

## 6-19/410.00 Recording Levies on Specific Types of Property

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- **6-19/410.10 Real Property**

A trust created for the sole purpose of selling the real property and paying the proceeds from such sale to the beneficiary gives the beneficiary no interest in the real property, but only the right to receive money from the trustee. However, the trustee of such a trust may be garnisheed. (Houghton v. Pacific Southwest Trust, 111 CA 509) Any interest in land, legal or equitable, is subject to attachment or execution, levy and sale. (Lynch v. Cunningham, 131 CA 164) The holder of a mortgage has only a lien on the mortgaged premises therefore, a mortgage creates no attachable interest in such realty that could be levied upon by creditors of the mortgage holder. (McGurren v. Garrity, 68 CA 566 (1886))

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- **6-19/410.20 Levy by Recording**

To levy upon real property, or any interest therein including but not limited to a leasehold interest, the levying officer shall record with the recorder of the county where the real property is located a copy of the writ and a notice of attachment or notice of levy that describes the property levied upon and states that the defendant's interest in the described property has been levied upon. If the defendant's interest in the real property stands upon the records of the county in the name of a person other than the defendant debtor, the notice of attachment or notice of levy shall identify the third person. (CCP 488.315, 700.015(a))

Only one recording is made under an instruction to levy on real property regardless of the number of lots or parcels involved. The complete descriptions should be shown on the notice of levy.

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- **6-19/410.30 Notification to Record Owner**

At the time of levy or promptly thereafter, the levying officer shall, either personally or by mail, serve a copy of the writ and a notice of attachment on any third person in whose name the defendant's interest in the real property stands upon the records of the county. If service on the third person is by mail, it shall be sent to the person at the address for such person, if any, shown by the records of the office of the tax assessor of the county where the real property is located or, if no address is so shown, to the person at the address used by the county recorder for the return of the instrument creating the interest of the third person in the property. (CCP 488.315, 700.015(b))

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- **6-19/410.40 Notification to Occupant**

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At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of attachment on one occupant of the real property. Service on the occupant shall be made by leaving the copy of the writ and notice with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found upon the real property when service is attempted who is either an employee or agent of the occupant or a member of the occupant's household. If unable to serve such an occupant at the time service is attempted, the levying officer shall post the copy of the writ and notice in a conspicuous place on the real property. If the real property described in the notice consists of more than one distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or governmental subdivisions lies with relation to any of the others so as to form one or more continuous, unbroken tracts, only one service or posting need be made as to each continuous, unbroken tract. (CCP 488.315, 700.015(c))

The number of services or postings required, where several lots or tracts are attached, depends upon the number of continuous, unbroken parcels. Remember that a street would break the continuity, and an alley between lots would probably do likewise.

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