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)
