conspicuous place on
16 the property to be sold at least 20 days before the date of sale, where possible and
17 where not restricted for any reason. If the property is a single-family residence the
18 posting shall be on a door of the residence, but, if not possible or restricted, then
19 the notice shall be posted in a conspicuous place on the property; however, if
20 access is denied because a common entrance to the property is restricted by a
21 guard gate or similar impediment, the property may be posted at that guard gate or
22 similar impediment to any development community.

23 (4) The notice of sale shall conform to the minimum requirements of Section
24 6043 of the Government Code and be recorded with the county recorder of the
25 county in which the property or some part thereof is situated at least 20 days prior
26 to the date of sale.

27 (5) The notice of sale shall contain the name, street address in this state, which
28 may reflect an agent of the trustee, and either a toll-free telephone number or
29 telephone number in this state of the trustee, and the name of the original trustor,
30 and also shall contain the statement required by paragraph (3) of subdivision (c).
31 In addition to any other description of the property, the notice shall describe the
32 property by giving its street address, if any, or other common designation, if any,
33 and a county assessor's parcel number; but if the property has no street address or
34 other common designation, the notice shall contain a legal description of the
35 property, the name and address of the beneficiary at whose request the sale is to be
36 conducted, and a statement that directions may be obtained pursuant to a written
37 request submitted to the beneficiary within 10 days from the first publication of
38 the notice. Directions shall be deemed reasonably sufficient to locate the property
39 if information as to the location of the property is given by reference to the
40 direction and approximate distance from the nearest crossroads, frontage road, or
41 access road. If a legal description or a county assessor's parcel number and either
42 a street address or another common designation of the property is given, the
43 validity of the notice and the validity of the sale shall not be affected by the fact

1 that the street address, other common designation, name and address of the
2 beneficiary, or the directions obtained therefrom are erroneous or that the street
3 address, other common designation, name and address of the beneficiary, or
4 directions obtained therefrom are omitted.

5 (6) The term “newspaper of general circulation,” as used in this section, has the
6 same meaning as defined in Article 1 (commencing with Section 6000) of Chapter
7 1 of Division 7 of Title 1 of the Government Code.

8 (7) The notice of sale shall contain a statement of the total amount of the unpaid
9 balance of the obligation secured by the property to be sold and reasonably
10 estimated costs, expenses, advances at the time of the initial publication of the
11 notice of sale, and, if republished pursuant to a cancellation of a cash equivalent
12 pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided,
13 that the trustee shall incur no liability for any good faith error in stating the proper
14 amount, including any amount provided in good faith by or on behalf of the
15 beneficiary. An inaccurate statement of this amount shall not affect the validity of
16 any sale to a bona fide purchaser for value, nor shall the failure to post the notice
17 of sale on a door as provided by this subdivision affect the validity of any sale to a
18 bona fide purchaser for value.

19 (8) (A) On and after April 1, 2012, if the deed of trust or mortgage containing a
20 power of sale is secured by real property containing from one to four single-family
21 residences, the notice of sale shall contain substantially the following language, in
22 addition to the language required pursuant to paragraphs (1) to (7), inclusive:

23
24 **NOTICE TO POTENTIAL BIDDERS:** If you are considering bidding on this
25 property lien, you should understand that there are risks involved in bidding at a
26 trustee auction. You will be bidding on a lien, not on the property itself. Placing
27 the highest bid at a trustee auction does not automatically entitle you to free and
28 clear ownership of the property. You should also be aware that the lien being
29 auctioned off may be a junior lien. If you are the highest bidder at the auction, you
30 are or may be responsible for paying off all liens senior to the lien being auctioned
31 off, before you can receive clear title to the property. You are encouraged to
32 investigate the existence, priority, and size of outstanding liens that may exist on
33 this property by contacting the county recorder’s office or a title insurance
34 company, either of which may charge you a fee for this information. If you consult
35 either of these resources, you should be aware that the same lender may hold more
36 than one mortgage or deed of trust on the property.

37
38 **NOTICE TO PROPERTY OWNER:** The sale date shown on this notice of sale
39 may be postponed one or more times by the mortgagee, beneficiary, trustee, or a
40 court, pursuant to Section 2924g of the California Civil Code. The law requires
41 that information about trustee sale postponements be made available to you and to
42 the public, as a courtesy to those not present at the sale. If you wish to learn
43 whether your sale date has been postponed, and, if applicable, the rescheduled

1 time and date for the sale of this property, you may call [telephone number for
2 information regarding the trustee's sale] or visit this Internet Web site [Internet
3 Web site address for information regarding the sale of this property], using the file
4 number assigned to this case [case file number]. Information about postponements
5 that are very short in duration or that occur close in time to the scheduled sale may
6 not immediately be reflected in the telephone information or on the Internet Web
7 site. The best way to verify postponement information is to attend the scheduled
8 sale.

9
10 (B) A mortgagee, beneficiary, trustee, or authorized agent shall make a good
11 faith effort to provide up-to-date information regarding sale dates and
12 postponements to persons who wish this information. This information shall be
13 made available free of charge. It may be made available via an Internet Web site, a
14 telephone recording that is accessible 24 hours a day, seven days a week, or
15 through any other means that allows 24 hours a day, seven days a week, no-cost
16 access to updated information. A disruption of any of these methods of providing
17 sale date and postponement information to allow for reasonable maintenance or
18 due to a service outage shall not be deemed to be a violation of the good faith
19 standard.

20 (C) Except as provided in subparagraph (B), nothing in the wording of the
21 notices required by subparagraph (A) is intended to modify or create any
22 substantive rights or obligations for any person providing, or specified in, either of
23 the required notices. Failure to comply with subparagraph (A) or (B) shall not
24 invalidate any sale that would otherwise be valid under Section 2924f.

25 (D) Information provided pursuant to subparagraph (A) does not constitute the
26 public declaration required by subdivision (d) of Section 2924g.

27 (9) If the sale of the property is to be a unified sale as provided in subparagraph
28 (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code,
29 the notice of sale shall also contain a description of the personal property or
30 fixtures to be sold. In the case where it is contemplated that all of the personal
31 property or fixtures are to be sold, the description in the notice of the personal
32 property or fixtures shall be sufficient if it is the same as the description of the
33 personal property or fixtures contained in the agreement creating the security
34 interest in or encumbrance on the personal property or fixtures or the filed
35 financing statement relating to the personal property or fixtures. In all other cases,
36 the description in the notice shall be sufficient if it would be a sufficient
37 description of the personal property or fixtures under Section 9108 of the
38 Commercial Code. Inclusion of a reference to or a description of personal property
39 or fixtures in a notice of sale hereunder shall not constitute an election by the
40 secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph
41 (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate
42 the secured party to conduct a unified sale pursuant to subparagraph (B) of
43 paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in

1 no way shall render defective or noncomplying either that notice or a sale pursuant
2 to that notice by reason of the fact that the sale includes none or less than all of the
3 personal property or fixtures referred to or described in the notice. This paragraph
4 shall not otherwise affect the obligations or duties of a secured party under the
5 Commercial Code.

6 (c) (1) This subdivision applies only to deeds of trust or mortgages which
7 contain a power of sale and which are secured by real property containing a single-
8 family, owner-occupied residence, where the obligation secured by the deed of
9 trust or mortgage is contained in a contract for goods or services subject to the
10 provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title
11 2 of Part 4 of Division 3).

12 (2) Except as otherwise expressly set forth in this subdivision, all other
13 provisions of law relating to the exercise of a power of sale shall govern the
14 exercise of a power of sale contained in a deed of trust or mortgage described in
15 paragraph (1).

16 (3) If any default of the obligation secured by a deed of trust or mortgage
17 described in paragraph (1) has not been cured within 30 days after the recordation
18 of the notice of default, the trustee or mortgagee shall mail to the trustor or
19 mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A
,
(Deed of trust or mortgage)
DATED ____ . UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

20 (4) All sales of real property pursuant to a power of sale contained in any deed
21 of trust or mortgage described in paragraph (1) shall be held in the county where
22 the residence is located and shall be made to the person making the highest offer.
23 The trustee may receive offers during the 10-day period immediately prior to the
24 date of sale and if any offer is accepted in writing by both the trustor or mortgagor
25 and the beneficiary or mortgagee prior to the time set for sale, the sale shall be
26 postponed to a date certain and prior to which the property may be conveyed by
27 the trustor to the person making the offer according to its terms. The offer is
28 revocable until accepted. The performance of the offer, following acceptance,
29 according to its terms, by a conveyance of the property to the offeror, shall operate
30 to terminate any further proceeding under the notice of sale and it shall be deemed
31 revoked.

1 (5) In addition to the trustee fee pursuant to Section 2924c, the trustee or
2 mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall
3 be entitled to charge an additional fee of fifty dollars (\$50).

4 (6) This subdivision applies only to property on which notices of default were
5 filed on or after the effective date of this subdivision.

6 (d) With respect to residential real property containing no more than four
7 dwelling units, a separate document containing a summary of the notice of sale
8 information in English and the languages described in Section 1632 shall be
9 attached to the notice of sale provided to the mortgagor or trustor pursuant to
10 Section 2923.3.

11 **§ 3440.1. Exemption for debtor’s conveyance of personal property without delivery from**
12 **fraudulent transfer rules**

13 3440.1. This chapter does not apply to any of the following:

14 (a) Things in action.

15 (b) Ships or cargoes if either are at sea or in a foreign port.

16 (c) The sale of accounts, chattel paper, payment intangibles, or promissory notes
17 governed by the Uniform Commercial Code, security interests, and contracts of
18 bottomry or respondentia.

19 (d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers
20 or owners of the wines or brandies, or other persons having possession, care, and
21 control of the wines or brandies, and the pipes, casks, and tanks in which the wines
22 or brandies are contained, if the transfers are made in writing and executed and
23 acknowledged, and if the transfers are recorded in the book of official records in
24 the office of the county recorder of the county in which the wines, brandies, pipes,
25 casks, and tanks are situated.

26 (e) A transfer or assignment made for the benefit of creditors generally or by any
27 assignee acting under an assignment for the benefit of creditors generally.

28 (f) Property exempt from enforcement of a money judgment.

29 (g) Standing timber.

30 (h) Subject to the limitations in Section 3440.3, a transfer of personal property if
31 all of the following conditions are satisfied:

32 (1) Prior to the date of the intended transfer, the transferor or the transferee files
33 a financing statement, with respect to the property transferred, authorized in an
34 authenticated record by the transferor. The financing statement shall be filed in the
35 office of the Secretary of State in accordance with Chapter 5 (commencing with
36 Section 9501) of Division 9 of the Commercial Code, but may use the terms
37 “transferor” in lieu of “debtor” and “transferee” in lieu of “secured party.” The
38 provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the
39 Commercial Code shall apply as appropriate to the financing statement.

40 (2) The transferor or the transferee publishes a notice of the intended transfer
41 one time in a newspaper of general circulation published in the *judicial district* in
42 which the personal property is located, if there is one, and if there is none in the

1 *judicial district*, then in a newspaper of general circulation in the county
2 embracing the *judicial district*. The publication shall be completed not less than 10
3 days before the date the transfer occurs. The notice shall contain the name and
4 address of the transferor and transferee and a general statement of the character of
5 the personal property intended to be transferred, and shall indicate the place where
6 the personal property is located and a date on or after which the transfer is to be
7 made.

8 (i) Personal property not located within this state at the time of the transfer or
9 attachment of the lien if the provisions of this subdivision are not used for the
10 purpose of evading this chapter.

11 (j) A transfer of property that (1) is subject to a statute or treaty of the United
12 States or a statute of this state that provides for the registration of transfers of title
13 or issuance of certificates of title and (2) is so far perfected under that statute or
14 treaty that a bona fide purchaser cannot acquire an interest in the property
15 transferred that is superior to the interest of the transferee.

16 (k) A transfer of personal property in connection with a transaction in which the
17 property is immediately thereafter leased by the transferor from the transferee
18 provided the transferee purchased the property for value and in good faith
19 (subdivision (c) of Section 10308 of the Commercial Code).

20 (l) Transition property, as defined in Section 840 of the Public Utilities Code, or
21 recovery property, as defined in Section 848 of the Public Utilities Code.

22 (m) A transfer of property by any governmental entity.

23 **§ 3440.5. Exemption of certain security agreements from fraudulent transfer rules**

24 3440.5 (a) This chapter does not affect the rights of a secured party who, for
25 value and in good faith, acquires a security interest in the transferred personal
26 property from the transferee, or from the transferee's successor in interest, if the
27 transferor is no longer in possession of the personal property at the time the
28 security interest attaches.

29 (b) Additionally, except as provided in Section 3440.3, this chapter does not
30 affect the rights of a secured party who acquires a security interest from the
31 transferee, or from the transferee's successor in interest, in the personal property,
32 if all of the following conditions are satisfied:

33 (1) On or before the date the security agreement is executed, the intended debtor
34 or secured party files a financing statement with respect to the property
35 transferred, signed by the intended debtor. The financing statement shall be filed
36 in the office of the Secretary of State in accordance with Chapter 5 (commencing
37 with Section 9501) of Division 9 of the Commercial Code, but shall use the terms
38 "transferor" in lieu of "debtor," "transferee" in lieu of "secured party," and
39 "secured party" in lieu of "assignee of secured party." The provisions of Chapter 5
40 (commencing with Section 9501) of Division 9 of the Commercial Code shall
41 apply as appropriate to such a statement. For the purpose of indexing, and in any
42 certification of search, the Secretary of State may refer to any financing statement

1 filed pursuant to this paragraph as a financing statement under the Commercial
2 Code and may describe the transferor as a debtor and the transferee as a secured
3 party.

4 Compliance with this paragraph shall, however, not perfect the security interest
5 of the secured party. Perfection of such a security interest shall be governed by
6 Division 9 (commencing with Section 9101) of the Commercial Code.

7 (2) The intended debtor or secured party publishes a notice of the transfer one
8 time in a newspaper of general circulation published in the *judicial district* in
9 which the personal property is located, if there is one, and if there is none in the
10 *judicial district*, then in a newspaper of general circulation in the county
11 embracing the *judicial district*. The publication shall be completed not less than 10
12 days before the date of execution by the intended debtor of the intended security
13 agreement. The notice shall contain the names and addresses of the transferor and
14 transferee and of the intended debtor and secured party, a general statement of the
15 character of the personal property transferred and intended to be subject to the
16 security interest, the location of the personal property, and the date on or after
17 which the security agreement is to be executed by the intended debtor.

18 **CODE OF CIVIL PROCEDURE**

19 **§ 701.540. Notice of sale of interest in real property**

20 701.540. (a) Notice of sale of an interest in real property shall be in writing,
21 shall state the date, time, and place of sale, shall describe the interest to be sold,
22 and shall give a legal description of the real property and its street address or other
23 common designation, if any. If the real property has no street address or other
24 common designation, the notice of sale shall include a statement that directions to
25 its location may be obtained from the levying officer upon oral or written request
26 or, in the discretion of the levying officer, the notice of sale may contain directions
27 to its location. Directions are sufficient if information as to the location of the real
28 property is given by reference to the direction and approximate distance from the
29 nearest crossroads, frontage road, or access road. If an accurate legal description
30 of the real property is given, the validity of the notice and sale is not affected by
31 the fact that the street address or other common designation, or directions to its
32 location, are erroneous or omitted.

33 (b) Not less than 20 days before the date of sale, notice of sale of an interest in
34 real property shall be served, mailed, and posted by the levying officer as provided
35 in subdivisions (c), (d), (e), and (f).

36 (c) Notice of sale shall be served on the judgment debtor. Service shall be made
37 personally or by mail.

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

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

4 (2) A conspicuous place on the real property.

5 (e) At the time notice is posted pursuant to paragraph (2) of subdivision (d),
6 notice of sale shall be served or service shall be attempted on one occupant of the
7 real property. Service on the occupant shall be made by leaving the notice with the
8 occupant personally or, in the occupant's absence, with any person of suitable age
9 and discretion found upon the real property at the time service is attempted who is
10 either an employee or agent of the occupant or a member of the occupant's
11 household. If the levying officer is unable to serve such an occupant at the time
12 service is attempted, the levying officer is not required to make any further
13 attempts to serve an occupant.

14 (f) If the property described in the notice of sale consists of more than one
15 distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or
16 governmental subdivisions lies with relation to any of the others so as to form one
17 or more continuous, unbroken tracts, only one service pursuant to subdivision (e)
18 and posting pursuant to paragraph (2) of subdivision (d) need be made as to each
19 continuous, unbroken tract.

20 (g) Notice of sale shall be published pursuant to Section 6063 of the
21 Government Code, with the first publication at least 20 days prior to the time of
22 sale, in a newspaper of general circulation published in the city in which the real
23 property or a part thereof is situated if any part thereof is situated in a city or, if
24 not, in a newspaper of general circulation published in the *judicial district* in
25 which the real property or a part thereof is situated. If no newspaper of general
26 circulation is published in the city or *judicial district*, notice of sale shall be
27 published in a newspaper of general circulation in the county in which the real
28 property or a part thereof is situated.

29 (h) Not earlier than 30 days after the date of levy, the judgment creditor shall
30 determine the names of all persons having liens on the real property on the date of
31 levy that are of record in the office of the county recorder and shall instruct the
32 levying officer to mail notice of sale to each such person at the address used by the
33 county recorder for the return of the instrument creating the person's lien after
34 recording. The levying officer shall mail notice to each such person, at the address
35 given in the instructions, not less than 20 days before the date of sale.

36 COMMERCIAL CODE

37 § 6105. Notice requirement for bulk sales

38 6105. In order to comply with subdivision (b) of Section 6104 each of the
39 following shall be satisfied:

40 (a) The notice shall comply with each of the following:

- 1 (1) State that a bulk sale is about to be made.
- 2 (2) State the name and business address of the seller together with any other
3 business name and address listed by the seller (subdivision (a) of Section 6104)
4 and the name and business address of the buyer.
- 5 (3) State the location and general description of the assets.
- 6 (4) State the place and the anticipated date of the bulk sale.
- 7 (5) State whether or not the bulk sale is subject to Section 6106.2 and, if so
8 subject, the matters required by subdivision (f) of Section 6106.2.
- 9 (b) At least 12 business days before the date of the bulk sale, the notice shall be:
- 10 (1) Recorded in the office of the county recorder in the county or counties in this
11 state in which the tangible assets are located and, if different, in the county in
12 which the seller is located (paragraph (2) of subdivision (a) of Section 6103).
- 13 (2) Published at least once in a newspaper of general circulation published in the
14 *judicial district* in this state in which the tangible assets are located and in the
15 *judicial district*, if different, in which the seller is located (paragraph (2) of
16 subdivision (a) of Section 6103), if in either case there is one, and if there is none,
17 then in a newspaper of general circulation in the county in which the *judicial*
18 *district* is located.
- 19 (3) Delivered or sent by registered or certified mail to the county tax collector in
20 the county or counties in this state in which the tangible assets are located. If
21 delivered during the period from January 1 to May 7, inclusive, the notice shall be
22 accompanied by a completed business property statement with respect to property
23 involved in the bulk sale pursuant to Section 441 of the Revenue and Taxation
24 Code.
- 25 If the tangible assets are located in more than one *judicial district* in this state,
26 the publication required in paragraph (2) shall be in a newspaper of general
27 circulation published in the *judicial district* in this state in which a greater portion
28 of the tangible assets are located, on the date the notice is published, than in any
29 other *judicial district* in this state and, if different, in the *judicial district* in which
30 the seller is located (paragraph (2) of subdivision (a) of Section 6103). As used in
31 this subdivision, “business day” means any day other than a Saturday, Sunday, or
32 day observed as a holiday by the state government.

33 REVENUE AND TAXATION CODE

34 **§ 3381. Alternate means of notice of intent to sell property of delinquent taxpayers**

35 3381. In each county where the tax collector or, if the county is a chartered
36 county, the board of supervisors determines that the public interest, convenience
37 and necessity require the local publication of the delinquent list required by
38 Section 3371, or the published notice of power and intent to sell required by
39 Section 3361, in order to afford adequate notice, all items required to be published
40 shall be published as provided in this article.

1 After the determination, the tax collector or, if the county is a chartered county,
2 the board of supervisors shall divide and distribute the items to be published and
3 cause the same to be published either within (a) the municipal corporations, (b) the
4 elementary, high school, or junior college districts, (c) the supervisory districts,
5 (d) *judicial districts*, (e) tax districts, areas included in map books, or tax code
6 areas, or (f) by any annexation or annexations of same, or any combination of
7 same, or any combination of those districts, annexations, areas included in map
8 books, and code areas, within the county as they shall determine most likely to
9 afford adequate notice to owners of the property.

10 Except as provided in this article, the publication shall be in the same manner as
11 provided in Article 1.7 (commencing with Section 3371).

12 The publication provided for in this article shall be made once a week for two
13 successive weeks in a newspaper or newspapers of general circulation. The
14 publication shall be made in a newspaper published not less frequently than once a
15 week.

16 **§ 3702. Notice of intended sale of property of delinquent taxpayers**

17 3702. The tax collector shall publish the notice of intended sale once a week for
18 three successive weeks in a newspaper of general circulation published in the
19 county seat and in a newspaper of general circulation published in the *judicial*
20 *district* in which the property is situated. If the same newspaper of general
21 circulation is published in both the county seat and in such district, or if the
22 publication of the notice of sale is made in a newspaper which is determined
23 pursuant to Section 3381 as most likely to afford adequate notice of the sale, a
24 publication in such paper shall satisfy the requirements for publication set forth in
25 this section. If there is no newspaper published in the county seat or in the *judicial*
26 *district*, then publication may be made by posting notice in three public places in
27 the county seat or in the *judicial district*, as the case may be, where no such
28 newspaper is published. The publication shall be started not less than 21 days prior
29 to the date of the sale.
