

Memorandum 2014-25

**Trial Court Unification: Publication of Legal Notice
(Discussion of Alternatives)**

In this study, the Commission¹ is considering whether the judicial district notice publication statutes need to be revised in order to effectively achieve their original purpose of local notice.²

This memorandum examines a range of possible reforms, which were discussed in more general terms in prior memoranda.³ Attached to this memorandum are discussion drafts, presenting legislative language for two of the approaches that appear most promising. If the Commission chooses to pursue either of these approaches, the staff will develop a draft tentative recommendation for presentation at a future meeting. On the other hand, if the Commission is interested in an approach that is not presented in this memorandum, the staff can further develop that approach for discussion at a future meeting.

In this memorandum, as in prior memoranda and the notice publication statutes at issue in this study, the references to “judicial district” refer to the former municipal court districts used for notice publication under Government Code Section 71042.5 unless otherwise noted.⁴

CURRENT JUDICIAL DISTRICT NOTICE PUBLICATION REQUIREMENTS

A number of statutes require that certain legal notices be published in a particular “judicial district.” The principal issue in this study is that these judicial

1. 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.

2. Memorandum 2014-15, pp. 4-8.

3. See generally Memorandum 2014-15, pp. 11-15; Memorandum 2014-4, pp. 15-18.

4. Memorandum 2014-15, p. 1; Memorandum 2014-4, pp. 3-4; *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 70 (1998).

district notice publication requirements are difficult to use and are posing practical challenges.

The fundamental challenge is that a “judicial district” is a historical district that is no longer used for its original primary purpose (relating to municipal court jurisdiction and administration).⁵ Moreover, the boundaries of “judicial districts” used for notice publication were frozen at some point in time, possibly before judicial districts as municipal court districts ceased to exist (i.e., if the districts were consolidated prior to unification).⁶ This makes it very difficult to determine the relevant boundaries that govern notice publication.

By law, county recorders are required to maintain maps of the relevant districts.⁷ However, it appears that some county recorders may not have such maps.⁸ Even if such maps are being maintained, those maps may not be in a form that is easily used by the public.⁹ This creates uncertainty about how to comply with the notice requirements and, in turn, invites error.

REFORM GOALS

In the staff’s view, an ideal reform of the judicial district notice statutes would achieve all of the following goals:

- (1) Achieve local notice.
- (2) Facilitate determination of notice boundaries.
- (3) Preserve existing rights.
- (4) Minimize implementation costs.

Those goals are discussed in greater detail below.

Unfortunately, as discussed later in the memorandum, the staff has not identified any reform approach that would achieve all of those goals. The best that can be done is to choose an approach that optimizes them.

5. Gov’t Code § 71042.5 (“Notwithstanding any other provision of law, where judicial districts in a county have been consolidated, or where the municipal and superior courts in a county have unified, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.”)

6. *Id.*

7. *Id.* § 71042.6.

8. See Memorandum 2014-15, p. 10.

9. *Id.*

Achieve Local Notice

As discussed in a prior memorandum,¹⁰ the apparent purpose of the judicial district notice publication requirements is to achieve publication of notice locally and, at least in some places, on a less-than-countywide basis.

To the extent that local, less-than-countywide notice is the goal, the staff notes that judicial districts are an imperfect fit to achieve it. It appears that some, perhaps even a majority of, counties may not have been subdivided into judicial districts (i.e., there is only a single, countywide judicial district).¹¹ In such counties, publication of notice within the judicial district is the same thing as publishing in the county as a whole.

Facilitate Determination of Notice Boundaries

A principal defect of existing law is that it is difficult to use and invites error. Any reform should provide certainty as to the relevant location for publication.

The current law appears to be a potentially costly, research-intensive means to achieve local notice. A person who must publish notice in a particular judicial district must determine that the requirement refers to a historical judicial district,¹² determine the boundaries of that historical judicial district, and identify newspapers of general circulation within those boundaries.

In short, it may not be easy for a person required to publish notice in a judicial district to determine whether publishing in a particular newspaper of general circulation complies with the law.

Preserve Existing Rights

Under existing law, a newspaper may qualify as a newspaper of general circulation in a particular judicial district.¹³ Such a newspaper is then eligible for publication of notices that are required to be published in that judicial district. Any reform that changes the applicable boundaries could disturb existing rights, making some newspapers lose their eligibility for publication of some notices. To the extent that a newspaper is required to seek a judicial determination clarifying its status, this would add costs for the affected newspaper and add workload to the courts.

10. Memorandum 2014-15, pp. 4-8.

11. See Memorandum 2014-15, p. 14.

12. Gov't Code § 71042.5.

13. *Id.* § 6008.

Ideally, a reform should preserve existing rights of newspapers who are eligible to publish notices in their areas. Existing rights could be preserved, albeit perhaps imperfectly, through a grandfather clause (i.e., a clause that gives a newspaper of general circulation the equivalent rights in the replacement system as it has in the existing system).

Minimize Implementation Costs

As discussed below, some reform approaches would entail significant implementation costs. Given that there are only a small number of notice publication statutes at issue, significant costs could make a reform harder to justify. To the extent possible, implementation costs should be minimized.

ALTERNATIVE APPROACHES

This section of the memorandum briefly discusses the different reform possibilities that the staff has identified. As discussed below, the staff felt that two of these approaches appeared most promising at this point. The staff also felt that developing legislative language for these two approaches could help in assessing the strengths and weaknesses of those approaches. Thus, attached to this memorandum are discussion drafts presenting legislative language for two of the approaches, as discussed later in this memorandum.

Improved Status Quo

Under this approach,¹⁴ the judicial district boundaries currently used for notice publication would be retained. Those districts could be re-named to help alleviate potential confusion. This approach could also entail improving access to district boundaries, which would assist persons in complying with the notice publication requirements. Finally, this approach could include additional statutory cross-references to provide clear direction on identifying the relevant statutes that govern notice publication.

A primary advantage of this approach is that it can continue to provide for the exact degree of local publication that current law requires. Another important advantage is that existing rights of newspapers can be preserved without change.

In addition, this approach can improve the clarity and usability of the notice publication requirements by re-naming the districts, requiring the district

14. See generally Memorandum 2014-15, pp. 11-12; Memorandum 2014-4, pp. 16.

boundaries to be determined, and publishing the district boundaries for public use.

Thus, this approach would meet three of the reform goals (Achieve Local Notice, Facilitate Determination of Notice Boundaries, and Preserve Existing Rights).

The primary disadvantage of this approach is that it would impose significant transitional implementation costs. Some entity would need to determine the relevant district boundaries pursuant to the judicial district preservation accomplished by Government Code Section 71042.5. Determining these boundaries would probably involve a fair amount of archival research. In addition, publishing the information in a user-friendly form and maintaining it on the Internet would also impose costs. Given these costs and the small number of statutes that require judicial district notice publication (albeit some important ones, such as Civil Code Section 2924f, relating to certain foreclosure sales), the benefits of this approach might not justify its cost.

Language to implement this approach is attached as Discussion Draft #1. Noteworthy features of that draft are discussed later in this memorandum.

Replace Judicial District with Another District

Under this approach,¹⁵ the statutes that require publication of notice in judicial districts would be revised to instead require publication in some other type of local district. The key to this approach is selecting a set of districts that would serve as a good replacement for judicial districts. The options for replacement districts are discussed later in this memorandum.¹⁶

Ideally, any replacement districts should be maintained for other purposes and their boundaries should be easily accessible by the public. For example, if supervisorial districts are chosen as a substitute, the county maintains those districts. In addition, the county has an interest in ensuring that it is relatively easy to determine the boundaries of the districts. Most counties have maps of the districts or search tools on their websites, and the information is probably also available from reference librarians and other officials. So, this approach should achieve the goals of minimizing implementation costs and facilitating determination of notice boundaries.

15. See generally Memorandum 2014-15, pp. 13-15; Memorandum 2014-4, pp 16-17.

16. See *infra* pp. 14-20.

However, regardless of which replacement district the Commission selects, the notice boundaries probably will change significantly from the current judicial district boundaries.¹⁷ It is likely that the localness of notice may increase in some places, while decreasing in others. Thus, the approach's ability to achieve this goal is mixed. While it could achieve the goal of local notice on the whole, the approach may result in less localness in certain areas.

The main disadvantage of this approach is that it would disturb existing rights of some newspapers. Changing to a new set of boundaries could mean that some newspapers would be located outside of districts containing territory that they formerly served. It is possible that this disruption of existing rights could be partially cured by a grandfather clause.

Language to implement this approach is attached as Discussion Draft #2. Noteworthy features of that draft are discussed later in this memorandum.

Replace Judicial District with a Proximity Rule

Under this approach,¹⁸ the statutes that require publication of notice in judicial districts would be revised to replace "judicial district" with a proximity rule. Either a relative-proximity ("nearest") or mileage-based requirement could serve as an option for replacing judicial districts.

There are a number of statutes that require notices to be published in the "nearest" newspaper of general circulation.¹⁹ Although the staff has not found any examples, it would also be possible to require notice to be published in a newspaper of general circulation within some fixed distance of the relevant nexus (e.g., 10 miles). The former would pinpoint a single eligible newspaper. The latter might provide more than one option. In both cases, it would probably be appropriate to also require that the newspaper be located within the same county as the relevant nexus (to better continue the existing rules).

17. Memorandum 2014-15, pp. 13-14.

18. See generally Memorandum 2014-15, pp. 13-15; Memorandum 2014-4, pp 16-17.

19. See, e.g., Bus. & Prof. Code § 23986 (for on-sale licenses for alcoholic beverages, publication shall be made "in a newspaper of general circulation nearest the premises where the business is to be conducted" where the premises are not within a city); Gov't Code §§ 6042 (where no newspaper is published in the initial jurisdiction for publication, the notice shall be published "in a newspaper of general circulation published nearest thereto"), 25584 (for county park abandonment, a notice shall be published in "newspaper of general circulation in the county printed and published nearest to the park all or a portion of which is proposed to be abandoned").

Such an approach would largely achieve the goal of local publication, as much as possible based on the location of the relevant nexus and the eligible newspapers.

The reform would be self-executing, so there would be no implementation costs.

However, this approach has some significant problems. First and foremost, it is not at all clear how it should be implemented. How would the distance between the relevant nexus and newspapers be determined? As the crow flies? By driving distance? In the former case, the staff is not aware of any readily-available tool to determine which newspapers are nearest or within a specified distance. If driving distance is the measure, then it might be possible to use online map applications to determine the distance to different newspapers. The staff is, however, concerned about giving legal credence to a commercial map application designed for a different purpose (i.e., to provide directions for driving). In addition, the staff is also concerned about the possibility of errors or discrepancies in mileage information accessed from different map applications (e.g., the information available may be for the option with the shortest driving time, as opposed to the lowest mileage). Thus, this approach may not adequately facilitate determination of notice boundaries.

In addition, this reform approach could significantly disrupt existing rights. There would likely be many instances where a system based on judicial districts would produce different results from a distance-based system.

Eliminate References to Judicial Districts

This approach²⁰ would simply revise the publication statutes to eliminate references to judicial districts. As a practical matter, implementing this approach will often result the elimination of an entire notice requirement that refers to “judicial district” as it would otherwise lead to impractical, nonsensical requirements.²¹ Revenue and Taxation Code Section 3381 is a notable exception. In this section, “judicial district” is one of several options to achieve local publication; the requirement still functions without the judicial district reference.

20. Memorandum 2014-15, p. 15; Memorandum 2014-4, pp. 17-18.

21. See Bus. & Prof. Code § 21707 (removing “judicial district” would require that the notice be published “in a newspaper of general circulation published where the sale is to be held”), Rev. & Tax. Code § 3702 (removing “judicial district” would require notice to be published in newspapers of general circulation published in the county seat and “in which [sic] the property is situated”).

As discussed later in this memorandum, the Commission may want to apply this approach to Section 3381 regardless of how the other judicial district notice publication statutes are addressed.²²

The practical effect of this approach would differ in the different statutes. In the statutes that include a requirement mandating judicial district publication in certain situations, the achievement of less-than-countywide, local publication could be defeated. For example, in subdivision (g) of Code of Civil Procedure Section 701.540, a person must publish in a newspaper of general circulation in the relevant city as the first option. If there is none, then publication is required in the relevant judicial district. If there is no newspaper of general circulation in the judicial district, then one must publish in the county as a whole. While it is uncertain how often the judicial district requirement is determinative for the issuance of notice in practice, eliminating the “judicial district” requirement from these sections would decrease the localness of notice in those cases.

In the staff’s view, this approach probably is not worth pursuing across the board, because the level of localness it would achieve in some statutes is highly uncertain, especially those that require initial publication in the judicial district. However, it is worth considering how the option fares with regard to the other reform goals.

With regard to facilitating determination of notice boundaries, the approach would resolve the need for determining boundaries because it eliminates the related notice requirement.

This approach would be self-executing and would not have any implementation costs at all.

This approach could disrupt existing rights. The notice market for newspapers of general circulation in a judicial district would cease to exist. Newspapers that are certified for a particular judicial district might need to be recertified for the county as a whole (unless they already have countywide certification).

Summary

Based on the analysis presented above, **the staff tentatively concluded that the “Improved Status Quo” and the “Replace Judicial District with Another**

22. See *infra* pp. 12, 21-22.

District” approaches have more potential to improve existing law with minimal disruption than the other two approaches.

Therefore, the staff prepared discussion drafts for the “Improved Status Quo” approach and the “Replace Judicial District with Another District” approach. Those drafts are attached to this memorandum, for the Commission’s consideration. The balance of the memorandum will focus on analyzing these two discussion drafts in detail.

The staff notes that the discussion drafts generally presume that a single approach should apply to all the notice publication statutes (with the possible exception of Revenue and Taxation Code Section 3381) and that the statutes should all be revised in the same manner. A hybrid outcome is also possible (e.g., using different substitute districts in different statutes; using a proximity rule for certain statutes and a substitute district for others). At this point, the staff does not see the need for the increased complexity that such a proposal would entail.

DISCUSSION DRAFT #1: “IMPROVED STATUS QUO” APPROACH

Generally, the “Improved Status Quo” discussion draft includes amendments to accomplish the following:

- Replace “judicial district” with “publication district” in notice publication statutes and relevant statutes regarding newspapers of general circulation.
- Add a new article to the Government Code that creates publication districts and assigns the Judicial Council to determine and publish their boundaries.
- Repeal the provisions of the Government Code that currently preserve judicial districts for notice publication purposes.
- Conform the language of the statutes to standard drafting style.

In preparing Discussion Draft #1, the staff identified several questions and potential concerns with this approach, which are described below. The following discussions are presented roughly in order of importance of the issues.

Key Provisions Transitioning from Judicial Districts to Publication Districts for Notice Publication

Government Code Sections 6080-6086 are the key provisions in this discussion draft.²³ These provisions establish publication districts, describe the process for publishing publication district boundaries, re-state certain presumptions regarding the boundaries, and provide that a newspaper of general circulation in a former judicial district is deemed a newspaper of general circulation in the successor publication district.

Custodian for Publication District Boundaries

Currently, the judicial district boundaries are maintained at the county level.²⁴ In drafting this approach, the staff considered who should be responsible for maintaining the publication district boundaries. Identifying the appropriate candidate for maintaining this boundary information is the policy question at the heart of this approach.

As an initial matter, the staff considered whether this information should be maintained at the county level (as judicial district boundaries are) or at the state level. The staff felt that a central, statewide resource for judicial district boundaries would be preferable, because a single source would likely be easiest for parties to find and use.

The staff identified the Judicial Council as a potentially appropriate state-level candidate to serve as the custodian for publication district boundaries. Those boundaries would govern the distribution of notices that are required by law and may ultimately be decisive in court proceedings. Further, the staff expects that the Judicial Council would have ready access to historical information on judicial district boundaries. Consequently, the Judicial Council seems well-suited to serve as custodian of the boundary information.

The staff considered whether shifting the boundary maintenance responsibility from the local level to the state level would be problematic. Aside from shifting the maintenance costs, the staff did not see any apparent disadvantages to naming the Judicial Council as the custodian for the publication district boundaries. Given the considerable advantage of a statewide boundary

23. Discussion Draft #1, pp. 14-16.

24. Gov't Code § 71042.6.

resource, the Judicial Council is the custodian of the publication district boundaries in the attached discussion draft.²⁵

That choice could be easily changed if appropriate. **The staff is interested in receiving input from stakeholders and the Commission on other appropriate state-level candidates, and on whether there are benefits to maintaining this information at the county level.**

Inclusion of Sunset Clause in Section 6082

In Discussion Draft #1, proposed Government Code Section 6082 would provide:

Gov't Code § 6082. Replacement of judicial district with publication district for purposes of notice publication

6082. (a) On January 1, 2016, each judicial district designated for the publication of notices pursuant to former Section 71042.5 is replaced with a publication district.

(b) Each publication district established pursuant to this section shall have the same boundaries as the judicial district that it replaces.

[(c) This section is repealed by operation of law on January 1, 2020, unless a later enacted statute that becomes operative on or before January 1, 2020, deletes or extends that date.]²⁶

The bracketed subdivision (c) is an optional sunset clause, which would automatically repeal the statute on January 1, 2020. This sunset clause is intended to make clear that the publication district boundaries published by the Judicial Council are conclusive by removing this transitional provision, which establishes the publication district boundaries initially.

If Section 6082 were not subject to a sunset clause, the publication districts would appear to have two definitions: (1) the former judicial district boundaries (Section 6082) and (2) the former judicial districts *published by the Judicial Council* (Section 6084). To the extent that there are any differences between the former judicial district boundaries and those published by the Judicial Council, this dual definition could lead to disputes. Inclusion of the sunset clause would help prevent such disputes.

25. Discussion Draft #1, p. 15.

26. *Id.*

This repeal, however, would make it more difficult to determine the origin of the publication district boundaries by obscuring the transition from judicial districts to publication districts.

Considering the competing considerations, does the Commission want to include the sunset clause in this draft?

Technical Implementation Issues

A few technical issues relating to Discussion Draft #1 are discussed below.

Preferred Approach to Revenue and Taxation Code Section 3381

Revenue and Taxation Code Section 3381 includes judicial districts as one of several options for more local notice, when a county (through its board of supervisors or tax collector) determines that less-than-countywide notice is necessary. In an earlier memorandum, the staff raised the idea of removing the judicial district reference in Section 3381 without replacing it. Since this was only an idea for discussion, no decision was made on how to treat this statute.

Section 3381 could either be amended to replace judicial district with publication district (as in the legislative language presented in the discussion draft) or eliminate the judicial district reference without replacing it (as in the staff note). **What is the Commission's preference on this issue?**

Statutes Relating to a Newspaper of General Circulation

In Discussion Draft #1, Government Code Section 6008 would be amended such that a newspaper could be established as a newspaper of general circulation for a publication district, as opposed to the judicial district.²⁷ The staff has not yet reviewed all of the newspaper-related statutory provisions in detail. The staff would appreciate input on any additional amendments that might be necessary to accomplish a transition from judicial districts to publication districts.

Clarification of the Statute on Interpreting "Judicial District"

The discussion draft proposes to amend Code of Civil Procedure Section 38 as follows:

Code Civ. Proc. § 38 (amended). Judicial districts

38. Unless the provision or context otherwise requires, a any reference in a statute to a judicial district means:

27. *Id.* at 13-14.

- (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.
- (e) As it relates to the location for publishing legal notice, the publication district established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of Division 7 of Title 1 of the Government Code.

Comment. Section 38 is amended to reflect the replacement of judicial districts with publication districts for notice publication purposes. See Gov't Code § 6080(c); see generally Gov't Code §§ 6080-6086 (publication districts) & Comments.

In addition, Section 38 is amended to make a technical change.²⁸

This amendment is not strictly necessary, but the staff felt that it might be helpful in certain cases. For instance, where a regulation or local law requires “judicial district” publication, this provision would point to the relevant publication district provisions.

Does the Commission have any concerns about the proposed amendment to Code of Civil Procedure Section 38?

Additional Questions

In preparing the discussion drafts, the staff reviewed the codes for statutes that would need to be modified to implement the reforms described above. In the process, we came across Government Code Section 24052, which reads:

24052. Whenever notice is required by law to be published in a newspaper by any officer of a county or judicial district, the person for whom the notice is to be given shall pay to the officer, if required, the fees for the publication, in advance. Failure of any officer to publish any notice required by law pertaining to the duties of his office is a misdemeanor.

Although this statute relates to publication of notice, it refers to publication *by an officer of a judicial district*, not to publication *in* a judicial district. In other words, it addresses *who* must publish the notice, rather than *where* the notice must be published. Thus, this statute is not within the scope of this study. However, this statute touches on an issue related to this study, which may be appropriate for the Commission to address.

28. *Id.* at 10.

The staff recognized that Code of Civil Procedure Section 38,²⁹ which provides general rules for interpreting the term “judicial district,” would apply to this section. However, the staff concluded, after reading this section in conjunction with Section 38, that this “judicial district” reference is, at best, unclear, but possibly superfluous.

The staff is happy to research this issue further, if the Commission feels that it would be appropriate to address the point in this study. The staff notes that this issue could be addressed in this study regardless of the approach selected by the Commission (i.e., the question of whether to amend Government Code Section 24052 is not limited to Discussion Draft #1). In addition, the staff welcomes feedback on the appropriate interpretation of Government Code Section 24052.

Would the Commission like staff to research this issue further for possible inclusion in any recommendation resulting from this study?

DISCUSSION DRAFT #2: “REPLACE JUDICIAL DISTRICT WITH ANOTHER DISTRICT”
APPROACH

Generally, Discussion Draft #2 includes amendments to accomplish the following:

- Replace “judicial district” with a placeholder reference to “substitute district” in notice publication statutes and relevant statutes regarding newspapers of general circulation.
- Repeal the provisions of the Government Code that currently preserve judicial districts for notice publication purposes.
- Conform the language of the statutes to standard drafting style.

This discussion draft does not address the key question at the heart of this approach: What is the appropriate substitute district? The staff has identified several candidates, none of which are ideal. The following discussion first presents the candidate substitute districts and analyzes their pros and cons. After addressing the possible substitute districts, the discussion addresses specific issues pertaining to Discussion Draft #2.

Candidates to Replace Judicial Districts

To identify appropriate candidates to replace judicial districts, the staff developed a list of key characteristics for substitute districts. The staff identified

29. See *id.*

two required characteristics and several desired characteristics. The two required characteristics are: (1) the set of districts must completely cover the state (i.e., there is no land that is outside of the districts altogether) and (2) the individual districts must not have any geographical overlap (i.e., no land can be within more than one district). Taken together, these characteristics ensure that, for any place in the state, there is a single district that dictates the boundaries of the applicable notice area.

Eliminating all districts that do not meet these two requirements narrows the options considerably. For instance, California contains many different types of special districts.³⁰ While the term “special district” appears to be somewhat fluid,³¹ many types of districts generally fall within this classification (including, community service districts, fire districts, parks and recreation districts, sanitary districts, water districts). Regardless, special districts are generally established to provide a specific local service or services, based on taxpayers’ or residents’ willingness to pay for new services or a higher level of existing services.³² Generally, special districts perform functions that could also be performed by cities, counties, or even other types of special districts.³³ There is no universal requirement for special districts. As such, any set of special districts would not provide universal coverage of the state.³⁴ Since special districts do not meet one of the required characteristics, the staff ruled them out.

30. See generally Milton Marks “Little Hoover” Commission on California State Government Organization and Economy, *Special Districts: Relics of the Past or Resources for the Future?* (May 2000) (hereafter, “Little Hoover Special Districts Report”); California Office of the State Controller, *Special Districts Annual Report* (62nd ed., Nov. 2013), *available at* <www.sco.ca.gov/Files-ARD-Local/LocRep/1112_special_districts.pdf> (hereafter, “Controller Special Districts Report”).

31. See Little Hoover Special Districts Report, pp. 7 (“The State Controller’s office, which gathers financial data on special districts, puts the count at 4,787. This number includes 659 joint powers agencies and 233 public nonprofit corporations.”), 11 (“In [some policy-makers’] eyes, California’s 58 counties, 474 cities, and more than 3,800 special districts are evidence of an uncoordinated, unwieldy and complex system of local government.”); Senate Local Government Committee, *What’s So Special About Special Districts? A Citizen’s Guide to Special Districts in California* (4th ed., Oct. 2010) (hereafter, “Special Districts Citizen’s Guide”), p. 4 (“The total number of special districts included in this citizen’s guide (3,294) varies from the State Controller’s report (4,776) because the Controller defines special districts differently.”).

32. Little Hoover Special Districts Report, p. 5; Special Districts Citizen’s Guide, p. 2.

33. See Special Districts Citizen’s Guide, pp. 2, 6.

34. See also California Special District Association website, *Special Districts Map*, *sited at* <www.csda.net/special-districts/map/>.

In addition, benefit assessment districts,³⁵ business improvement districts,³⁶ Census Designated Places,³⁷ and Mello-Roos Act community facilities districts,³⁸ among others, do not meet these required characteristics, so the staff ruled them out on this basis.

Beyond the required characteristics, there are several desired characteristics for substitute districts. These include:

- **The substitute districts should not be wholly contained within a single city.** Judicial districts were prohibited from subdividing cities.³⁹ A substitute district that is smaller than a city would not make sense for nested statutes.
- **The substitute districts should be contained within a single county.** Judicial districts were necessarily within a single county.⁴⁰ A substitute district that is larger than a county or straddles county lines may not make sense for nested statutes. Some notices at issue in this study are related to county functions and, thus, should properly be noticed within the county at issue,⁴¹ while other notices in this study may be of special concern within the county as they relate to real property transfers.⁴²
- **The substitute districts should be the appropriate size.** Generally, districts should not be so small that they are unlikely to contain a newspaper of general circulation, and not so large that they no longer provide sufficiently local notice. This would help ensure that the substitute districts will achieve local notice as intended by judicial districts.
- **The substitute districts should be durable.** In other words, it is desirable to use districts that will continue to be maintained and are unlikely to be eliminated or otherwise become obsolete.

35. Assessing the Benefits of Benefit Assessments: A Citizen's Guide to Benefit Assessments in California (2nd ed., Dec. 2004), available at <senweb03.senate.ca.gov/committee/standing/governance/BenefitAssessmentsPublication.pdf>.

36. See generally Sts. & Hy. Code §§ 36500-36671; see also City of San Diego Economic Development Division webpage, Business Improvement Districts, sited at <www.sandiego.gov/economic-development/about/bids.shtml>.

37. See U.S. Census website, 2010 Geographic Terms and Concepts - Place, sited at <www.census.gov/geo/reference/gtc/gtc_place.html >; see also *id.*, Cartographic Boundary Files - Places (Incorporated Places and Census Designated Places), sited at <www.census.gov/geo/maps-data/data/cbf/cbf_place.html >.

38. See generally Gov't Code §§ 53311-53368.3; see also California Debt and Investment Advisory Commission, California Mello-Roos Community Facilities Districts Yearly Fiscal Status Reports 2008-1009, available at <www.treasurer.ca.gov/cdiac/reports/M-Roos/2009.pdf>.

39. Former Cal. Const. art. VI, § 5(a) (see 1996 Cal. Stat. res. ch. 36).

40. *Id.*

41. E.g., Rev. & Tax Code § 3702.

42. E.g., Code Civ. Proc. § 701.540.

- **Boundary information is widely available for the substitute districts.** This would facilitate determination of notice boundaries.

School Districts

School districts are districts established for the administration of schools. The California Department of Education maintains a database with information about California’s public schools and districts.⁴³ School districts can and do overlap. For instance unless the school district is unified (i.e., a single K-12 district), a location will have both an elementary school district and high school district.⁴⁴ In addition to the grade level districts, it appears that there may be other types of school districts that overlap (for instance, some counties have a separate district for the county’s office of education or a charter school district).⁴⁵

As noted above, one of the required characteristics for school districts is that they do not overlap. At this point, the staff is unsure whether a set of non-overlapping school districts can be identified for notice publication. Even if a set of non-overlapping districts could be identified, it may not be feasible to describe those districts in the statutes in a manner that provides sufficient direction to persons who need to provide notice. If the Commission is interested in school districts as a possible substitute for judicial districts, the staff will determine whether the school districts meet the requirements.

Regardless, school districts do not have many of the desired characteristics for substitute districts described above. Specifically, a single city may contain multiple school districts.⁴⁶ School districts are not necessarily contained within a single county.⁴⁷ School districts can vary wildly in size. Los Angeles Unified School District enrolls 662,140 students, while the Sierra County Office of

43. California Department of Education website, Public School Database, *sited at* <www.cde.ca.gov/ds/si/ds/pubschls.asp>.

44. See *id.* (e.g., in Sacramento County, there are several unified districts (Center Unified, Elk Grove Unified), as well as some individual elementary school and high school districts (Galt Joint Union Elementary School District and Galt Joint Union High School District).)

45. See *id.* (e.g., Calaveras County and El Dorado County have districts for their respective offices of education. Solano County has a district named “SBE - Dixon Montessori Charter,” presumably for a charter school.)

46. See *id.* (e.g., San Rafael in Marin County has two elementary school districts: Dixie and San Rafael City).

47. Educ. Code §§ 82 (defining “Joint union school district” as “a district composed of two or more school districts situated wholly or in part in different counties”), 87 (stating that “[a] school district lying in more than one county is a joint school district”).

Education has 2 students.⁴⁸ Given this wide variation, the staff cannot conclude that school districts will reliably be an appropriate size for local notice purposes.

While their boundaries may change, school districts as a whole are likely to be durable and their boundary information is widely available.

Supervisory Districts

Supervisory districts are the districts from which a county's supervisors are elected.⁴⁹ State law requires supervisors to be elected by districts, except in specified circumstances.⁵⁰ In practice, it appears that all counties in California have supervisory districts, which are used for supervisory elections.⁵¹ Since these districts are used for county elections, they are necessarily contained within a single county (i.e., they do not cross county lines) and the boundaries are widely available. Many county websites have tools where one can enter an address and find the supervisory district for that address.⁵²

All counties in California, with the exception of San Francisco, have five supervisors.⁵³ In the staff's view, five districts per county seems to be a reasonably appropriate size for notice purposes.

State law requires that supervisory districts be maintained for county election purposes. The board is required to adjust district boundaries after each decennial census so that the districts are nearly equal in population.⁵⁴ In addition, in establishing the district boundaries, the board may consider "(a) topography, (b) geography, (c) cohesiveness, contiguity, integrity, and compactness of territory, and (d) community of interests of the districts."⁵⁵ Based

48. California Department of Education, Largest & Smallest Public School Districts – *CalEdFacts*, available at <www.cde.ca.gov/ds/sd/cb/ceflargesmalldist.asp>.

49. See Gov't Code §§ 25000-26490.

50. *Id.* § 25040.

51. See Aaron 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."); California Association of Counties website, County Structure & Powers, *sited at* <www.csac.counties.org/general-information/county-structure-0> ("A board member must be a registered voter of, and reside in, the district from which the member is elected.").

52. See, e.g., County of Sacramento website, Find Your County Supervisor, *sited at* <www.supervisorlookup.saccounty.net/>.

53. Gov't Code § 25000. The City and County of San Francisco is the only City and County in California. City and County of San Francisco website, SF 311 - Board of Supervisors - Does San Francisco have a City Council?, *sited at* <sf311.org/index.aspx?page=262>. San Francisco has an 11 member Board of Supervisors that serves as the legislative branch of the City and County. S.F., Cal., Charter art. II, § 2.100 (1996).

54. Elec. Code § 21500.

55. *Id.*

on this language, the staff surmises that supervisorial districts can subdivide cities, however districts may be crafted with an eye towards preserving intact “communities of interest.” The staff concludes that, while supervisorial districts are not strictly prohibited from subdividing cities, the “communities of interest” factor allows such considerations to be taken into account as district boundaries are drawn.

Supervisorial districts are also likely to be durable. Currently, state law requires supervisorial elections by district for most counties.⁵⁶ There is the possibility that this could change, or certain counties could seek to avoid this requirement. Specifically, it is not clear if this restriction applies to the thirteen charter counties in California.⁵⁷ Those counties might (or might not) be able to amend their charters to avoid either the requirement for a five-member Board of Supervisors or the requirement that the supervisors be elected by district. The staff offers this only as a theoretical possibility, but has no information suggesting that any county is interested in pursuing such a change.

Assembly Districts

Assembly districts are the districts used to elect Assembly Members to the State Legislature. There are 80 Assembly districts in the state.⁵⁸ Senate districts are not discussed separately here. Since there are fewer Senate districts (40) than counties (58), the staff felt that the Senate districts would not serve as an effectively means of ensuring less-than-countywide notice.

Assembly districts are crafted to ensure roughly equivalent population.⁵⁹ While Assembly districts are not prohibited from cutting across county lines or subdividing cities, respecting “the geographic integrity of any city, county, city and county, local neighborhood, or local community of interest ... in a manner that minimizes their division ...” is a criterion for the establishment of districts.⁶⁰ This is similar to the criterion for supervisorial district boundaries discussed above.

56. Gov’t Code § 25040.

57. California Association of Counties website, *supra* note 51 (Charter Counties: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, Tehama).

58. California State Legislature website, Assembly Districts, *sited at* <www.legislature.ca.gov/legislators_and_districts/districts/assemblydistricts.html>.

59. Cal. Const. art. XXI, § 2(d)(1).

60. *Id.* § 2(d)(4).

Some Assembly districts covering less populous counties cover multiple counties (e.g., Assembly District #1 contains all or part of 9 counties⁶¹), while some highly populated counties are subdivided into many Assembly districts (e.g., Los Angeles County contains all or part of 25 Assembly districts⁶²). This distribution suggests that Assembly districts are not, as a whole, the appropriate size to ensure less-than-countywide notice. Because of the uneven population distribution in the state, relying on Assembly districts as notice boundaries could result in notice that is too local in populated areas (more local than the city), while not local enough notice in others (less local than the county).

Assembly districts are durable and are maintained to ensure the boundaries reflect population shifts. Similar to supervisorial districts, Assembly districts must be adjusted in the year after the decennial census is taken.⁶³

As the relevant boundaries for state legislative elections, Assembly districts are widely available and easy to determine.⁶⁴

Technical Implementation Questions

A few technical issues relating to Discussion Draft #2 are discussed below. Rather than reiterate certain technical items presented for Discussion Draft #1, the staff notes that two issues discussed above, under the headings *Statutes Relating to a Newspaper of General Circulation* and *Clarification of the Statute on Interpreting "Judicial District,"* also apply to Discussion Draft #2.⁶⁵

Grandfathering for Newspapers (Gov't Code Section 6009)

In Discussion Draft #2, proposed Government Code Section 6009 would state:

Gov't Code § 6009 (added). Establishing newspaper of general circulation for [substitute] district

SEC. ____. Section 6009 of the Government Code is amended to read:

6009. On January 1, 2016, any newspaper with a valid judicial decree declaring it a newspaper of general circulation for a judicial

61. California Citizens Redistricting Commission website, California State Assembly District 1 Map, *sited at* <wedrawthelines.ca.gov/downloads/meeting_handouts_082011/map_20110815_ap_ad_1_certified.pdf>.

62. See State of California Healthcare Atlas website, Assembly Districts of California, *sited at* <gis.oshpd.ca.gov/atlas/places/legislature/assembly>.

63. Cal. Const. art. XXI, § 1.

64. See, e.g., California State Legislature website, Find your California Representative, *sited at* <findyourrep.legislature.ca.gov/>.

65. See *supra* pp. 12-13.

district is deemed a newspaper of general circulation for the [substitute] district in which its principal office of publication is located.

Comment. Section 6009 is added to grandfather any newspaper that was judicially determined to be a newspaper of general circulation for a judicial district before January 1, 2016. On that date, any such newspaper will automatically be deemed a newspaper of general circulation for the [substitute] district where the newspaper's principal office of publication is located.

More generally, this amendment stems from the repeal of the provision that preserved judicial districts for purposes of notice publication after trial court unification. *Compare* Section 6008 *with* 1974 Cal. Stat. ch. 241, § 1 (former Section 6008); see also 2002 Cal. Stat. ch. 784, § 344 (former Section 71042.5).⁶⁶

This proposed section, while not strictly necessary, would help to minimize the disturbance of existing rights.⁶⁷ The section could avoid some process costs by allowing a newspaper that has been designated as a newspaper of general circulation for a judicial district to continue to publish district-level notices without the need to seek a new judicial determination.

In addition, this section would help ensure that local notice is not disrupted upon the transition to substitute districts. It would ensure that there will be newspapers eligible to print notices in certain substitute districts as soon as the transition occurs. Otherwise, in the absence of newspapers of general circulation in the substitute districts, the desired level of local notice could not be achieved, at least temporarily while a newspaper obtains a judicial determination declaring it a newspaper of general circulation for the substitute district.

Does the Commission have any concerns about the proposed Government Code Section 6009?

Preferred Approach to Revenue and Taxation Code Section 3381

As discussed above for Discussion Draft #1,⁶⁸ the staff is seeking the Commission's preferred approach to address Revenue and Taxation Code Section 3381. In an earlier memorandum, the staff raised the idea of removing the judicial district reference in Section 3381 without replacing it. Since this was only an idea for discussion, no decision was made on how to treat this statute.

66. Discussion Draft #2, p. 14.

67. See *supra* pp. 3-4, 6.

68. See *supra* p. 12.

Depending on the substitute district chosen, this question may be moot (e.g., Section 3381 already lists supervisorial districts as an option).

Under this approach, Section 3381 could either be amended to replace judicial district with the chosen substitute district (as in the legislative language presented in the discussion draft) or to eliminate the judicial district reference without replacing it (as in the staff note). **What is the Commission's preference on this issue?**

CONCLUSION

The Commission should decide whether to include one of the approaches discussed above in a tentative recommendation. The staff would then draft a tentative recommendation implementing that approach and reflecting any specific decisions made by the Commission, for consideration at a future meeting.

Respectfully submitted,

Kristin Burford
Staff Counsel

Discussion Draft #1

“Improved Status Quo” Approach

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1 BUSINESS AND PROFESSIONS CODE

2 **Bus. & Prof. Code § 21707 (amended). Notice requirement for self-storage facility lien sale**

3 SEC. _____. Section 21707 of the Business and Professions Code is amended to
4 read:

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

23 (b) For the purposes of this section, "publication district" means the district
24 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of
25 Division 7 of Title 1 of the Government Code.

26 **Comment.** Section 21707 is amended to (1) replace "judicial district" with "publication
27 district" and (2) define the term "publication district."

28 CIVIL CODE

29 **Civ. Code § 2924f (amended). Home foreclosure sale made under a power of sale**

30 SEC. _____. Section 2924f of the Civil Code is amended to read:

31 2924f. (a) As used in this section and Sections 2924g and 2924h, "property"
32 means real property or a leasehold estate therein, and "calendar week" means
33 Monday through Saturday, inclusive.

34 (b)(1) Except as provided in subdivision (c), before any sale of property can be
35 made under the power of sale contained in any deed of trust or mortgage, or any
36 resale resulting from a rescission for a failure of consideration pursuant to
37 subdivision (c) of Section 2924h, notice of the sale thereof shall be given by
38 posting a written notice of the time of sale and of the street address and the

1 specific place at the street address where the sale will be held, and describing the
2 property to be sold, at least 20 days before the date of sale in one public place in
3 the city where the property is to be sold, if the property is to be sold in a city, or, if
4 not, then in one public place in the ~~judicial~~ judicial publication district in which the
5 property is to be sold, and publishing a copy once a week for three consecutive
6 calendar weeks.

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

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

29 (4) The notice of sale shall conform to the minimum requirements of Section
30 6043 of the Government Code and be recorded with the county recorder of the
31 county in which the property or some part thereof is situated at least 20 days prior
32 to the date of sale.

33 (5) The notice of sale shall contain the name, street address in this state, which
34 may reflect an agent of the trustee, and either a toll-free telephone number or
35 telephone number in this state of the trustee, and the name of the original trustor,
36 and also shall contain the statement required by paragraph (3) of subdivision (c).
37 In addition to any other description of the property, the notice shall describe the
38 property by giving its street address, if any, or other common designation, if any,
39 and a county assessor's parcel number; but if the property has no street address or
40 other common designation, the notice shall contain a legal description of the
41 property, the name and address of the beneficiary at whose request the sale is to be
42 conducted, and a statement that directions may be obtained pursuant to a written
43 request submitted to the beneficiary within 10 days from the first publication of

1 the notice. Directions shall be deemed reasonably sufficient to locate the property
2 if information as to the location of the property is given by reference to the
3 direction and approximate distance from the nearest crossroads, frontage road, or
4 access road. If a legal description or a county assessor's parcel number and either
5 a street address or another common designation of the property is given, the
6 validity of the notice and the validity of the sale shall not be affected by the fact
7 that the street address, other common designation, name and address of the
8 beneficiary, or the directions obtained therefrom are erroneous or that the street
9 address, other common designation, name and address of the beneficiary, or
10 directions obtained therefrom are omitted.

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

14 (B) The term "publication district," as used in this section, means the district
15 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of
16 Division 7 of Title 1 of the Government Code.

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

28 (8)(A) On and after April 1, 2012, if the deed of trust or mortgage containing a
29 power of sale is secured by real property containing from one to four single-family
30 residences, the notice of sale shall contain substantially the following language, in
31 addition to the language required pursuant to paragraphs (1) to (7), inclusive:
32

33 NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this
34 property lien, you should understand that there are risks involved in bidding at a
35 trustee auction. You will be bidding on a lien, not on the property itself. Placing
36 the highest bid at a trustee auction does not automatically entitle you to free and
37 clear ownership of the property. You should also be aware that the lien being
38 auctioned off may be a junior lien. If you are the highest bidder at the auction, you
39 are or may be responsible for paying off all liens senior to the lien being auctioned
40 off, before you can receive clear title to the property. You are encouraged to
41 investigate the existence, priority, and size of outstanding liens that may exist on
42 this property by contacting the county recorder's office or a title insurance
43 company, either of which may charge you a fee for this information. If you consult

1 either of these resources, you should be aware that the same lender may hold more
2 than one mortgage or deed of trust on the property.

3
4 NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale
5 may be postponed one or more times by the mortgagee, beneficiary, trustee, or a
6 court, pursuant to Section 2924g of the California Civil Code. The law requires
7 that information about trustee sale postponements be made available to you and to
8 the public, as a courtesy to those not present at the sale. If you wish to learn
9 whether your sale date has been postponed, and, if applicable, the rescheduled
10 time and date for the sale of this property, you may call [telephone number for
11 information regarding the trustee's sale] or visit this Internet Web site [Internet
12 Web site address for information regarding the sale of this property], using the file
13 number assigned to this case [case file number]. Information about postponements
14 that are very short in duration or that occur close in time to the scheduled sale may
15 not immediately be reflected in the telephone information or on the Internet Web
16 site. The best way to verify postponement information is to attend the scheduled
17 sale.

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

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

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

36 (9) If the sale of the property is to be a unified sale as provided in subparagraph
37 (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code,
38 the notice of sale shall also contain a description of the personal property or
39 fixtures to be sold. In the case where it is contemplated that all of the personal
40 property or fixtures are to be sold, the description in the notice of the personal
41 property or fixtures shall be sufficient if it is the same as the description of the
42 personal property or fixtures contained in the agreement creating the security
43 interest in or encumbrance on the personal property or fixtures or the filed

1 financing statement relating to the personal property or fixtures. In all other cases,
2 the description in the notice shall be sufficient if it would be a sufficient
3 description of the personal property or fixtures under Section 9108 of the
4 Commercial Code. Inclusion of a reference to or a description of personal property
5 or fixtures in a notice of sale hereunder shall not constitute an election by the
6 secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph
7 (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate
8 the secured party to conduct a unified sale pursuant to subparagraph (B) of
9 paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in
10 no way shall render defective or noncomplying either that notice or a sale pursuant
11 to that notice by reason of the fact that the sale includes none or less than all of the
12 personal property or fixtures referred to or described in the notice. This paragraph
13 shall not otherwise affect the obligations or duties of a secured party under the
14 Commercial Code.

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

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

25 (3) If any default of the obligation secured by a deed of trust or mortgage
26 described in paragraph (1) has not been cured within 30 days after the recordation
27 of the notice of default, the trustee or mortgagee shall mail to the trustor or
28 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.

29 4) All sales of real property pursuant to a power of sale contained in any deed of
30 trust or mortgage described in paragraph (1) shall be held in the county where the
31 residence is located and shall be made to the person making the highest offer. The

1 trustee may receive offers during the 10-day period immediately prior to the date
2 of sale and if any offer is accepted in writing by both the trustor or mortgagor and
3 the beneficiary or mortgagee prior to the time set for sale, the sale shall be
4 postponed to a date certain and prior to which the property may be conveyed by
5 the trustor to the person making the offer according to its terms. The offer is
6 revocable until accepted. The performance of the offer, following acceptance,
7 according to its terms, by a conveyance of the property to the offeror, shall operate
8 to terminate any further proceeding under the notice of sale and it shall be deemed
9 revoked.

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

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

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

20 **Comment.** Section 2924f is amended to (1) replace "judicial district" with "publication
21 district" and (2) define the term "publication district."

22 **Civ. Code § 3440.1 (amended). Exemption for debtor's conveyance of personal property**
23 **without delivery from fraudulent transfer rules**

24 SEC. ____. Section 3440.1 of the Civil Code is amended to read:

25 3440.1. This chapter does not apply to any of the following:

26 (a) Things in action.

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

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

31 (d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers
32 or owners of the wines or brandies, or other persons having possession, care, and
33 control of the wines or brandies, and the pipes, casks, and tanks in which the wines
34 or brandies are contained, if the transfers are made in writing and executed and
35 acknowledged, and if the transfers are recorded in the book of official records in
36 the office of the county recorder of the county in which the wines, brandies, pipes,
37 casks, and tanks are situated.

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

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

41 (g) Standing timber.

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

3 (1) Prior to the date of the intended transfer, the transferor or the transferee files
4 a financing statement, with respect to the property transferred, authorized in an
5 authenticated record by the transferor. The financing statement shall be filed in the
6 office of the Secretary of State in accordance with Chapter 5 (commencing with
7 Section 9501) of Division 9 of the Commercial Code, but may use the terms
8 "transferor" in lieu of "debtor" and "transferee" in lieu of "secured party." The
9 provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the
10 Commercial Code shall apply as appropriate to the financing statement.

11 (2) The transferor or the transferee publishes a notice of the intended transfer
12 one time in a newspaper of general circulation published in the judicial publication
13 district in which the personal property is located, if there is one, and if there is
14 none in the judicial publication district, then in a newspaper of general circulation
15 in the county embracing the judicial publication district. The publication shall be
16 completed not less than 10 days before the date the transfer occurs. The notice
17 shall contain the name and address of the transferor and transferee and a general
18 statement of the character of the personal property intended to be transferred, and
19 shall indicate the place where the personal property is located and a date on or
20 after which the transfer is to be made.

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

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

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

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

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

36 (n) For the purposes of this section, "publication district" means the district
37 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of
38 Division 7 of Title 1 of the Government Code.

39 **Comment.** Section 3440.1 is amended to (1) replace "judicial district" with "publication
40 district" and (2) define the term "publication district."

1 **Civ. Code § 3440.5 (amended). Exemption of certain security agreements from fraudulent**
2 **transfer rules**

3 SEC. ____ . Section 3440.5 of the Civil Code is amended to read:

4 3440.5 (a) This chapter does not affect the rights of a secured party who, for
5 value and in good faith, acquires a security interest in the transferred personal
6 property from the transferee, or from the transferee's successor in interest, if the
7 transferor is no longer in possession of the personal property at the time the
8 security interest attaches.

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

13 (1) On or before the date the security agreement is executed, the intended debtor
14 or secured party files a financing statement with respect to the property
15 transferred, signed by the intended debtor. The financing statement shall be filed
16 in the office of the Secretary of State in accordance with Chapter 5 (commencing
17 with Section 9501) of Division 9 of the Commercial Code, but shall use the terms
18 "transferor" in lieu of "debtor," "transferee" in lieu of "secured party," and
19 "secured party" in lieu of "assignee of secured party." The provisions of Chapter 5
20 (commencing with Section 9501) of Division 9 of the Commercial Code shall
21 apply as appropriate to ~~such a~~ the financing statement. For the purpose of
22 indexing, and in any certification of search, the Secretary of State may refer to any
23 financing statement filed pursuant to this paragraph as a financing statement under
24 the Commercial Code and may describe the transferor as a debtor and the
25 transferee as a secured party.

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

29 (2) The intended debtor or secured party publishes a notice of the transfer one
30 time in a newspaper of general circulation published in the ~~judicial~~ publication
31 district in which the personal property is located, if there is one, and if there is
32 none in the ~~judicial~~ publication district, then in a newspaper of general circulation
33 in the county embracing the ~~judicial~~ publication district. The publication shall be
34 completed not less than 10 days before the date of execution by the intended
35 debtor of the intended security agreement. The notice shall contain the names and
36 addresses of the transferor and transferee and of the intended debtor and secured
37 party, a general statement of the character of the personal property transferred and
38 intended to be subject to the security interest, the location of the personal property,
39 and the date on or after which the security agreement is to be executed by the
40 intended debtor.

41 (c) Compliance with paragraph (1) of subdivision (b) shall not perfect the
42 security interest of the secured party. Perfection of that security interest shall be

1 governed by Division 9 (commencing with Section 9101) of the Commercial
2 Code.

3 (d) For the purposes of this section, "publication district" means the district
4 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of
5 Division 7 of Title 1 of the Government Code.

6 **Comment.** Section 3440.5 is amended to (1) replace "judicial district" with "publication
7 district" and (2) define the term "publication district."

8 The section is also amended to label, relocate, and make a stylistic revision in an unlabeled
9 paragraph. This is not a substantive change.

10 CODE OF CIVIL PROCEDURE

11 **Code Civ. Proc. § 38 (amended). Judicial districts**

12 SEC. ____ . Section 38 of the Code of Civil Procedure is amended to read:

13 38. Unless the provision or context otherwise requires, a any reference in a
14 statute to a judicial district means:

15 (a) As it relates to a court of appeal, the court of appeal district.

16 (b) As it relates to a superior court, the county.

17 (c) As it relates to a municipal court, the municipal court district.

18 (d) As it relates to a county in which there is no municipal court, the county.

19 (e) As it relates to the location for publishing legal notice, the publication district
20 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of
21 Division 7 of Title 1 of the Government Code.

22 **Comment.** Section 38 is amended to reflect the replacement of judicial districts with
23 publication districts for notice publication purposes. See Gov't Code § 6080(c); see generally
24 Gov't Code §§ 6080-6086 (publication districts) & Comments.

25 In addition, Section 38 is amended to make a technical change

26 **Staff Note.** These amendments are not strictly necessary to implement the "Improved Status
27 Quo" approach, but the staff believes that this amendment offers helpful explanation and may
28 alleviate confusion. For instance, for local laws that require "judicial district" notice publication,
29 this amendment can help direct persons to the relevant publication district provisions.

30 **Code Civ. Proc. § 701.540 (amended). Notice of sale of interest in real property**

31 SEC. ____ . Section 701.540 of the Code of Civil Procedure is amended to read:

32 701.540. (a) Notice of sale of an interest in real property shall be in writing,
33 shall state the date, time, and place of sale, shall describe the interest to be sold,
34 and shall give a legal description of the real property and its street address or other
35 common designation, if any. If the real property has no street address or other
36 common designation, the notice of sale shall include a statement that directions to
37 its location may be obtained from the levying officer upon oral or written request
38 or, in the discretion of the levying officer, the notice of sale may contain directions
39 to its location. Directions are sufficient if information as to the location of the real
40 property is given by reference to the direction and approximate distance from the
41 nearest crossroads, frontage road, or access road. If an accurate legal description

1 of the real property is given, the validity of the notice and sale is not affected by
2 the fact that the street address or other common designation, or directions to its
3 location, are erroneous or omitted.

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

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

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

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

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

14 (e) At the time notice is posted pursuant to paragraph (2) of subdivision (d),
15 notice of sale shall be served or service shall be attempted on one occupant of the
16 real property. Service on the occupant shall be made by leaving the notice with the
17 occupant personally or, in the occupant's absence, with any person of suitable age
18 and discretion found upon the real property at the time service is attempted who is
19 either an employee or agent of the occupant or a member of the occupant's
20 household. If the levying officer is unable to serve ~~such~~ an occupant as specified
21 at the time service is attempted, the levying officer is not required to make any
22 further attempts to serve an occupant.

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

29 (g) Notice of sale shall be published pursuant to Section 6063 of the
30 Government Code, with the first publication at least 20 days prior to the time of
31 sale, in a newspaper of general circulation published in the city in which the real
32 property or a part thereof is situated if any part thereof is situated in a city or, if
33 not, in a newspaper of general circulation published in the ~~judicial~~ publication
34 district in which the real property or a part thereof is situated. If no newspaper of
35 general circulation is published in the city or ~~judicial~~ publication district, notice of
36 sale shall be published in a newspaper of general circulation in the county in
37 which the real property or a part thereof is situated.

38 (h) Not earlier than 30 days after the date of levy, the judgment creditor shall
39 determine the names of all persons having liens on the real property on the date of
40 levy that are of record in the office of the county recorder and shall instruct the
41 levying officer to mail notice of sale to each ~~such person~~ lienholder at the address
42 used by the county recorder for the return of the instrument creating the ~~person's~~
43 lien after recording. The levying officer shall mail notice to each ~~such person~~

1 lienholder, at the address given in the instructions, not less than 20 days before the
2 date of sale.

3 (i) For the purposes of this section, "publication district" means the district
4 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of
5 Division 7 of Title 1 of the Government Code.

6 **Comment.** Section 701.540 is amended to (1) replace "judicial district" with "publication
7 district" and (2) define the term "publication district."

8 This section is also amended to make technical changes.

9 COMMERCIAL CODE

10 **Com. Code § 6105 (amended). Notice requirement for bulk sale**

11 SEC. ____ . Section 6105 of the Commercial Code is amended to read:

12 6105. (a) In order to comply with subdivision (b) of Section ~~6104~~ each of the
13 following shall be satisfied: ~~6104~~, each requirement of subdivision (b) and each
14 requirement of subdivision (c) of this section shall be satisfied.

15 ~~(a)~~ (b) The notice shall comply with each of the following:

16 (1) State that a bulk sale is about to be made.

17 (2) State the name and business address of the seller together with any other
18 business name and address listed by the seller (subdivision (a) of Section 6104)
19 and the name and business address of the buyer.

20 (3) State the location and general description of the assets.

21 (4) State the place and the anticipated date of the bulk sale.

22 (5) State whether or not the bulk sale is subject to Section 6106.2 and, if so
23 subject, the matters required by subdivision (f) of Section 6106.2.

24 ~~(b)~~ (c) At least 12 business days before the date of the bulk sale, the notice shall
25 be:

26 (1) Recorded in the office of the county recorder in the county or counties in this
27 state in which the tangible assets are located and, if different, in the county in
28 which the seller is located (paragraph (2) of subdivision (a) of Section 6103).

29 (2)(A) Published at least once in a newspaper of general circulation published in
30 the judicial publication district in this state in which the tangible assets are located
31 and in the judicial publication district, if different, in which the seller is located
32 (paragraph (2) of subdivision (a) of Section 6103), if in either case there is one,
33 and if there is none, then in a newspaper of general circulation in the county in
34 which the judicial publication district is located.

35 ~~(3) Delivered or sent by registered or certified mail to the county tax collector in~~
36 ~~the county or counties in this state in which the tangible assets are located. If~~
37 ~~delivered during the period from January 1 to May 7, inclusive, the notice shall be~~
38 ~~accompanied by a completed business property statement with respect to property~~
39 ~~involved in the bulk sale pursuant to Section 441 of the Revenue and Taxation~~
40 ~~Code.~~

1 (B) If the tangible assets are located in more than one judicial publication
2 district in this state, the publication required in paragraph (2) shall be in a
3 newspaper of general circulation published in the judicial publication district in
4 this state in which a greater portion of the tangible assets are located, on the date
5 the notice is published, than in any other judicial publication district in this state
6 and, if different, in the judicial publication district in which the seller is located
7 (paragraph (2) of subdivision (a) of Section 6103). ~~As used in this subdivision,~~
8 ~~“business day” means any day other than a Saturday, Sunday, or day observed as a~~
9 ~~holiday by the state government.~~

10 (3) Delivered or sent by registered or certified mail to the county tax collector in
11 the county or counties in this state in which the tangible assets are located. If
12 delivered during the period from January 1 to May 7, inclusive, the notice shall be
13 accompanied by a completed business property statement with respect to property
14 involved in the bulk sale pursuant to Section 441 of the Revenue and Taxation
15 Code.

16 (d)(1) As used in this section, “publication district” means the district
17 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of
18 Division 7 of Title 1 of the Government Code.

19 (2) As used in this section, “business day” means any day other than a Saturday,
20 Sunday, or day observed as a holiday by the state government.

21 **Comment.** Section 6105 is amended to (1) replace “judicial district” with “publication district”
22 and (2) define the term “publication district.”

23 GOVERNMENT CODE

24 **Gov’t Code § 6008 (amended). Criteria for establishing standing as newspaper of general** 25 **circulation**

26 SEC. ____ . Section 6008 of the Government Code is amended to read:

27 6008. (a) Notwithstanding any provision of law to the contrary, a newspaper is a
28 “newspaper of general circulation” if it ~~meets~~ satisfies the requirements of Section
29 6086 or it meets all of following criteria:

30 (a) (1) It is a newspaper published for the dissemination of local or telegraphic
31 news and intelligence of a general character, which has a bona fide subscription
32 list of paying subscribers and has been established and published at regular
33 intervals of not less than weekly in the city, district, or judicial publication district
34 for which it is seeking adjudication for at least three years preceding the date of
35 adjudication.

36 (b) (2) It has a substantial distribution to paid subscribers in the city, district, or
37 judicial publication district in which it is seeking adjudication.

38 (c) (3) It has maintained a minimum coverage of local or telegraphic news and
39 intelligence of a general character of not less than 25 percent of its total inches
40 during each year of the three-year period.

~~(d)~~ (4) It has only one principal office of publication and that office is in the city, district, or judicial publication district for which it is seeking adjudication.

(b) For the purposes of Section 6020, a newspaper meeting the criteria of this section which desires to have its standing as a newspaper of general circulation ascertained and established, may, by its publisher, manager, editor, or attorney, file a verified petition in the superior court of the county in which it is established and published.

(c) As used in this section:


(1) "Established" means in existence under a specified name during the whole of the three-year period, except that a modification of name in accordance with Section 6024, where the modification of name does not substantially change the identity of the newspaper, shall not affect the status of the newspaper for the purposes of this definition.

(2) "Published" means issued from the place where the newspaper is sold to or circulated among the people and its subscribers during the whole of the three-year period.

(3) "Publication district" means the district established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of Division 7 of Title 1 of the Government Code.

Comment. Section 6008 is amended to (1) replace "judicial district" with "publication district" and (2) define the term "publication district."

This section is also amended to make technical changes.

 **Staff Note.** The staff has not yet carefully examined the statutes relating to a newspaper of general circulation. The staff would appreciate input on additional newspaper-related provisions that would need to be modified to accomplish a change from "judicial district" notice publication.

Gov't Code §§ 6080-6086 (added). Publication districts

SEC. ____. Article 6 (commencing with Section 6080) is added to Chapter 1 of Division 7 of Title 1 of the Government Code to read:

Article 6. Publication Districts

Gov't Code § 6080. Publication of notice in a publication district

6080. (a) Each county is divided into one or more publication districts.

(b) Any provision of law that requires publication of notice in a publication district is governed by this article.

(c) Any provision of law that requires publication of notice in a judicial district shall be construed as requiring publication in a publication district.

Comment. Section 6080 is new. This section establishes publication districts as a location for publication of legal notice.

1 **Gov't Code § 6082. Replacement of judicial district with publication district for purposes of**
2 **notice publication**

3 6082. (a) On January 1, 2016, each judicial district designated for the
4 publication of notices pursuant to former Section 71042.5 is replaced with a
5 publication district.

6 (b) Each publication district established pursuant to this section shall have the
7 same boundaries as the judicial district that it replaces.

8 [(c) This section is repealed by operation of law on January 1, 2020, unless a
9 later enacted statute that becomes operative on or before January 1, 2020, deletes
10 or extends that date.]

11 **Comment.** Section 6082 is new. This section establishes a publication district for each former
12 judicial district used for notice publication under former Section 71042.5 with the same
13 boundaries as the former judicial district.

14 [This section is transitional. Subdivision (c) is a sunset clause that will repeal this provision on
15 January 1, 2020, after publication district boundaries are published by the Judicial Council in
16 accordance with Section 6084.]

17 **Staff Note.** The staff has not yet carefully examined the statutes relating to a newspaper of
18 general circulation. The staff would appreciate input on additional newspaper-related provisions
19 that would need to be modified to accomplish a change from "judicial district" notice publication.

20 **Gov't Code § 6084. Publication of boundary descriptions**

21 6084. (a) On or before January 1, 2017, the Judicial Council shall publish the
22 boundaries of the publication districts established pursuant to this article.

23 (b) The Judicial Council shall maintain the publication district boundary
24 information on an Internet website in a form that allows the general public to
25 determine the location of publication districts.

26 (c) The boundary descriptions published pursuant to this section are
27 conclusively presumed to be correct and may be offered as evidence in a legal
28 proceeding.

29 (d) Anyone who reasonably relies on the publication district boundary
30 information provided by the Judicial Council and publishes notice accordingly is
31 deemed to be in substantial compliance with a requirement that the notice be
32 published in a particular publication district.

33 **Comment.** Section 6084 is new. This section requires the Judicial Council to publish
34 publication district boundaries and maintain the district boundary information on a website.

35 Nothing in this section limits the form in which the Judicial Council may publish the
36 publication district boundary information.

37 Subdivision (c) is similar to the last sentence of former Section 71042.6, 2002 Cal. Stat. ch.
38 784, § 344 (conclusive presumption that judicial district maps are correct).

39 **Staff Note.** The Judicial Council is designated the custodian of publication district boundaries
40 in this section. While the judicial district boundaries are maintained at the county level, the staff
41 thinks that creating a central, statewide resource would considerably improve the accessibility of
42 the district boundary information. The staff seeks comment on other appropriate state-level
43 candidates, and on whether this information should instead continue to be maintained at the local
44 level.

1 **Gov't Code § 6086. Status of newspaper of general circulation in judicial district**

2 6086. A newspaper of general circulation in a former judicial district is deemed
3 to be a newspaper of general circulation in the publication district that replaced the
4 former judicial district.

5 **Comment.** Section 6086 is new.

6 **Gov't Code § 26203 (amended). Power of the board of supervisors to order a census**

7 SEC. _____. Section 26203 of the Government Code is amended to read:

8 26203. In years other than those in which a census is taken by the United States,
9 the board of supervisors by ordinance may cause a census of the county or any
10 district therein to be taken which shall be validated by the Population Research
11 Unit of the Department of Finance. ~~The board of supervisors shall cause a census~~
12 ~~of a judicial district to be taken upon presentation to it of a petition signed by not~~
13 ~~less than 40 percent of the qualified electors residing in the district whose names~~
14 ~~appear upon the great register of the county at the last general election.~~ The
15 persons taking the census shall enumerate all the inhabitants of the county or
16 district. The census shall be validated by the Population Unit. The expenses of
17 taking such census is a county charge.

18 **Comment.** Section 26203 is amended to delete a sentence on taking a census of a judicial
19 district. That sentence is obsolete, because counties are no longer subdivided into judicial districts
20 for any purpose. See Gov't Code §§ 6080-6086 (establishing publication districts, which replace
21 judicial districts for purposes of publishing legal notices) & Comments; see also Code Civ. Proc.
22 § 38, former Gov't Code § 71042.5 (2002 Cal. Stat. ch. 784, § 344), which temporarily preserved
23 particular judicial districts (i.e., municipal court districts) for purposes of publishing legal notices
24 after trial court unification.

25 **Gov't Code §§ 71042.5-71043 (repealed). Preservation of judicial districts**

26 SEC. _____. Article 2 (commencing with Section 70142.5) of Chapter 6 of Title 8
27 of the Government Code is repealed.

28 **Comment.** Sections 71042.5-71043 are repealed. The judicial districts designated for the
29 publication of notice in the former provisions are replaced with publication districts having the
30 same territorial boundaries as the former judicial districts. See Gov't Code §§ 6080-6083.

31 **Staff Note.** The text of the repealed article is set forth below.

32 **Article 2. Preservation of Judicial Districts**

33 71042.5. Notwithstanding any other provision of law, where judicial districts in
34 a county have been consolidated, or where the municipal and superior courts in a
35 county have unified, the territory embraced within the respective prior component
36 judicial districts shall be separate judicial districts for the purpose of publication
37 within a judicial district.

38 71042.6. For the purpose of establishing boundaries under Section 71042.5, a
39 map approved by the county surveyor shall be kept on file with the county
40 recorder showing the boundaries of all consolidated or unified districts and
41 component districts as of the date of consolidation or unification. The map shall be

1 conclusively presumed to be accurate and may be used in evidence in any
2 proceeding involving application of Section 71042.5.

3 71043. For the purpose of establishing boundaries under Section 71042.5, a map
4 approved by the county surveyor shall be kept on file with the county recorder
5 showing the boundaries of all consolidated or unified districts and component
6 districts as of the date of consolidation or unification. The map shall be
7 conclusively presumed to be accurate and may be used in evidence in any
8 proceeding involving application of Section 71042.5.

9 REVENUE AND TAXATION CODE

10 **Rev. & Tax. Code § 3381 (amended). Alternate means of notice of intent to sell property of**
11 **delinquent taxpayer**

12 SEC. ____ . Section 3381 of the Revenue and Taxation Code is amended to read:

13 3381. (a) In each county where the tax collector or, if the county is a chartered
14 county, the board of supervisors determines that the public interest, convenience
15 and necessity require the local publication of the delinquent list required by
16 Section 3371, or the published notice of power and intent to sell required by
17 Section 3361, in order to afford adequate notice, all items required to be published
18 shall be published as provided in this article.

19 (b) After the determination, the tax collector or, if the county is a chartered
20 county, the board of supervisors shall divide and distribute the items to be
21 published and cause the same to be published either within ~~(a)~~ (1) the municipal
22 corporations, ~~(b)~~ (2) the elementary, high school, or junior college districts, ~~(c)~~ (3)
23 the supervisorial districts, ~~(d)~~ judicial (4) publication districts established pursuant
24 to Section 6080 of the Government Code, ~~(e)~~ (5) tax districts, areas included in
25 map books, or tax code areas, or ~~(f)~~ (6) by any annexation or annexations of same,
26 or any combination of same, or any combination of those districts, annexations,
27 areas included in map books, and code areas, within the county as they shall
28 determine most likely to afford adequate notice to owners of the property.

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

31 (d) The publication provided for in this article shall be made once a week for
32 two successive weeks in a newspaper or newspapers of general circulation. The
33 publication shall be made in a newspaper published not less frequently than once a
34 week.

35 **Comment.** Section 3381 is amended to (1) replace "judicial district" with "publication district"
36 and (2) include a cross-reference to the Government Code section establishing publication
37 districts.

38 This section is also amended to insert subdivision labels and make other technical changes.

39 **Staff Note.** The Commission tentatively discussed removing the judicial district reference in
40 this section without replacing it. The "Improved Status Quo" approach presented here does not
41 necessarily invalidate that option. However, as drafted above, this approach offers the ability to

1 treat this section as all other sections providing for judicial district publication, by replacing
2 "judicial district" references with "publication district." As such, the Commission can decide to
3 replace the judicial district reference with "publication district" (as drafted above) or whether to
4 or eliminate the judicial district reference altogether. The following is an excerpt of the section,
5 providing sample legislative language to eliminate the judicial district reference without replacing
6 it:

7 ...

8 After the determination, the tax collector or, if the county is a chartered county, the
9 board of supervisors shall divide and distribute the items to be published and cause the
10 same to be published either within (a) the municipal corporations, (b) the elementary,
11 high school, or junior college districts, (c) the supervisorial districts, ~~(d) judicial districts,~~
12 ~~(e) (d)~~ tax districts, areas included in map books, or tax code areas, or ~~(f) (e)~~ by any
13 annexation or annexations of same, or any combination of same, or any combination of
14 those districts, annexations, areas included in map books, and code areas, within the
15 county as they shall determine most likely to afford adequate notice to owners of the
16 property.

17 ...

18 **What is the Commission's preferred approach to this section?**

19 **Rev. & Tax. Code § 3702 (amended). Means of notice of intended sale of property of**
20 **delinquent taxpayer**

21 SEC. ____ . Section 3702 of the Revenue and Taxation Code is amended to read:

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

35 (b) For the purposes of this section, "publication district" means the district
36 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of
37 Division 7 of Title 1 of the Government Code.

38 **Comment.** Section 3702 is amended to (1) replace "judicial district" with "publication district"
39 and (2) define the term "publication district."

40 This section is also amended to make technical changes.

41 **Rev. & Tax. Code § 3703 (amended). Alternate means of notice if property is lower in value**
42 **than cost of publication**

43 SEC. ____ . Section 3703 of the Revenue and Taxation Code is amended to read:

44 3703. (a) If in the judgment of the board of supervisors any property to be sold
45 under this chapter will bring at auction less than the cost of publication in a

1 newspaper, the publication of the notice of intended sale may be made in the same
2 manner as if there were no newspaper published in the county seat or in the
3 judicial publication district.

4 (b) For the purposes of this section, "publication district" means the district
5 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of
6 Division 7 of Title 1 of the Government Code.

7 **Comment.** Section 3703 is amended to (1) replace "judicial district" with "publication district"
8 and (2) define the term "publication district."

Discussion Draft #2

“Replace Judicial District with Substitute District” Approach

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1 **☞ Staff Note.** This proposed language is provided to illustrate the option of replacing each
2 reference to a "judicial district" with a reference to another kind of district. For drafting
3 convenience, the staff denominated the replacement as "substitute district." At this point, the staff
4 does not have a recommended replacement for the references to a "judicial district." The
5 language below is simply illustrative of the general "remove and replace" approach. If the
6 Commission selects a particular replacement, we could easily revise this draft to refer to that type
7 of district, instead of using the term "substitute district."

8 BUSINESS AND PROFESSIONS CODE

9 **Bus. & Prof. Code § 21707 (amended). Notice requirement for self-storage facility lien sale**

10 SEC. _____. Section 21707 of the Business and Professions Code is amended to
11 read:

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

30 **Comment.** Section 21707 is amended to replace "judicial district" with "[substitute] district."
31 The provision preserving judicial districts for notice publication has been repealed. See 2002 Cal.
32 Stat. ch. 784, § 344 (former Gov't Code § 71042.5).

33 CIVIL CODE

34 **Civ. Code § 2924f (amended). Home foreclosure sale made under a power of sale**

35 SEC. _____. Section 2924f of the Civil Code is amended to read:

36 2924f. (a) As used in this section and Sections 2924g and 2924h, "property"
37 means real property or a leasehold estate therein, and "calendar week" means
38 Monday through Saturday, inclusive.

39 (b)(1) Except as provided in subdivision (c), before any sale of property can be
40 made under the power of sale contained in any deed of trust or mortgage, or any

1 resale resulting from a rescission for a failure of consideration pursuant to
2 subdivision (c) of Section 2924h, notice of the sale thereof shall be given by
3 posting a written notice of the time of sale and of the street address and the
4 specific place at the street address where the sale will be held, and describing the
5 property to be sold, at least 20 days before the date of sale in one public place in
6 the city where the property is to be sold, if the property is to be sold in a city, or, if
7 not, then in one public place in the ~~judicial~~ [substitute] district in which the
8 property is to be sold, and publishing a copy once a week for three consecutive
9 calendar weeks.

10 (2) The first publication to be at least 20 days before the date of sale, in a
11 newspaper of general circulation published in the city in which the property or
12 some part thereof is situated, if any part thereof is situated in a city, if not, then in
13 a newspaper of general circulation published in the ~~judicial~~ [substitute] district in
14 which the property or some part thereof is situated, or in case no newspaper of
15 general circulation is published in the city or ~~judicial~~ [substitute] district, as the
16 case may be, in a newspaper of general circulation published in the county in
17 which the property or some part thereof is situated, or in case no newspaper of
18 general circulation is published in the city or ~~judicial~~ [substitute] district or county,
19 as the case may be, in a newspaper of general circulation published in the county
20 in this state that is contiguous to the county in which the property or some part
21 thereof is situated and has, by comparison with all similarly contiguous counties,
22 the highest population based upon total county population as determined by the
23 most recent federal decennial census published by the Bureau of the Census.

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

32 (4) The notice of sale shall conform to the minimum requirements of Section
33 6043 of the Government Code and be recorded with the county recorder of the
34 county in which the property or some part thereof is situated at least 20 days prior
35 to the date of sale.

36 (5) The notice of sale shall contain the name, street address in this state, which
37 may reflect an agent of the trustee, and either a toll-free telephone number or
38 telephone number in this state of the trustee, and the name of the original trustor,
39 and also shall contain the statement required by paragraph (3) of subdivision (c).
40 In addition to any other description of the property, the notice shall describe the
41 property by giving its street address, if any, or other common designation, if any,
42 and a county assessor's parcel number; but if the property has no street address or
43 other common designation, the notice shall contain a legal description of the

1 property, the name and address of the beneficiary at whose request the sale is to be
2 conducted, and a statement that directions may be obtained pursuant to a written
3 request submitted to the beneficiary within 10 days from the first publication of
4 the notice. Directions shall be deemed reasonably sufficient to locate the property
5 if information as to the location of the property is given by reference to the
6 direction and approximate distance from the nearest crossroads, frontage road, or
7 access road. If a legal description or a county assessor's parcel number and either
8 a street address or another common designation of the property is given, the
9 validity of the notice and the validity of the sale shall not be affected by the fact
10 that the street address, other common designation, name and address of the
11 beneficiary, or the directions obtained therefrom are erroneous or that the street
12 address, other common designation, name and address of the beneficiary, or
13 directions obtained therefrom are omitted.

14 (6) The term "newspaper of general circulation," as used in this section, has the
15 same meaning as defined in Article 1 (commencing with Section 6000) of Chapter
16 1 of Division 7 of Title 1 of the Government Code.

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

28 (8)(A) On and after April 1, 2012, if the deed of trust or mortgage containing a
29 power of sale is secured by real property containing from one to four single-family
30 residences, the notice of sale shall contain substantially the following language, in
31 addition to the language required pursuant to paragraphs (1) to (7), inclusive:
32

33 **NOTICE TO POTENTIAL BIDDERS:** If you are considering bidding on this
34 property lien, you should understand that there are risks involved in bidding at a
35 trustee auction. You will be bidding on a lien, not on the property itself. Placing
36 the highest bid at a trustee auction does not automatically entitle you to free and
37 clear ownership of the property. You should also be aware that the lien being
38 auctioned off may be a junior lien. If you are the highest bidder at the auction, you
39 are or may be responsible for paying off all liens senior to the lien being auctioned
40 off, before you can receive clear title to the property. You are encouraged to
41 investigate the existence, priority, and size of outstanding liens that may exist on
42 this property by contacting the county recorder's office or a title insurance
43 company, either of which may charge you a fee for this information. If you consult

1 either of these resources, you should be aware that the same lender may hold more
2 than one mortgage or deed of trust on the property.

3
4 NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale
5 may be postponed one or more times by the mortgagee, beneficiary, trustee, or a
6 court, pursuant to Section 2924g of the California Civil Code. The law requires
7 that information about trustee sale postponements be made available to you and to
8 the public, as a courtesy to those not present at the sale. If you wish to learn
9 whether your sale date has been postponed, and, if applicable, the rescheduled
10 time and date for the sale of this property, you may call [telephone number for
11 information regarding the trustee's sale] or visit this Internet Web site [Internet
12 Web site address for information regarding the sale of this property], using the file
13 number assigned to this case [case file number]. Information about postponements
14 that are very short in duration or that occur close in time to the scheduled sale may
15 not immediately be reflected in the telephone information or on the Internet Web
16 site. The best way to verify postponement information is to attend the scheduled
17 sale.

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

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

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

36 (9) If the sale of the property is to be a unified sale as provided in subparagraph
37 (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code,
38 the notice of sale shall also contain a description of the personal property or
39 fixtures to be sold. In the case where it is contemplated that all of the personal
40 property or fixtures are to be sold, the description in the notice of the personal
41 property or fixtures shall be sufficient if it is the same as the description of the
42 personal property or fixtures contained in the agreement creating the security
43 interest in or encumbrance on the personal property or fixtures or the filed

1 financing statement relating to the personal property or fixtures. In all other cases,
2 the description in the notice shall be sufficient if it would be a sufficient
3 description of the personal property or fixtures under Section 9108 of the
4 Commercial Code. Inclusion of a reference to or a description of personal property
5 or fixtures in a notice of sale hereunder shall not constitute an election by the
6 secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph
7 (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate
8 the secured party to conduct a unified sale pursuant to subparagraph (B) of
9 paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in
10 no way shall render defective or noncomplying either that notice or a sale pursuant
11 to that notice by reason of the fact that the sale includes none or less than all of the
12 personal property or fixtures referred to or described in the notice. This paragraph
13 shall not otherwise affect the obligations or duties of a secured party under the
14 Commercial Code.

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

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

25 (3) If any default of the obligation secured by a deed of trust or mortgage
26 described in paragraph (1) has not been cured within 30 days after the recordation
27 of the notice of default, the trustee or mortgagee shall mail to the trustor or
28 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.

29 (4) All sales of real property pursuant to a power of sale contained in any deed
30 of trust or mortgage described in paragraph (1) shall be held in the county where
31 the residence is located and shall be made to the person making the highest offer.

1 The trustee may receive offers during the 10-day period immediately prior to the
2 date of sale and if any offer is accepted in writing by both the trustor or mortgagor
3 and the beneficiary or mortgagee prior to the time set for sale, the sale shall be
4 postponed to a date certain and prior to which the property may be conveyed by
5 the trustor to the person making the offer according to its terms. The offer is
6 revocable until accepted. The performance of the offer, following acceptance,
7 according to its terms, by a conveyance of the property to the offeror, shall operate
8 to terminate any further proceeding under the notice of sale and it shall be deemed
9 revoked.

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

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

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

20 **Comment.** Section 2924f is amended to replace "judicial district" with "[substitute] district."
21 The provision preserving judicial districts for notice publication has been repealed. See 2002 Cal.
22 Stat. ch. 784, § 344 (former Gov't Code § 71042.5).

23 **Civ. Code § 3440.1 (amended). Exemption for debtor's conveyance of personal property**
24 **without delivery from fraudulent transfer rules**

25 SEC. ____ . Section 3440.1 of the Civil Code is amended to read:

26 3440.1. This chapter does not apply to any of the following:

27 (a) Things in action.

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

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

32 (d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers
33 or owners of the wines or brandies, or other persons having possession, care, and
34 control of the wines or brandies, and the pipes, casks, and tanks in which the wines
35 or brandies are contained, if the transfers are made in writing and executed and
36 acknowledged, and if the transfers are recorded in the book of official records in
37 the office of the county recorder of the county in which the wines, brandies, pipes,
38 casks, and tanks are situated.

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

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

42 (g) Standing timber.

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

3 (1) Prior to the date of the intended transfer, the transferor or the transferee files
4 a financing statement, with respect to the property transferred, authorized in an
5 authenticated record by the transferor. The financing statement shall be filed in the
6 office of the Secretary of State in accordance with Chapter 5 (commencing with
7 Section 9501) of Division 9 of the Commercial Code, but may use the terms
8 "transferor" in lieu of "debtor" and "transferee" in lieu of "secured party." The
9 provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the
10 Commercial Code shall apply as appropriate to the financing statement.

11 (2) The transferor or the transferee publishes a notice of the intended transfer
12 one time in a newspaper of general circulation published in the ~~judicial~~ [substitute]
13 district in which the personal property is located, if there is one, and if there is
14 none in the ~~judicial~~ [substitute] district, then in a newspaper of general circulation
15 in the county embracing the ~~judicial~~ [substitute] district. The publication shall be
16 completed not less than 10 days before the date the transfer occurs. The notice
17 shall contain the name and address of the transferor and transferee and a general
18 statement of the character of the personal property intended to be transferred, and
19 shall indicate the place where the personal property is located and a date on or
20 after which the transfer is to be made.

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

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

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

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

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

36 **Comment.** Section 3440.1 is amended to replace "judicial district" with "[substitute] district."
37 The provision preserving judicial districts for notice publication has been repealed. See 2002 Cal.
38 Stat. ch. 784, § 344 (former Gov't Code § 71042.5).

39 **Civ. Code § 3440.5 (amended). Exemption of certain security agreements from fraudulent**
40 **transfer rules**

41 SEC. ____ . Section 3440.5 of the Civil Code is amended to read:

1 3440.5 (a) This chapter does not affect the rights of a secured party who, for
2 value and in good faith, acquires a security interest in the transferred personal
3 property from the transferee, or from the transferee's successor in interest, if the
4 transferor is no longer in possession of the personal property at the time the
5 security interest attaches.

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

10 (1) On or before the date the security agreement is executed, the intended debtor
11 or secured party files a financing statement with respect to the property
12 transferred, signed by the intended debtor. The financing statement shall be filed
13 in the office of the Secretary of State in accordance with Chapter 5 (commencing
14 with Section 9501) of Division 9 of the Commercial Code, but shall use the terms
15 "transferor" in lieu of "debtor," "transferee" in lieu of "secured party," and
16 "secured party" in lieu of "assignee of secured party." The provisions of Chapter 5
17 (commencing with Section 9501) of Division 9 of the Commercial Code shall
18 apply as appropriate to ~~such a~~ the financing statement. For the purpose of
19 indexing, and in any certification of search, the Secretary of State may refer to any
20 financing statement filed pursuant to this paragraph as a financing statement under
21 the Commercial Code and may describe the transferor as a debtor and the
22 transferee as a secured party.

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

26 (2) The intended debtor or secured party publishes a notice of the transfer one
27 time in a newspaper of general circulation published in the judicial [substitute]
28 district in which the personal property is located, if there is one, and if there is
29 none in the judicial [substitute] district, then in a newspaper of general circulation
30 in the county embracing the judicial [substitute] district. The publication shall be
31 completed not less than 10 days before the date of execution by the intended
32 debtor of the intended security agreement. The notice shall contain the names and
33 addresses of the transferor and transferee and of the intended debtor and secured
34 party, a general statement of the character of the personal property transferred and
35 intended to be subject to the security interest, the location of the personal property,
36 and the date on or after which the security agreement is to be executed by the
37 intended debtor.

38 (c) Compliance with paragraph (1) of subdivision (b) shall not perfect the
39 security interest of the secured party. Perfection of that security interest shall be
40 governed by Division 9 (commencing with Section 9101) of the Commercial
41 Code.

1 **Comment.** Section 3440.5 is amended to replace “judicial district” with “[substitute] district.”
2 The provision preserving judicial districts for notice publication has been repealed. See 2002 Cal.
3 Stat. ch. 784, § 344 (former Gov’t Code § 71042.5).

4 The section is also amended to label, relocate, and make a stylistic revision in an unlabeled
5 paragraph. This is not a substantive change.

6 **CODE OF CIVIL PROCEDURE**

7 **Code Civ. Proc. § 38 (amended). Judicial districts**

8 SEC. _____. Section 38 of the Code of Civil Procedure is amended to read:

9 38. Unless the provision or context otherwise requires, a any reference in a
10 statute to a judicial district means:

11 (a) As it relates to a court of appeal, the court of appeal district.

12 (b) As it relates to a superior court, the county.

13 (c) As it relates to a municipal court, the municipal court district.

14 (d) As it relates to a county in which there is no municipal court, the county.

15 (e) As it relates to the location for publishing legal notice, the [substitute]
16 district.

17 **Comment.** Section 38 is amended to make a technical change.

18 Subdivision (e) is added to reflect that [substitute] districts are now used for publishing legal
19 notices, instead of judicial districts.

20 **Code Civ. Proc. § 701.540 (amended). Notice of sale of interest in real property**

21 SEC. _____. Section 701.540 of the Code of Civil Procedure is amended to read:

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

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

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

40 (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 as specified
12 the time service is attempted, the levying officer is not required to make any
13 further 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~~ [substitute]
25 district in which the real property or a part thereof is situated. If no newspaper of
26 general circulation is published in the city or ~~judicial~~ [substitute] district, notice of
27 sale shall be published in a newspaper of general circulation in the county in
28 which the real 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~~ lienholder at the address
33 used by the county recorder for the return of the instrument creating the ~~person's~~
34 lien after recording. The levying officer shall mail notice to each ~~such person~~
35 lienholder, at the address given in the instructions, not less than 20 days before the
36 date of sale.

37 **Comment.** Section 701.540 is amended to replace "judicial district" with "[substitute] district."
38 The provision preserving judicial districts for notice publication has been repealed. See 2002 Cal.
39 Stat. ch. 784, § 344 (former Gov't Code § 71042.5).

40 The section is also amended to make technical changes.

COMMERCIAL CODE

Com. Code § 6105 (amended). Notice requirement for bulk sale

SEC. ____ . Section 6105 of the Commercial Code is amended to read:

6105. ~~(a)~~ In order to comply with subdivision (b) of Section ~~6104~~ each of the following shall be satisfied: 6104, each requirement of subdivision (b) and each requirement of subdivision (c) of this section shall be satisfied.

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

(1) State that a bulk sale is about to be made.

(2) State the name and business address of the seller together with any other business name and address listed by the seller (subdivision (a) of Section 6104) and the name and business address of the buyer.

(3) State the location and general description of the assets.

(4) State the place and the anticipated date of the bulk sale.

(5) State whether or not the bulk sale is subject to Section 6106.2 and, if so subject, the matters required by subdivision (f) of Section 6106.2.

~~(b)~~ (c) At least 12 business days before the date of the bulk sale, the notice shall be:

(1) Recorded in the office of the county recorder in the county or counties in this state in which the tangible assets are located and, if different, in the county in which the seller is located (paragraph (2) of subdivision (a) of Section 6103).

~~(2)~~ (A) Published at least once in a newspaper of general circulation published in the ~~judicial~~ judicial [substitute] district in this state in which the tangible assets are located and in the ~~judicial~~ judicial [substitute] district, if different, in which the seller is located (paragraph (2) of subdivision (a) of Section 6103), 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~~ judicial [substitute] district is located.

~~(3) Delivered or sent by registered or certified mail to the county tax collector in the county or counties in this state in which the tangible assets are located. If delivered during the period from January 1 to May 7, inclusive, the notice shall be accompanied by a completed business property statement with respect to property involved in the bulk sale pursuant to Section 441 of the Revenue and Taxation Code.~~

(B) If the tangible assets are located in more than one ~~judicial~~ judicial [substitute] district in this state, the publication required in paragraph (2) shall be in a newspaper of general circulation published in the ~~judicial~~ judicial [substitute] district in this state in which a greater portion of the tangible assets are located, on the date the notice is published, than in any other ~~judicial~~ judicial [substitute] district in this state and, if different, in the ~~judicial~~ judicial [substitute] district in which the seller is located (paragraph (2) of subdivision (a) of Section 6103). ~~As used in this subdivision, "business day" means any day other than a Saturday, Sunday, or day observed as a holiday by the state government.~~

1 (3) Delivered or sent by registered or certified mail to the county tax collector in
2 the county or counties in this state in which the tangible assets are located. If
3 delivered during the period from January 1 to May 7, inclusive, the notice shall be
4 accompanied by a completed business property statement with respect to property
5 involved in the bulk sale pursuant to Section 441 of the Revenue and Taxation
6 Code.

7 (d) As used in this section, "business day" means any day other than a Saturday,
8 Sunday, or day observed as a holiday by the state government.

9 **Comment.** Section 6105 is amended to replace "judicial district" with "[substitute] district."
10 The provision preserving judicial districts for notice publication has been repealed. See 2002 Cal.
11 Stat. ch. 784, § 344 (former Gov't Code § 71042.5).

12 The section is also amended to make technical changes.

13 GOVERNMENT CODE

14 **Gov't Code § 6008 (amended). Criteria for establishing standing as newspaper of general**
15 **circulation**

16 SEC. ____ . Section 6008 of the Government Code is amended to read:

17 6008. (a) Notwithstanding any provision of law to the contrary, a newspaper is a
18 "newspaper of general circulation" if it satisfies the requirements of Section 6009
19 or it meets all of the following criteria:

20 ~~(a)~~ (1) It is a newspaper published for the dissemination of local or telegraphic
21 news and intelligence of a general character, which has a bona fide subscription
22 list of paying subscribers and has been established and published at regular
23 intervals of not less than weekly in the city, district, or ~~judicial~~ [substitute] district
24 for which it is seeking adjudication for at least three years preceding the date of
25 adjudication.

26 ~~(b)~~ (2) It has a substantial distribution to paid subscribers in the city, district, or
27 ~~judicial~~ [substitute] district in which it is seeking adjudication.

28 ~~(c)~~ (3) It has maintained a minimum coverage of local or telegraphic news and
29 intelligence of a general character of not less than 25 percent of its total inches
30 during each year of the three-year period.

31 ~~(d)~~ (4) It has only one principal office of publication and that office is in the
32 city, district, or ~~judicial~~ [substitute] district for which it is seeking adjudication.

33 (b) For the purposes of Section 6020, a newspaper meeting the criteria of this
34 section which desires to have its standing as a newspaper of general circulation
35 ascertained and established, may, by its publisher, manager, editor, or attorney,
36 file a verified petition in the superior court of the county in which it is established
37 and published.

38 (c) As used in this section:

39 (1) "Established" means in existence under a specified name during the whole of
40 the three-year period, except that a modification of name in accordance with
41 Section 6024, where the modification of name does not substantially change the

1 identity of the newspaper, shall not affect the status of the newspaper for the
2 purposes of this definition.

3 (2) "Published" means issued from the place where the newspaper is sold to or
4 circulated among the people and its subscribers during the whole of the three-year
5 period.

6 **Comment.** Section 6008 is amended to replace "judicial district" with "[substitute] district."
7 The provision preserving judicial districts for notice publication has been repealed. See 2002 Cal.
8 Stat. ch. 784, § 344 (former Gov't Code § 71042.5).

9 The section is also amended to make technical changes.

10 **Gov't Code § 6009 (added). Establishing newspaper of general circulation for [substitute]**
11 **district**

12 SEC. _____. Section 6009 of the Government Code is amended to read:

13 6009. On January 1, 2016, any newspaper with a valid judicial decree declaring
14 it a newspaper of general circulation for a judicial district is deemed a newspaper
15 of general circulation for the [substitute] district in which its principal office of
16 publication is located.

17 **Comment.** Section 6009 is added to grandfather any newspaper that was judicially determined
18 to be a newspaper of general circulation for a judicial district before January 1, 2016. On that
19 date, any such newspaper will automatically be deemed a newspaper of general circulation for the
20 [substitute] district where the newspaper's principal office of publication is located.

21 More generally, this amendment stems from the repeal of the provision that preserved judicial
22 districts for purposes of notice publication after trial court unification. *Compare* Section 6008
23 with 1974 Cal. Stat. ch. 241, § 1 (former Section 6008); see also 2002 Cal. Stat. ch. 784, § 344
24 (former Section 71042.5).

25 **Staff Note.** This section is not strictly necessary to switch from judicial district publication to
26 publication in another district. The value of this change is that it will avoid rendering the judicial
27 district certifications moot. In doing so, this section will also limit the number of certification
28 proceedings that will be required going forward and ensure that targeted local publication will
29 continue without interruption.

30 **Gov't Code § 26203 (amended). Power of the board of supervisors to order a census**

31 SEC. _____. Section 26203 of the Government Code is amended to read:

32 26203. In years other than those in which a census is taken by the United States,
33 the board of supervisors by ordinance may cause a census of the county or any
34 district therein to be taken which shall be validated by the Population Research
35 Unit of the Department of Finance. ~~The board of supervisors shall cause a census~~
36 ~~of a judicial district to be taken upon presentation to it of a petition signed by not~~
37 ~~less than 40 percent of the qualified electors residing in the district whose names~~
38 ~~appear upon the great register of the county at the last general election.~~ The
39 persons taking the census shall enumerate all the inhabitants of the county or
40 district. The census shall be validated by the Population Unit. The expenses of
41 taking such census is a county charge.

42 **Comment.** Section 26203 is amended to delete a sentence on taking a census of a judicial
43 district. That sentence is obsolete, because counties are not longer subdivided into judicial
44 districts for any purpose. See Code Civ. Proc. § 38, see also former Gov't Code § 71042.5 (2002

1 Cal. Stat. ch. 784, § 344), which temporarily preserved particular judicial districts (i.e., municipal
2 court districts) for purposes of publishing legal notices after trial court unification.

3 **Gov't Code §§ 71042.5-71043 (repealed). Preservation of judicial districts**

4 SEC. _____. Article 2 (commencing with Section 71042.5) of Chapter 6 of Title 8
5 of the Government Code is repealed.

6 **Comment.** Sections 71042.5-71043 are repealed. The judicial districts designated for the
7 publication of notice in the former provisions are replaced with [substitute] districts.

8 **Staff Note.** The text of the repealed article is set forth below.

9 Article 2. Preservation of Judicial Districts

10 71042.5. Notwithstanding any other provision of law, where judicial districts in
11 a county have been consolidated, or where the municipal and superior courts in a
12 county have unified, the territory embraced within the respective prior component
13 judicial districts shall be separate judicial districts for the purpose of publication
14 within a judicial district.

15 71042.6. For the purpose of establishing boundaries under Section 71042.5, a
16 map approved by the county surveyor shall be kept on file with the county
17 recorder showing the boundaries of all consolidated or unified districts and
18 component districts as of the date of consolidation or unification. The map shall be
19 conclusively presumed to be accurate and may be used in evidence in any
20 proceeding involving application of Section 71042.5.

21 71043. For the purpose of establishing boundaries under Section 71042.5, a map
22 approved by the county surveyor shall be kept on file with the county recorder
23 showing the boundaries of all consolidated or unified districts and component
24 districts as of the date of consolidation or unification. The map shall be
25 conclusively presumed to be accurate and may be used in evidence in any
26 proceeding involving application of Section 71042.5.

27 REVENUE AND TAXATION CODE

28 **Rev. & Tax. Code § 3381 (amended). Alternate means of notice of intent to sell property of**
29 **delinquent taxpayer**

30 SEC. _____. Section 3381 of the Revenue and Taxation Code is amended to read:

31 3381. (a) In each county where the tax collector or, if the county is a chartered
32 county, the board of supervisors determines that the public interest, convenience
33 and necessity require the local publication of the delinquent list required by
34 Section 3371, or the published notice of power and intent to sell required by
35 Section 3361, in order to afford adequate notice, all items required to be published
36 shall be published as provided in this article.

37 (b) After the determination, the tax collector or, if the county is a chartered
38 county, the board of supervisors, shall divide and distribute the items to be
39 published and cause the same to be published either within ~~(a)~~ (1) the municipal

1 corporations, ~~(b)~~ (2) the elementary, high school, or junior college districts, ~~(c)~~ (3)
2 the supervisorial districts, ~~(d)~~ ~~judicial districts~~, ~~(e)~~ (4) tax districts, areas included
3 in map books, or tax code areas, or ~~(f)~~ (5) by any annexation or annexations of
4 same, or any combination of same, or any combination of those districts,
5 annexations, areas included in map books, and code areas, within the county as
6 they shall determine most likely to afford adequate notice to owners of the
7 property.

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

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

14 **Comment.** Section 3381 is amended to remove "judicial district." The provision preserving
15 judicial districts for notice publication has been repealed. See 2002 Cal. Stat. ch. 784, § 344
16 (former Gov't Code § 71042.5).

17 The section is also amended to insert subdivision labels and make other technical changes.

18 **Staff Note.** Previously, the Commission tentatively discussed removing the judicial district
19 reference in this section without replacing it. Depending on the substitute district selected and
20 whether it is currently included in this section, the Commission should consider whether to add
21 the substitute district to this section. However, the staff notes that, for this section, any
22 amendment adding a substitute district should only occur if the substitute district is necessarily
23 contained within a single county.

24 **Rev. & Tax. Code § 3702 (amended). Means of notice of intended sale of property of**
25 **delinquent taxpayer**

26 SEC. _____. Section 3702 of the Revenue and Taxation Code is amended to read:

27 3702. The tax collector shall publish the notice of intended sale once a week for
28 three successive weeks in a newspaper of general circulation published in the
29 county seat and in a newspaper of general circulation published in the ~~judicial~~
30 [substitute] district in which the property is situated. If the same newspaper of
31 general circulation is published in both the county seat and in ~~such that~~ district, or
32 if the publication of the notice of sale is made in a newspaper which is determined
33 pursuant to Section 3381 as most likely to afford adequate notice of the sale, a
34 publication in ~~such that~~ paper shall satisfy the requirements for publication set
35 forth in this section. If there is no newspaper published in the county seat or in the
36 ~~judicial~~ [substitute] district, then publication may be made by posting notice in
37 three public places in the county seat or in the ~~judicial~~ [substitute] district, as the
38 case may be, where no ~~such~~ newspaper of general circulation is published. The
39 publication shall be started not less than 21 days prior to the date of the sale.

40 **Comment.** Section 3702 is amended to replace "judicial district" with "[substitute] district."
41 The provision preserving judicial districts for notice publication has been repealed. See 2002 Cal.
42 Stat. ch. 784, § 344 (former Gov't Code § 71042.5).

43 The section is also amended to make technical changes

1 **Rev. & Tax. Code § 3703 (amended). Alternate means of notice if property is lower in value**
2 **than cost of publication**

3 SEC. _____. Section 3703 of the Revenue and Taxation Code is amended to read:
4 3703. If in the judgment of the board of supervisors any property to be sold
5 under this chapter will bring at auction less than the cost of publication in a
6 newspaper, the publication of the notice of intended sale may be made in the same
7 manner as if there were no newspaper published in the county seat or in the
8 ~~judicial~~ [substitute] district.

9 **Comment.** Section 3703 is amended to replace “judicial district” with “[substitute] district.”
10 The provision preserving judicial districts for notice publication has been repealed. See 2002 Cal.
11 Stat. ch. 784, § 344 (former Gov’t Code § 71042.5).
