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)