6-22/300.00 Method of Seizure

Upon delivery of the writ of possession to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor, the levying officer shall execute the writ in the manner prescribed by law. (CCP 712.030)

To execute the writ of possession of personal property, the levying officer shall take custody of the property and deliver it to the judgment creditor in satisfaction of the judgment. The property may only be taken from the possession of the judgment debtor or an agent of the judgment debtor, and the property is seized in the same manner as a levy under a writ of execution on such property from the possession of the judgment debtor. (CCP 714.020)

The special requirements for a levy on personal property used as a dwelling (see 6-22/310.00 Dwelling) and for a levy on personal property in a private place (see 6-22/400.00 Private Place) are applicable to seizure of property pursuant to a writ of possession for personal property. (CCP 714.020(a))

The judgment debtor does not have the right to retain the property by paying the value (itemized in 25e of the writ of possession) specified in the judgment or supplemental order. The value provision is for the benefit of the prevailing party in the event delivery of the property cannot be had. (Law v. Beiniger, 132 CA 2d Supp. 898)

If the judgment states the alternative value of each item in the event delivery cannot be had, then the judgment creditor can recover the value of any portion of the property not found. (Black v. Black, 74 CA

520) The judgment debtor may deliver the property and discharge the amount of the judgment

representing the value of the items delivered. (Stienback v. Halsey, 115 CA 2d 213)

The judgment creditor is not required to accept just a portion of the property where the judgment fixes only the value of the property as a whole. If, under these circumstances, the judgment creditor does accept a portion of the property, the judgment creditor could not collect any amount represented by the alternative money value. (Whetmore v. Rupe, 65 CA 237)

If the property specified in the writ of possession cannot be taken into custody, the levying officer shall make a demand upon the judgment debtor for the property if the judgment debtor can be located. If custody of the property is not then obtained, the levying officer shall so state in the return. Thereafter the writ of possession of personal property may be treated as a writ of execution and may be enforced in the same manner as a money judgment for the value of the property as specified in the writ (25e). The writ of possession may be enforced as a writ of execution at all times to satisfy any money judgment included in the judgment for possession.

Although not specifically required by statute, the levying officer should, as in other cases, at the time of levy or promptly thereafter, serve the judgment debtor either personally or by mail a copy of the writ and a notice of levy.

- **6-22/310.00 Dwelling**

To levy upon personal property used as a dwelling, the levying officer shall serve a copy of the writ and a notice of levy on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ and the notice with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found at the property when service is attempted who is a member of the occupant's family or household. If unable to serve such an occupant at the time service is attempted, the levying officer shall make the levy by posting the copy of the writ and the notice in a conspicuous place on the property. (CCP 700.080)

(b) If the judgment creditor so instructs, the levying officer shall place a keeper in charge of the property for a period requested by the judgment creditor.

(c) The judgment creditor may apply to the court on noticed motion for an order directing the levying officer to remove the occupants. The notice of motion shall be served on any legal owner and any junior lienholder who was served pursuant to Section 700.090, on the occupant, and, if the judgment debtor is not the occupant, on the judgment debtor. Service shall be made personally or by mail. At the hearing on the motion the court shall determine the occupant's right to possession and shall make an order including terms and conditions that are appropriate under the circumstances of the case.

House trailers and mobile homes are classified as personal property capable of manual delivery when their wheels have not been removed, and they have not been so connected with the ground so as to become a fixture of the realty.

If the dwelling meets the requirements of CCP 700.090, the levying officer must notify the legal owner.