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6-27/000.00 EXECUTION SALE

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6-27/820.00 Airplane

6-27/830.00 Real Property Deed of Sale

6-27/840.00 Contents of Certificate or Deed of Sale

6-27/900.00 Distribution of Proceeds of Sale

6-27/910.00 Collection by Non-Cash Payment

6-27/920.00 Prompt Distribution of Proceeds

6-27/930.00 Deposit with Court

6-27/940.00 Proceeds from Sale Other Than Homestead

6-27/950.00 Proceeds from Sale of Homestead

6-27/960.00 Failure to Distribute Proceeds Timely

References

BPC – Business and Professions Code

CC – Civil Code

CCP – Code of Civil Procedure

COMM – Commercial Code

CRC – California Rules of Court

FAM – Family Code

GC – Government Code

HS – Health and Safety Code

LAB – Labor Code

PC – Penal Code

PROB – Probate Code

RTC – Revenue and Tax Code

WIC – Welfare and Institutions Code

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• 6-27/100.00 Execution Sale

The sale of property is not an action in of itself. In order for the Sheriff to sell property, the Sheriff must obtain jurisdiction by first levying on the property and having it in his possession or by virtue of recording in the case of real property. Please refer to 6-20/000.00 Writ of Execution (Money Judgment) to levy on property under a money judgment.

Cash may not be sold unless it has a value which exceeds its face value, such as in the case of rare coins. (CCP 701.510) Checks, drafts, money orders, etc., shall be endorsed and presented for payment. (CCP 687.020)

• • 6-27/110.00 Possession of Writ by Levying Officer

A sale under a writ of execution must be made within two years of the issuance thereof, unless it be of an

interest in personal property in the estate of a decedent, in which case it must be within one year after the date the decree distributing the interest became final. (CCP 699.560, 700.200; Ruddell v. Warne, 73 CA 2d 907)

The levying officer should not return a writ under which a levy was performed in a case where an execution sale is to be made, as the return of the writ to court terminates the power and duty of the levying officer. (Duncan v. Standard Accident Ins. Co., 1 C 2d 385) Although the judgment creditor could obtain a new writ, there no longer being a provision for redelivery of the prior writ upon the judgment creditor's request, another levy on the property would have to be performed under the new writ for the property to be sold under it. In such a case the priority of the judgment lien created by the second levy would relate back to the first levy if the prior lien had not expired at the time of the second levy. (CCP 697.020)

• • 6-27/120.00 Sister State Money Judgment

Property levied upon pursuant to a writ issued under Sister State and Foreign-Country Money Judgments may not be sold or distributed before 30 days after the judgment creditor serves notice of entry of judgment upon the judgment debtor. Perishable property may be sold to prevent its destruction or loss of value, but the proceeds may not be distributed before the date sale of nonperishable property is permissible. (CCP 1710.45)

• • 6-27/130.00 Decedentâ€™s Estate

If property of the decedent is subject to an execution lien at the time of the decedent's death, enforcement against the property may proceed under the Enforcement of Judgments Law to satisfy the judgment. The levying officer shall account to the personal representative for any surplus. If the judgment is not satisfied, the balance of the judgment remaining unsatisfied is payable in the course of administration. (PROB 9303)

• • 6-27/140.00 Levying Officer Cannot Purchase

The levying officer may not be a purchaser or have an interest in any purchase at a sale. (CCP 701.610)

• • 6-27/150.00 Lien Extinguished by Sale

If either real or personal property is sold, the lien under which it is sold, any liens subordinate thereto, and any state tax lien (as defined in GC 7162) on the property sold are extinguished. (CCP 701.630)

• 6-27/200.00 Real Property Containing a Dwelling

• • 6-27/210.00 Definitions

• • • 6-27/210.10 Dwelling

"Dwelling" means a place where a person resides and may include but is not limited to the following (CCP 704.710(a)):

- A house together with the outbuildings and the land upon which they are situated.
- A mobilehome together with the outbuildings and the land upon which they are situated.
- A boat or other waterborne vessel.
- A condominium, as defined CC 783
- A planned development, as defined in BPC 11003
- A stock cooperative, as defined in BPC 11003.2
- A community apartment project, as defined in BPC 11004 and CC 4105

• • • 6-27/210.20 Family Unit

"Family unit" means any of the following (CCP 704.710(b)):

- The judgment debtor and the judgment debtor's spouse if the spouses reside together in the homestead.
- The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the homestead:
  - The minor child or minor grandchild of the judgment debtor or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.
  - The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.
  - The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.
  - An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.
- The judgment debtor's spouse and at least one of the persons listed in 2nd bullet who the judgment debtor's spouse cares for or maintains in the homestead.

• • • 6-27/210.30 Homestead

"Homestead" means the principal dwelling (CCP 704.710(c))

- in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and
- in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

• • • 6-27/210.40 Spouse

"Spouse" does not include a married person following entry of a judgment decreeing legal separation of the parties, unless such married persons reside together in the same dwelling. (CCP 704.710(d))

• • 6-27/220.00 Order for Sale Required

A levy against real property that contains a dwelling is performed in the same manner as for other real property. In order to protect a debtor who is a natural person from a sale of a dwelling, where the sale could be avoided through assertion of a homestead exemption, there are special procedures that must be complied with after the levy in order to sell the property. These procedures also apply to property upon which a declared homestead has been filed. (CCP 704.740(a))

• • 6-27/230.00 Order for Sale Not Required

If the judgment debtor is not a natural person, the dwelling is personal property, or is one in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy, the order for sale is not required. (CCP 704.740(b)(1)) If the dwelling is personal property of a natural person, a Claim of Exemption may be filed and handled as other exemptions. (CCP 701.740(b)(2)) See 6-30/000.00 Exemptions.

• • 6-27/240.00 Request for Application for Order to Sell

Promptly after a levy on real property containing a dwelling, 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. (CCP 704.750(a))) The 20 days is extended by the appropriate number of days if the notice is served by mail. (CCP 684.120)

The application shall be filed with the court that entered the judgment if the dwelling is in the same county. If the dwelling is located in a different county, then the application shall be filed with a court of similar jurisdiction in the county where the dwelling is located or, if there is no court of similar jurisdiction, to a court of higher jurisdiction in that county. (CCP 704.750(b))

• • 6-27/250.00 Order to Show Cause in re Order for Sale of Dwelling

Upon the filing of the application by the judgment creditor, the court shall set a time and place for hearing and order the judgment debtor to show cause why an order for sale should not be made in accordance with the application. The hearing shall be set within 45 days of the filing of the judgment creditor's application, unless good cause is shown to set it at a later time. (CCP 704.770)

At least 30 days prior to the hearing, the judgment creditor shall serve a copy of the order to show cause, a copy of the judgment creditor's application, and a copy of the notice of hearing on both of the following:

- The judgment debtor, personally or by mail and
- On an occupant of the dwelling, personally, or if no occupant is present at the time service is attempted, by posting in a conspicuous place at the dwelling.

At the hearing, the court shall determine if the dwelling is exempt and make an order for sale. If the dwelling is exempt, the order for sale shall specify the amount of the homestead exemption, the fair market value of the property, the amount of the proceeds of the sale that is to be distributed to each person having a lien or encumbrance on the dwelling, and the name and address of each such person. The court clerk shall transmit a certified copy of the order to the levying officer. (CCP 704.780)

• • 6-27/260.00 Declaration for Rehearing on Homestead Exemption

If no appearance was made at the hearing on the motion for the order for sale by the judgment debtor, the debtor's spouse, or an attorney appearing on behalf of either of them, then within 10 days of issuance of the order for sale, the judgment creditor shall serve a copy of the order and a blank Declaration for Rehearing on Homestead Exemption (EJ-182) on each of the following (CCP 704.790):

- The judgment debtor and the judgment debtor's spouse, personally or by mail
- An occupant of the dwelling, personally, or, if there is no occupant present at the time service is attempted, by posting in a conspicuous place at the dwelling

The judgment creditor shall file proof of service of the order and declaration with the levying officer and the court. If such proof of service is not filed, the dwelling may not be sold under the order for sale. (CCP 704.790(c))

If the judgment debtor or the judgment debtor's spouse files a completed Declaration for Rehearing on Homestead Exemption (EJ-182) with the levying officer within 10 days of being served with notice of the order, the levying officer shall transmit the declaration to court forthwith. The 10 days is extended if the notice was served by mail. (CCP 684.120) Upon receipt of the declaration, the court shall set a time and place for the hearing. The hearing shall be set within 20 days of the date the court received the declaration, and the court clerk shall be responsible for promptly giving notice of the hearing to the parties. (CCP 704.790)

• • 6-27/270.00 Personal Property Claim of Exemption

In order to provide an opportunity to file a claim of exemption, a sale of personal property of an individual may not take place until the expiration of 10 days after the date the notice of levy on the property was served on the judgment debtor. (CCP 701.530) If the notice of levy is served by mail, the 10 days is extended by the appropriate mail time. (CCP 684.120)

• 6-27/300.00 Notice of Sale

When a notice of sale is required to be posted in a public place, "public place" means such a place that an advertisement posted in it would be likely to attract general attention so that its contents might reasonably be expected to become a matter of notoriety in the vicinity. Where a notice is required to be posted in three public places, posting in different entrances of the same building does not satisfy the statute as a building and its surrounding areas constitute one public place. (Standley v. Knapp, 113 CA 91 – citation available through CMB Operations)

The failure of the levying officer to properly give notice of sale does not invalidate the sale, but it does make the officer liable to the judgment creditor and the judgment debtor for actual damages caused by failure to give notice. (CCP 701.560)

A sale of personal property of an individual may not take place until the expiration of the time during which the judgment debtor may make a claim of exemption. (CCP 701.530(d))

• • 6-27/310.00 Personal Property

Not less than 10 days before a sale of personal property, the levying officer shall serve a copy of the Notice of Sale on the judgment debtor either personally or by mail. (CCP 701.530(a)) The provisions of CCP 684.120 extending time when service is by mail do not apply to this service. Although not required by statute, a copy of the notice of sale should also be served either personally or by mail on the judgment creditor's attorney, if the judgment creditor is represented by an attorney; if not, then on the judgment creditor.

The Notice of Sale shall be in writing and state the following:

- The date, time, and place of sale (CCP 701.530(a))
- Describe the property to be sold. (CCP 701.530(a))
- Contain a statement that prospective bidders should refer to CCP 701.510 to 701.680, inclusive, for provisions governing the terms, conditions, and effect of the sale and the liability of defaulting bidders. (CCP 701.547)

A copy of the Notice of Sale shall be posted in three public places in the city in which the property is to be sold, or, if the property is not to be sold in a city, in the judicial district in which the property is to be sold. (CCP 701.530(c)) A copy of the Notice of Sale shall also be posted on the civil website (civil.lasd.org).

• • 6-27/320.00 Alcoholic Beverages

BPC 23104.5 specifically proscribes the sale of alcoholic beverages to anyone other than a

licensee authorized to sell such beverages. There is an exception to this rule in the case of bottled wine if a temporary license is obtained as provided in BPC 24045.8. These restrictions must be indicated in the Notice of Sale.

• • 6-27/330.00 Corporate Stock

The Notice of Sale regarding corporate stock must also include the number of shares. There is no excuse that the creditor cannot obtain the necessary information because the ability and right to obtain the information is available through supplemental proceedings after the levy and prior to the sale. (Baar v. Smith, 97 CA 398) The holding in this case should not be limited to corporate stock cases, but should be cited for the requirement of an adequate description of property to be sold on all sale notices. The levying officer is exempt from statutory restrictions on the sale and transfer of such property. (CORP 25104(f))

• • 6-27/340.00 Restricted Items

Absent statutory provisions, it would appear that the sale of any restricted item, such as prescription drugs or concealable firearms, should be limited to purchasers who are licensed to sell such items, and such fact should be stated in the notice of sale.

• • 6-27/350.00 Perishable Property

If the court determines that property levied upon is perishable or will greatly deteriorate or greatly depreciate in value, or for other reasons the interest of the parties will be best served, the court may make an order that the levying officer take any action necessary to preserve the value of the property. The order may be made upon application of the judgment creditor, judgment debtor, or a person who has filed a third party claim. (CCP 699.070(a))

If the levying officer determines that property levied upon is extremely perishable or will greatly deteriorate or greatly depreciate in value before a court order can be obtained, the levying, officer may take any action necessary to preserve the value of the property or may sell the property. The levying officer is not liable for a determination under these provisions made in good faith. (CCP 699.070(b)) Since the statutes only allow the levying officer to unilaterally take action to preserve the value of the property in cases where action is necessary to be taken before a court order can be obtained, and the court may hear the matter ex parte, it should be under extremely rare circumstances that the levying officer takes action without a court order.

In the event that the levying officer determines a sale is necessary, or the court orders a sale, unless the court order provides otherwise, the sale shall be conducted in the same manner as sales generally. The posting of sale notices is still required; the only difference is the notices must only be posted and served a reasonable time prior to the sale considering the character and condition of the property, and the sale may take place prior to the expiration of the time during which the judgment debtor may file a claim of exemption. (CCP 699.070(c))

If fruit or vegetables are to be sold, contact Los Angeles County Agricultural Commissioner.

In order to provide an opportunity to file a claim of exemption, a sale of personal property of an individual may not take place until the expiration of 10 days after the date the notice of levy on the property was served on the judgment debtor. If the notice of levy is served by mail, the 10 days is extended by the appropriate mail time pursuant to CCP 684.120. (CCP 701.530)

• • 6-27/360.00 Real Property

At least 30 days after the levy, the judgment creditor shall determine the names of all persons having liens of record in the office of the county recorder on the property on the date of levy and shall instruct the levying officer to mail notice of sale to each such person at the address used by the county recorder for the return of the instrument creating the person's lien after recording. (CCP 701.540(h))

A Notice of Sale of an interest in real property, other than a leasehold estate with an unexpired term of less than two years at the time of levy, may not be given until the expiration of 120 days after the date notice of levy was served on the judgment debtor. (CCP 701.545)

The Notice of Sale of an interest in real property shall be in writing and state the following:

- The date, time, and place of sale (CCP 701.540(a))
- Describe the interest to be sold, and shall give a legal description of the real property and its street address or other common designation, if any. [If the property has no street address or other common designation, the levying officer may either include directions to the property in the notice, or include a statement in the notice that the officer will provide directions upon written or oral request. Directions are sufficient if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If an accurate legal description of the property is given, the validity of the notice and sale is not affected by the fact that the street address or other common designation, or directions to its location are erroneous or omitted. (CCP 701.540(a)) A description is sufficient if it describes the property so that the notices given will enable the deputy and others to identify the land. A defect or variance in such descriptions is not fatal if nobody could be misled thereby, and the precise parcel of land can be readily ascertained from the description. (Godfrey v. Monroe, 101 CA 224, 228; Bateman v. Kellogg, 59 CA 464) Where maps, plats or field notes are referred to in a description, they are to be regarded as incorporated in the description and a part of it. (Swarzwald v. Cooley, 39 CA 2d 306)]
- Contain a statement that prospective bidders should refer to CCP 701.510 to 701.680, inclusive, for provisions governing the terms, conditions, and effect of the sale and the liability of defaulting bidders. (CCP 701.547)

Not less than 20 days before the date of sale (CCP 701.540(b), the levying officer shall provide a Notice of Sale shall in the following manner (The provisions of CCP 684.120 extending time when service is by mail do not apply to this service):

- Serve the judgment debtor either personally or by mail (CCP 701.540(c)
- Although not required by statute, a copy of the Notice of Sale should also be served either personally or by mail on the judgment creditor's attorney, if the judgment creditor is represented by an attorney; if not, then on the judgment creditor

- Personally serve an occupant (CCP 701.540(e)
  - In the occupant's absence, with any person of suitable age and discretion on the property who is either an employee or agent of the occupant or a member of the occupant's household
  - If an occupant cannot be served, no further attempts are required
- Post in a conspicuous place on the property (CCP 701.540(d)(2) If a leasehold estate is to be sold, the notice must be posted on the portion of the property covered by the lease
- Post in one public place in the city in which the interest in the real property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the real property is to be sold (CCP 701.540(d)(1)
- Mail to each person having a recorded lien on the property on the date of levy as instructed by the judgment creditor (CCP 701.540(h)
- Publish in a newspaper of general circulation (as defined in GC 6008) in the city which the real property or a part thereof is situated (CCP 701.540(g)
  - if not within a city, in the judicial district* in which the property or a portion thereof is situated
  - If no newspaper of general circulation is published in the city or judicial district*, notice of sale shall be published in a newspaper of general circulation in the county in which the real property or a portion there of is situated
- Publication of the notice shall be once a week for three successive weeks in a newspaper regularly published at least once a week, with at least five days intervening between the respective publication dates not counting such publication dates. (GC 6063) [GC 6041, 6042 are covered regarding the Sheriff as an elected official having jurisdiction in all of the county.]
- A copy of the Notice of Sale shall also be posted on the civil website (civil.lasd.org).

  If the property described in the notice of sale 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 posting of the property and one service on an occupant is required as to each continuous, unbroken tract. (CCP 701.540(f)

  In addition to the required publication, the officer may publish the notice of sale in a newspaper of general circulation published outside the officer's jurisdiction if the officer determines that a substantial number of residents within the officer's jurisdiction would benefit therefrom, and funds have specifically been made available for such purpose. (GC 6041.1)

*GC 6082 – Public Notice Districts

[Former section GC 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.]

• • 6-27/370.00 Additional Notices of Sale

In addition providing Notices of Sale as required above, the levying officer shall, at the time of posting of notices of a real or personal property sale, mail a Notice of Sale to any person who.

- As noted on Item #7(b), persons requesting a Notice of Sale appearing on item #23 of the Writ of Execution (EJ-130) (CCP 701.550(b)
- After a levy, any person who files a request with the levying officer for a Notice of Sale. The request shall contain the information specified by the levying officer as needed in order to comply with the request. (CCP 701.550(c)

• 6-27/400.00 Advertising

The judgment creditor and/or judgment debtor may advertise the sale. Such advertisement is in addition to the notices required to be given by the levying officer. The judgment creditor may recover reasonable costs of such advertising in the classified or other advertising section of a newspaper of general circulation or other publication, but any advertising costs of the judgment debtor are at the judgment debtor's own expense. (CCP 701.555)

• 6-27/500.00 Postponement of Sale

Except as ordered by the court, a sale may only be postponed by a written request for a postponement to an agreed date and hour executed by both the judgment creditor and the judgment debtor and delivered to the levying officer conducting the sale. (CCP 701.580)

• • 6-27/500.10 Public Notice of Postponement of Sale

After receipt of the request to postpone a sale, the levying officer shall give notice of the sale postponement by public declaration at the time and place originally fixed for the sale. Notice of any additional postponements shall be given by the levying officer by public declaration at the time and place last appointed for the sale. No other notice of a postponed sale is required. A postponed sale shall be held at the place originally fixed for the sale. (CCP 701.580)

• 6-27/600.00 Conduct of Sale

• • 6-27/610.00 Manner of Sale

Prior to requesting bids, the selling officer should read the notice of sale verbatim. By so doing, prospective bidders are informed of the authority for the sale and the description of the property, and are advised that only the right, title and interest of the debtor are being sold.

A sale of property shall be held:

- At the date, time, and place specified in the notice of sale, unless there has been a postponement, in which case it shall be held at the date and time appointed in the last postponement and at the place specified in the notice of sale (CCP 701.570(a))
- The sale shall be in the county where the property or a part thereof is situated (CCP 701.570(a))
    - Unless sold separately, real property consisting of one parcel, or of two or more contiguous parcels, situated in two or more counties may be sold in one county as instructed by the judgment creditor.
- Held between the hours of 9 a.m. and 5 p.m. (CCP 701.570(a))
- The sale shall be made at auction to the highest bidder (CCP 701.570(b))
- Personal property capable of manual delivery is to be sold, it shall be within the view of those who attend the sale unless the court orders otherwise (CCP 701.570(c))
- Property shall be sold separately or in such groups or lots as are likely to bring the highest price. (CCP 701.570(d))
    - The judgment debtor may request the property be sold separately or together and may request that the property be sold in a particular order.
        - If the debtor is not present, the request may be in writing and delivered to the levying officer prior to the sale
        - The levying officer shall comply with the request if, in the officer's opinion, the requested manner of sale is likely to yield an amount at least equal to any other manner of sale or the amount required to satisfy the money judgment, and the officer is not liable for such a decision if made in good faith.
- After sufficient property has been sold to satisfy the money judgment, no more shall be sold (CCP 701.570(e))

• • 6-27/620.00 Withdrawal of Bid

The rule of auction sales allowing a bidder to withdraw a bid at any time prior to the "hammer falling" applies to a sale by the levying officer. (Hibernia Savings and Loan Society v. Behnke, 121 C 339 - citation available through CMB Operations)

• • 6-27/630.00 Minimum Bid

Property may not be sold unless a minimum bid is received which exceeds the total of the following amounts (CCP 701.620(a)):

- The amount of all preferred labor claims that are required to be satisfied from the proceeds (CCP 701.620(a)(1))
- The amount of any state tax lien that is superior to the judgment creditor's lien (CCP 701.620(a)(2))
- If the purchaser is not the judgment creditor, the amount of any deposit made to the levying officer by the judgment creditor to pay off a third party claim with interest thereon at the rate on money judgments from the date of the deposit to the date of the sale (CCP 701.620(a)(3)):
- The amount of a proceeds exemption for (CCP 701.620(b)):

- A motor vehicle (CCP 704.010)
- Household furnishings and other personal effects (CCP 704.020)
- Tools of trade (CCP 704.060)

• • • 6-27/630.10 Motor Vehicle Exemption

If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of three thousand three hundred twenty-five dollars ($3,325) without making a claim. (CCP 704.010(d)) The Notice of Sale shall reflect this automatic exemption and shall be factored as a minimum bid.

In order to determine if the judgment debtor has only one registered vehicle, a registration check must be made with the California Department of Motor Vehicles (DMV). Care should be made to include alias or married name of the debtor listed on the registration of the levied vehicle is also checked. Similarly, vehicles may be registered to the debtor at a prior address. The record search must be reasonable but need not be exhaustive. The results of the DMV query shall be placed in the case folder.

• • • 6-27/630.20 Minimum Bid at Execution Sales

The Legislature has established by statute in which cases and in what amounts minimum bids may be required for execution sales. The Sheriff, as a ministerial officer, lacks both the duty and authority to unilaterally require a minimum bid in any specific amount and must accept a bid even though such bid appears merely nominal. Consequently, unless otherwise ordered by the court, the minimum bid may only be required at an execution sale if: (1) there is a statutory minimum bid, or (2) the judgment creditor has given sale instructions including a minimum bid, in which event the bid must meet or exceed any statutory minimum bid.

• • • 6-27/630.30 Minimum Bid at Franchise Tax Board Sale

The State of California Franchise Tax Board has initiated a practice of setting minimum bid requirements at Sheriff execution sales by including in the instructions the following:

You are instructed that:

(1) unless a greater minimum bid is required by the laws governing exemptions from execution, no bid less than ____ (amount) shall be accepted at the sale;

(2) if no acceptable bid is received, the sale shall be canceled; and

(3) if the sale is canceled, the property shall be retained under levy pending further instructions unless release of the property is required by the laws governing exemptions from executions.

Where the sale instructions include the statement establishing a minimum bid, the notice of sale

shall include the additional statement: “No bid less than $_____ (the amount of the minimum bid) will be accepted at the sale.”

The office of the state taxing agency issuing the warrant of collection shall be notified whenever a sale is canceled for lack of a minimum bid. The name of person notified and the date and time of notification shall be noted on the conducting sale (CS) service ticket.

• • • 6-27/630.40 Minimum Bid not Received

If a minimum bid required for the sale of property is not received, the levying officer shall promptly release the property. (CCP 701.620(c))

• • • 6-27/630.50 No Bids Received

If at the time of sale there are no bids received, after a reasonable amount of time, the deputies conducting the sale shall verbally end the sale. The property is not released and the lien continues to the extent of the two year lien period. However, the fees for storage of the property continue to accrue. The creditor’s attorney should immediately be contacted regarding a new sale date or release of the property. If the creditor’s attorney provides written instructions to release the property, release procedures should be followed.

If the creditor’s attorney provides instructions to set a new sale date, care should be given that sufficient fees for storage, Notice of Sale, and Conduct Sale are in the possession of the levying officer. If additional fees are required, a demand shall be made to the creditor’s attorney prior to setting a new sale date. See 6-20/110.00 Fee Deposit.

• • 6-27/640.00 Dwelling

If a dwelling, whether real or personal property, is to be sold in a case where an order for sale is not required, and a homestead exemption has been allowed, the levying officer should not sell the property except upon a court order that specifies both the minimum bid amount and the distribution of proceeds.

The court order is necessary because the distribution of proceeds satisfy all liens and encumbrances on the property and the levying officer has no basis to unilaterally determine the liens and encumbrances, if any, on the property. (CCP 704.850)

The order for sale of a dwelling shall specify whether or not the dwelling is exempt. If the court determines that the dwelling is exempt the order for sale shall specify the amount of the exemption, the fair market value of the property, the amount of the proceeds of the sale that is to be distributed to each person having a lien or encumbrance on the dwelling, and the name and address of each such person. (CCP 704.780)

• • 6-27/650.00 Real Property Sale

There is no requirement that the sale be held at the premises or within view of the property. Consequently, such sales are generally held at the courthouse or in the office of the levying officer.

Real property consisting of one parcel, or of two or more contiguous parcels, situated in two or more counties, may be sold in one county. (CCP 701.570)

• • • 6-27/650.10 Homestead Exemption

A Homestead exemption is determined by the court under CCP 704.720. The amount of the exemption is the greater of the following:

- The countywide median sale price not to exceed $600,000 (CCP 704.730(a)(1))
- $300,000 (CCP 704.730(a)(2))

• • • 6-27/650.20 Fair Market Value

If the court grants a Homestead Exemption, the court shall also determine the fair market value of the dwelling. (CCP 704.780(b)) The court may appoint a qualified appraiser to assist the court in determining the fair market value of the dwelling. (CCP 704.780(d))

• • • 6-27/650.30 Homestead Exemption Minimum Bid not Received

If no bid is received at a sale of a homestead (a dwelling for which the court has allowed a homestead exemption) which exceeds the amount of the homestead exemption and the amount necessary to satisfy all liens and encumbrances on the property, the property shall not be sold and shall be released and is not thereafter subject to a court order for sale upon subsequent application by the same judgment creditor for a period of one year. (CCP 704.800(a)) The judgment creditor is not entitled to recover any costs incurred in the proceedings relative to the levy, order for sale, or attempted sale of the property. (CCP 704.840(b))

The minimum bid amount must be increased by 55¢ for each $500 or fraction thereof to allow for payment by the levying officer of the real property transfer tax. (RTC 11911)

• • • 6-27/650.40 Fair Market Value Minimum Bid not Received

If a bid is received which is sufficient to satisfy the homestead exemption and all liens and encumbrances, the property still may not be sold if such bid is not an amount which is at least 90 percent of the fair market value of the property. (CCP 704.800(b)) If a bid does not satisfy at least 90 percent of the fair market value, the sale must be suspended. Within the two year lien period, the judgment creditor must file a motion for a court order for one of the following:

- Permission to accept the highest bid which exceeds the Homestead Exemption and all liens and encumbrances (CCP 704.800(b)(1))
- Provide a new order for sale of the homestead (CCP 704.800(b)(2))

• • 6-27/660.00 Only Debtorâ€™s Interest in Property is Purchased

The purchaser of property at an execution sale acquires any interest of the judgment debtor in the property sold that is held on the effective date of the lien under which the property was sold or that is acquired between such effective date and the date of sale. (CCP 701.640)

• 6-27/700.00 Method of Payment of Sale Bid

Unless the purchaser is the judgment creditor, the purchaser at a sale shall pay in cash or by certified or cashier's check. (CCP 701.590(a))

• • 6-27/710.00 Credit on Judgment (Wooden Money)

The judgment creditor may bid by giving the levying officer a written receipt crediting all or part of the amount required to satisfy the judgment (wooden money) However, the levying officer's costs remaining unsatisfied and the amount of preferred labor claims, exempt proceeds, and any other claim that is required by statute to be satisfied, shall be paid in cash or by certified or cashier's check. (CCP 701.590(b))

• • 6-27/720.00 Credit Bid

• • • 6-27/720.10 Property Other Than Real Property

The purchaser may elect to treat the sale as a credit transaction by paying to the levying officer at the time of the sale the greater of 10 percent of the amount bid or $2,500. A purchaser who makes this election shall pay to the levying officer within 10 days after the date of the sale the balance due, plus costs accruing with regard to the property sold and interest accruing at the rate on money judgments on the balance of the amount bid from the date of sale until the date of payment. (CCP 701.590(d)) A purchaser who makes this election is not entitled to possession of the property sold until the amount bid, plus accruing costs and interest, have been paid in full. (CCP 701.590(e))

• • • 6-27/720.20 Real Property

The purchaser may elect to treat the sale as a credit transaction by paying to the levying officer at the time of the sale the greater of 10 percent of the amount bid or $5000. A purchaser who makes this election shall pay to the levying officer within 10 days after the date of the sale the balance due,

plus costs accruing with regard to the property sold and interest accruing at the rate on money judgments on the balance of the amount bid from the date of sale until the date of payment. (CCP 701.590(c)) A purchaser who makes this election is not entitled to possession of the property sold until the amount bid, plus accruing costs and interest, have been paid in full. (CCP 701.590(e))

• • 6-27/730.00 Bidder Default

• • • 6-27/730.10 Default at Sale

If the default occurs at the sale, the property is sold to the next highest bidder at the amount of the next highest bid if such bidder agrees or to the highest bidder at a new sale held immediately. (CCP 701.600(a)(1))

• • • 6-27/730.20 Default After Sale

If the default occurs after the sale to a credit bidder, the property is sold to the highest bidder at a new sale. (CCP 701.600(a)(2))

The levying officer shall apply the amount of any deposit received from the defaulting bidder in the following order:

- To the satisfaction of costs accruing with regard to the property sold from the date of the sale until the date the property is resold, including costs of resale (CCP 701.600(b)(1))
- To the satisfaction of interest at the rate on money judgments on the amount bid from the date of the sale until the date the property is resold (CCP 701.600(b)(2))
- To the amount required to satisfy the money judgment in the order of distribution otherwise required for sale of the same type of property (CCP 701.600(b)(3))

• • • 6-27/730.30 New Sale after Default

If there is a sale to the next highest bidder or to the highest bidder at a new sale, the defaulting bidder is liable for the following amounts in an action by the judgment creditor or judgment debtor:

- The amount bid, less the amount obtained from the resale of the property and the amount of any deposit applied to the next highest bidder. The amount recovered pursuant to this paragraph shall be distributed in the manner prescribed by CCP 701.810 or 704.850, whichever is applicable. (CCP 701.600(c)(1))
- Any costs accruing with regard to the property sold from the date of sale until the date the property is resold, including costs of resale. (CCP 701.600(c)(2))
- Interest at the rate on money judgments on the amount bid from the date of the sale until the date the property is resold. (CCP 701.600(c)(3))
- Costs and attorney's fees incurred because of the defaulted sale (CC in the action under this subdivision. (CCP 701.600(c)(24)

• • • 6-27/730.40 Rejecting Defaulting Bidder

The levying officer may, in the levying officer's discretion, reject any subsequent bid of the defaulting bidder. (CCP 701.600(d))

• 6-27/800.00 Delivery of Property

When the purchaser of personal property pays the amount due, if the property is capable of manual delivery, the levying officer shall deliver the property to the purchaser. (CCP 701.650(a)(1))

• • 6-27/810.00 Certificate of Sale

If the purchaser requests and provides the necessary fee, the levying officer shall execute and deliver a certificate of sale to the purchaser. (CCP 701.650(A)(1)) If the property is not capable of manual delivery, the levying officer shall execute and deliver a certificate of sale to the purchaser. (CCP 701.650(A)(2))

If property or a certificate of sale is delivered, the levying officer shall sign or endorse any document or instrument in the officer's possession relating to the title to, or the right to possession of, the property and deliver it to the purchaser. (CCP 701.650(A)(3))

• • 6-27/820.00 Airplane

If an airplane has been sold, send a signed duplicate of the certificate of sale to the Federal Aviation Administration.

Federal Aviation Administration

Aircraft Registration Branch

P.O. Box 25504

Oklahoma City, OK 73125-0504

• • 6-27/830.00 Real Property Deed of Sale

When the purchaser of an interest in real property pays the amount due, the levying officer shall execute and deliver a deed of sale to the purchaser and record a signed duplicate of the deed of sale in the office of the county recorder. (CCP 701.660) A real property transfer tax is required to be paid at the time the deed is recorded if the sale price is in excess of $100. The tax is imposed at the rate of 55¢ on each $500 or fraction

thereof of the purchase price. (RTC 11911)

• • 6-27/840.00 Contents of Certificate or Deed of Sale

The certificate or deed of sale shall contain all the following: 701.670 CCP

- The title of the court, cause and case number (CCP 701.670(a))
- The date of entry of the judgment and of any subsequent renewals and where entered in the records of the court (CCP 701.670(b))
- The name and address of the judgment creditor and the name and last known address of the judgment debtor (CCP 701.670(c))
- A description of the property sold (CCP 701.670(d)) [If the property is a motor vehicle, the mileage of the vehicle as shown on the odometer at the time of the sale shall also be placed on the certificate of sale. (VEH 5900(b)), 49 USC 32705)]
- The date of sale (CCP 701.670(e))

• 6-27/900.00 Distribution of Proceeds of Sale

• • 6-27/910.00 Collection by Non-Cash Payment

Proceeds (collection) paid by check or other non-cash payment, are not considered received until the check or other form of non-cash payment has actually been honored. (CCP 701.820(d))

• • 6-27/920.00 Prompt Distribution of Proceeds

The levying officer shall promptly distribute proceeds received from a sale or collection to the persons entitled thereto.

The proceeds shall be paid within 30 days after they are received. (CCP 701.820(b))

If the proceeds are not to be received in one payment, the levying officer may accumulate proceeds received during a 30-day period, and the accumulated proceeds shall be paid to the persons entitled thereto not later than 10 days after the expiration of the 30-day period. (CCP 701.820(c))

• • 6-27/930.00 Deposit with Court

If the levying officer has knowledge of conflicting claims to all or a portion of proceeds to be distributed, the officer may, within the time required to make distribution, deposit the proceeds that

are subject of the conflicting claims with the court. In such a case, any interested party may apply to the court on noticed motion for an order for distribution of the proceeds deposited with the court. (CCP 701.830)

• • 6-27/940.00 Proceeds from Sale Other Than Homestead

The levying officer shall distribute the proceeds of sale or collection in the following order:

- To persons having preferred labor claims that are required to be satisfied (CCP 701.810(a))
- To the state department or agency having a state tax lien that is superior to the judgment creditor's lien (CCP 701.810(b))
- If property was sold, and the purchaser was not the judgment creditor, to the judgment creditor in the amount of any deposit made to satisfy a third party claim with interest thereon at the rate on money judgments from the date of the deposit (CCP 701.810(c))
- To the judgment debtor in the amount of any applicable proceeds exemption for a motor vehicle, household furnishings and other personal effects, or tools of trade. Such proceeds shall be used to satisfy the following in the order of their respective priorities and the balance paid to the debtor:
    - Any consensual liens and encumbrances, and any liens for labor or materials, that are subordinate to the judgment creditor's lien (CCP 701.810(d)(1))
    - Any state tax lien if the notice of lien on the property sold or collected has been recorded or filed prior to the time the levying officer received the proceeds of the sale or collection (CCP 701.810(d)(2))
- To the levying officer for any costs not prepaid (CCP 701.810(e))
- To the judgment creditor to satisfy
    - First, the costs and interest accruing after issuance of the writ (CCP 701.810(f)(1))
    - Second, the amount due on the judgment with costs and interest as entered on the writ (CCP 701.810(f)(2))
- To any other judgment creditors who have delivered writs to the levying officer, accompanied by instructions to levy upon the judgment debtor's property or the proceeds of its sale or collection, or any other persons actually known by the levying officer to have a claim, lien, or other interest subordinate to the judgment creditor's lien that is extinguished by the sale and is not otherwise satisfied, in the amounts to which they are entitled in order of their respective priorities (CCP 701.810(g))
- To the judgment debtor in the amount remaining (CCP 701.810(h))

• • 6-27/950.00 Proceeds from Sale of Homestead

Proceeds from the sale of a homestead shall be distributed in the following order:

- To the discharge of all liens and encumbrances, if any, on the property (CCP 704.850(a)(1))
- To the judgment debtor in the amount of any proceeds exemption (CCP 704.850(a)(2))

- To the levying officer for any costs not prepaid (CCP 704.850(a)(3))
- To the judgment creditor to satisfy
  - First, the costs and interest accruing after issuance of the writ (CCP 704.850(a)(4)(A))
  - Second, the amount due on the judgment with costs and interest as entered on the writ (CCP 704.850(a)(4)(B))
- To the judgment debtor in the amount remaining (CCP 704.850(a)(5))

• • 6-27/960.00 Failure to Distribute Proceeds Timely

If the levying officer fails to distribute proceeds or deposit with the court timely, a person entitled to the proceeds may file a written demand for the payment with the levying officer. The demand may be filed in person or by certified mail. (CCP 701.820(e)(2)

If the levying officer does not pay the process within 10 days after the demand is filed, the judgment creditor may file an ex parte application for an order directing the levying officer to show cause (OSC) why relief should not be granted.

The OSC shall set a date and time for the levying officer to appear not less than 20 and not more than 30 days after filing of the application. If the levying officer pays all proceeds to the judgment creditor no later than 10 days prior to the hearing, the judgment creditor shall notify the court of full payment no later than three days prior to the hearing and the court shall withdraw the order and vacate the hearing. (CCP 701.820(f))

Relief may be the officer is liable for the amount the person is entitled to plus 25 percent damages and interest at the rate of 10 percent a month from the time of demand, plus costs and reasonable attorney's fees. (GC 26680)

If the court finds that the OSC was filed was knowingly false, or made in bad faith, the court may award costs and reasonable attorney fees to the levying officer. (CCP 701.820(f))
