6-20/580.00 Recording Levies on Specific types of Property

• 6-20/580.10 Real Property

• • 6-20/580.11 Real Property Defined

The term “real property” includes land and permanent buildings. (CC 14(b)(2), CCP 17(b)(8)(A), 680.320) Things which are affixed to land, or incidental or appurtenant thereto, are generally considered as part of the real estate. (CC 658, 659, 660, 662) Land also embraces all titles, legal or equitable, perfect or imperfect, including such rights as lie in contract whether executory or executed. Therefore, 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 C 566 - this cite does not have an electronic copy (1886))

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)

• • 6-20/580.12 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 that describes the property levied upon and states that the judgment debtor’s interest in the described property has been levied upon. If the judgment debtor’s interest in the real property stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person. (CCP 700.015)

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.

• • 6-20/580.13 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 or notice of levy on any third person in whose

name the judgment debtor'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 700.015(b))

• • 6-20/580.14 Notification to Occupant

At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy 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 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.

• • 6-20/580.15 Dwelling

If the real property contains a dwelling (a place where a person actually resides as defined in CCP 704.710(a)), promptly after the levy (recording), the levying officer shall serve notice on the judgment creditor, either personally or by mail, that the levy has been made and that the property will be released unless a copy of an application for an order for sale of the dwelling is received by the officer within 20 days. The 20 days is extended by the appropriate number of days pursuant to CCP 684.120 if the notice to the creditor is served by mail. (CCP 704.750)

The interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale. If the debtor's interest in the real property is a leasehold estate with an unexpired term of less than two years at the time of levy or the dwelling is personal property, a court order for sale is not required. (CCP 704.740)

• 6-20/580.20 Growing crops, Timber, Minerals, Etc.

• • 6-20/580.21 Levy by Recording

To levy upon growing crops, timber to be cut, or minerals or the like (including oil and gas) to be extracted or accounts receivable resulting from the sale thereof at the wellhead or minehead, the levying officer shall record with the recorder of the county where such crops, timber, or minerals or the like are located a copy of the writ and a notice of levy that describes the property levied upon and states that the judgment debtor's interest in the described property has been levied upon and describes the real property where the crops, timber, or minerals or the like are located. If the judgment debtor's interest in the crops, timber, minerals or the like, or if the real property where the crops, timber, or minerals or the like are located, stands upon the records of the county in the name of a person other than the judgment debtor, the notice of levy shall identify the third person. (CCP 700.020(a))

• • 6-20/580.22 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 notice of levy on any third person in whose name the judgment debtor's interest in the crops, timber, minerals or the like stands upon the records of the county and any third person in whose name 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 700.020(b), (1))

• • 6-20/580.23 Notification to Secured Party

At the time of levy or promptly thereafter, the levying officer shall, either personally or by mail, serve a copy of the writ and notice of levy on any secured party who has filed a financing statement with respect to the crops, timber, or minerals or the like or the accounts receivable, prior to the date of levy on the property. (CCP 700.020(b)(2))

• • 6-20/580.24 Notification to Occupant

At the time of levy or promptly thereafter, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the real property where the crops, timber, or minerals or the like are located. 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 700.020(c))