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6-26/000.00 WRIT OF SALE

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6-26/880.00 Disposition of Proceeds

6-26/890.00 Special Tax Assessment

6-26/900.00 Return of Writ

References

BPC – Business and Professions Code	HS – Health and Safety Code
CC – Civil Code	LAB – Labor Code
CCP – Code of Civil Procedure	PC – Penal Code
COMM – Commercial Code	PROB – Probate Code
CRC – California Rules of Court	RTC – Revenue and Tax Code
FAM – Family Code	WIC – Welfare and Institutions Code
GC – Government Code	

• 6-26/100.00 Writ of Sale

A judgment for sale of real or personal property may be enforced by a writ of sale issued pursuant to CCP 712.010. (CCP 716.010)

• • 6-26/110.00 Mortgage Enforceable by Foreclosure

The ordinary mortgage on real property must be enforced by obtaining a decree of foreclosure of the mortgage. (CCP 726) Mechanic's liens on real property must be enforced by foreclosure the same as on a mortgage. (Laubisch v. Roberdo, 43 CA 2d 702)

• • 6-26/120.00 Mortgage with Power of Sale

The ordinary mortgage on real property must be enforced by obtaining a decree of foreclosure of the mortgage. (CCP 726) Mechanic's liens on real property must be enforced by foreclosure the same as on a mortgage. (Laubisch v. Roberdo, 43 CA 2d 702)

• • 6-26/130.00 Judicial Enforcement of Security Interest in Property

A security interest in personal property (chattel mortgage, conditional sale, etc.) may be enforced through judicial procedure. (COMM Chapter 6 – Default)

• • 6-26/140.00 Writ of Sale as Writ of Execution to Collect Money

Unless the court specifically orders the method, manner, or extent of enforcement of a money judgment included in the judgment for sale, a writ of sale may be enforced as a writ of execution to satisfy any money judgment included in the judgment. If amounts due under the judgment are not satisfied pursuant to the writ of sale, the judgment creditor may use a writ of execution to satisfy any money judgment included in the judgment after the writ of sale has been returned or 180 days after its issuance, whichever is earlier. If the judgment creditor does not desire issuance of a writ of sale (because the secured obligation has been voluntarily satisfied, or other reason), a writ of execution may be issued to satisfy any money judgment included in the judgment. Whether or not a writ has been issued, enforced, or returned, the judgment creditor may use any remedies available under writs of execution to satisfy any money judgment included in the judgment. (CCP 712.040)

• 6-26/200.00 Issuance of Writ

After entry of a judgment for sale of property, a writ shall be issued by the clerk of the court upon application of the judgment creditor and shall be directed to the levying officer in the county where the judgment is to be enforced. A separate writ shall be issued for each county where the judgment is to be enforced. Writs may be issued successively until the judgment is satisfied, except that a new writ may not be issued for a county until the expiration of 180 days after the issuance of a prior writ for that county unless the prior writ is first returned. (CCP 712.010)

• • 6-26/210.00 Contents of Writ

A writ of sale delivered to the levying officer shall be accompanied by a certified copy of the judgment for sale and shall require the levying officer to whom it is directed to enforce the judgment and shall include all of the following information:

- The seal of the court (CCP 153)
- The date of issuance of the writ (CCP 712.020(a))
- The title of the court where judgment is entered and the cause and case number of the action (CCP 712.020(b))
- The name and address of the creditor and the name and last known address of the judgment debtor. If the judgment debtor is other than a natural person, the type of legal entity shall be stated (CCP 712.020(c))
- The date the judgment, subsequent renewal, and where entered in the records of the court (CCP 712.020(d))
- If the judgment includes a money judgment, the amount required to satisfy the money judgment on the

date the writ is issued and the amount of interest accruing daily on the principal amount of the judgment from the date the writ is issued (CCP 712.020(e))
- Whether any person has requested notice of sale under the judgment and, if so, the name and address of such person (CCP 712.020(f))
- A statement indicating whether the case is limited or unlimited (CCP 712.020(h))
- A description of the property to be sold in satisfaction of the judgment for sale (CCP 716.010(b))

• 6-26/300.00 Enforcement of Judgment for Sale

• • 6-26/310.00 Enforcement After Death of Debtor

A writ of sale may be enforced after the death of the judgment debtor. (CCP 686.020; PROB 9302)

• • 6-26/320.00 Enforcement Against Public Entity

A writ of sale is enforceable against a public entity to the extent of seizure and sale of the property specified in the judgment. (CCP 712.070)

• • 6-26/330.00 Order Directing Transfer

If a writ of sale is issued, the judgment creditor may apply to the court for an order directing the judgment debtor to transfer to the levying officer possession of the property to be sold, if the prescribed method of levy is by taking the property into custody, and/or possession of any documentary evidence of title to property to be sold. An order to transfer possession of documentary evidence of title may not be served prior to the time of levy. The order shall be personally served on the judgment debtor and shall contain a notice that failure to comply with the order may subject the judgment debtor to being held in contempt of court. (CCP 716.030)

• • 6-26/340.00 Time to Execute Writ

The levying officer may not levy upon or otherwise seize property under the writ after the expiration of 180 days from the date the writ was issued. (CCP 712.030)

• • 6-26/350.00 Levy

Upon delivery of the writ of sale to the levying officer to whom the writ is directed, together with the written instructions of the judgment creditor and a certified copy of the judgment for sale, the levying officer shall execute the writ in the manner prescribed by law. (CCP 716.010)

To execute the writ of sale the levying officer shall levy upon, give notice of sale, and sell the property

described in the writ of sale in the same manner as is prescribed for like property under a writ of execution. (CCP 716.020)

As under execution, if the property is real property consisting of one parcel or of two or more contiguous parcels, situated in two or more counties, it may be sold in one county. (CCP 701.570(a)) In this event, under a writ of sale, the court may, in its judgment, direct the whole thereof to be sold in one of the counties, and upon these proceedings, and with like effect, as if the whole of the property were situated in that county. (CCP 726(d))

• 6-26/400.00 Real Property Transfer Tax

When computing the real property transfer tax, an exception to the ordinary rule exists when the real property is sold at a foreclosure sale and the mortgagee is the purchaser. Only that portion of the selling price that exceeds the unpaid debt, including accrued interest and cost of foreclosure, is subject to the transfer tax if the mortgagee is the purchaser. Consideration, unpaid debt amount and identification of grantee as beneficiary or mortgagee shall be noted on said deed, instrument or writing or stated in an affidavit or declaration under penalty of perjury for tax purposes. (RTC 11926) In all other cases the entire tax is imposed.

• 6-26/500.00 Property Subject to Redemption

Generally, the same procedures for enforcing a writ of sale against property not subject to the right of redemption also apply to property subject to the right of redemption. (CCP 729.010)

• • 6-26/510.00 Redeemable Property

The only property sold subject to a right of redemption is real property, other than a leasehold estate with an unexpired term of less than two years at the time of levy, wherein the decree of foreclosure of the mortgage or deed of trust on the property determines that a deficiency judgment may be ordered against the defendant. (CCP 729.010(a))

The sale of a separate interest in a common interest development is subject to redemption within 90 days after the sale. The sale must arise from a foreclosure by the association of a common interest development. (CCP 729.035)

• • 6-26/520.00 Notice of Sale

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.]

• • • 6-26/520.10 Special Requirements of Notice of Sale

In addition to the information required to be contained in notices of sale in other cases, the notices of sale shall state that the property will be sold subject to the right of redemption and shall state the amount of the secured indebtedness with interest and costs.

Notice of sale may be given immediately after levy, the delay period of 120 days prior to giving such notice in other cases not being applicable.

Notice of sale must be given by the levying officer to all persons determined by the judgment creditor to have liens of record on the property on the date of entry of judgment rather than on the date of levy, and the judgment creditor does not have to delay any time period to determine the names of such persons.

• • • 6-26/520.20 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)

• 6-26/600.00 Conduct of Sale

• • 6-26/610.00 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)

• • 6-26/630.00 Minimum Bid at 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.

• • • 6-26/630.10 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))

• • 6-26/640.00 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.

• • 6-26/650.00 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)

• 6-26/700.00 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))

• • 6-26/710.00 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))

• • 6-26/720.00 Credit Bid

• • • 6-26/720.10 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))

• • • 6-26/720.20 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))

• • 6-26/730.00 Bidder Default

• • • 6-26/730.10 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))

• • • 6-26/730.20 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))

• • • 6-26/730.30 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)

• • • 6-26/730.40 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))

• 6-26/800.00 Issuance of Certificate of Sale

Instead of issuing a deed of sale immediately after the sale as is required in other cases of sales of an interest in real property, when the purchaser of an interest in real property sold subject to the right of redemption pays the amount due, the levying officer shall execute and deliver a certificate of sale to the purchaser and record a duplicate of the certificate of sale in the office of the county recorder. (CCP 729.040(a))

The certificate of sale shall also contain:

- the title, cause and number of the action (CCP 701.670(a))
- the date of entry of the judgment and any renewals (CCP 701.670(b))
- the name and address of the judgment creditor (CCP 701.670(c))
- the name and last known address of the judgment debtor (CCP 701.670(c))
- a description of the property sold (CCP 701.670(d))
- the date of sale (CCP 701.670(e))
- the price paid for each distinct lot or parcel of real property sold subject to the right of redemption (CCP 729.040(c)(1))
- The total price paid (CCP 729.040(c)(2))
- a statement that the property is subject to the right of redemption, indicating the applicable redemption period (CCP 729.040(c)(3))

• • 6-26/810.00 Period of Redemption

If the proceeds of the sale are sufficient to satisfy the secured indebtedness with interest and costs of the action and sale, the redemption period is three months after the date of sale. If the proceeds of the sale are not sufficient to satisfy the secured indebtedness with interest and costs of the action and sale, the redemption period is one year after the date of sale. (CCP 729.030)

• • 6-26/820.00 Notice to Judgment Debtor of Right of Redemption

Promptly after the sale of property sold subject to the right of redemption, the levying officer shall, either personally or by mail, serve on the judgment debtor a notice of the right of redemption which indicates the applicable redemption period. (CCP 729.050)

• • 6-26/830.00 Parties Who May Redeem

The property may only be redeemed by the judgment debtor or the judgment debtor's successor in interest. For this purpose the purchaser at the sale is not a successor in interest. (CCP 729.020)

If there is more than one judgment debtor, a successor in interest of any of the judgment debtors is entitled to redeem the whole property, as property that is sold as a whole may only be redeemed as a whole. (Emerson v. Yosemite Gold Mining, 149 C 50)

• • 6-26/840.00 Redemption Procedure

A person who seeks to redeem the property shall deposit the redemption amount with the levying officer during the redemption period. If the person is a successor in interest of the judgment debtor, at the time of deposit the successor in interest must file with the levying officer either (1) a certified copy of a recorded conveyance, or (2) a copy of an assignment or any other evidence of the interest verified by an affidavit of the successor in interest or of a subscribing witness thereto. (CCP 729.060(a))

After reduction by the amount of any rents and profits from the property paid to the purchaser or the value of the use and occupation of the property to the purchaser, the redemption price is the total of the following with interest thereon at the rate of interest on money judgments from the time such amount was paid until the date the deposit is made.

- The purchase price at the sale
- The amount of any assessments of taxes and reasonable amounts for fire insurance, maintenance, upkeep, and repair of improvements on the property
- Any amount paid by the purchaser on a prior obligation secured by the property to the extent that the payment was necessary for the protection of the purchaser's interest
- If the purchaser at the sale has any liens subordinate to the lien under which the property was sold, the

amount of the purchaser's lien. Interest on this amount is computed from the date of the sale

• • 6-26/850.00 Certificate of Redemption

If the person seeking to redeem the property deposits the redemption amount with the levying officer during the redemption period, the levying officer shall tender the deposit to the purchaser. If the purchaser accepts the tender, or, in a case where there has been a hearing and the amount tendered is the amount ordered by the court to redeem the property, whether or not the tender is accepted by the purchaser, the levying officer shall promptly execute and deliver a certificate of redemption to the person seeking to redeem and shall immediately thereafter record a duplicate of the certificate in the office of the recorder of the county where the property is located. (CCP 729.080(b))

Tender of the redemption price determined by court order or agreed upon by the purchaser and the person seeking to redeem is equivalent to payment. If the tender is refused, the levying officer shall deposit the amount tendered with the county treasurer of the county where the property is located payable to the order of the purchaser. (CCP 729.080(c))

Except as provided in the next paragraph, upon redemption the effect of the sale is terminated and the person who redeemed the property is restored to the estate the same as if no sale had taken place. (CCP 729.080(d))

The lien under which the property is sold, any liens subordinate thereto, and any state tax lien that are extinguished by the sale do not reattach to the property upon redemption, and the property may not be applied to the satisfaction of the claim or judgment under which the lien was created. (CCP 729.080

(e)) For example, a judgment creditor whose judgment lien is extinguished may not again record the judgment to create a lien on the same property, nor may the judgment creditor obtain an execution lien by levy of a writ of execution on the property.

• • 6-26/860.00 Payment to Purchaser

The levying officer shall tender the amount deposited by the redemptioner to the purchaser. (CCP 729.080(b))

If the purchaser and the person seeking to redeem the property disagree on the redemption price or as to whether the person is entitled to redeem the property, or if the purchaser refuses the levying officer's tender of the redemptioner's deposit, then the person seeking to redeem may file a petition with the court for an order determining the redemption price or whether the person is entitled to redeem the property. The petition must

be filed within the redemption period. Written notice of the filing of the petition and a deposit of the undisputed amount of the redemption period must be given to the levying officer within the redemption period. At the hearing on the petition, the court shall determine by order the amount required to redeem the property. If the amount deposited with the levying officer is not sufficient to redeem the property, the person seeking to redeem shall, within 10 days after the issuance of the order, deposit the additional amount required with the levying officer. (CCP 729.070)

• • 6-26/870.00 Deed of Sale

If the redemption price is not deposited with the levying officer within the redemption period or, in cases where there has been a petition for hearing and the court ordered an additional amount deposited, the person seeking to redeem does not deposit the additional amount with the levying officer within 10 days after the issuance of the order, the levying officer shall execute and deliver a deed of sale to the purchaser. The deed shall comply with the requirements of deeds of sale in other cases, but there is no requirement that the levying officer record a duplicate. (CCP 729.080(a)

A deed issued or delivered before the period for redemption has expired is void. (Bessinger v. Grotz,

66 CA 2d 947) If, in a case with a one year redemption period, the sale takes place on the fifth day of the month, the judgment debtor has the whole day of the fifth of the month a year later within which to redeem, and a deed issued on the fifth would be void. [(Perham v. Kuper, 61 C 331) cite available through operations]

A deed adds no title but only serves as evidence there has been no redemption. The purchaser acquires legal title at the sale and not by virtue of the deed which is not issued until the period of redemption has passed. (Allen v. McGee, 54 CA 2d 476)

If the levying officer's deed is defective, the officer has the right to make another deed and may be compelled to do so. [(Sheehan v. All Persons, 80 CA 2d 476) cite available through operations]

• • 6-26/880.00 Disposition of Proceeds

The levying officer shall apply the proceeds of the sale in conformity with the judgment for sale. (CCP 716.020)

If the judgment for sale does not make provision for distribution of surplus proceeds from the sale, the levying officer has no power or authority to distribute such proceeds without an order of the court. The court may also direct such surplus proceeds to be deposited with the court for disposition by the court. (CCP 727) Absent an order, the levying officer must hold the surplus proceeds and such proceeds are in *custodia legis* (Latin

phrase which means “in the custody of the law”) and consequently not subject to attachment or execution until a court order is issued. (Withington v. Shay, 47 CA 2d 68)

• • 6-26/890.00 Special Tax Assessment

The legislative body of a city, county or special district may protect bondholders against loss caused by delinquent installments securing previously issued bonds. The legislative body may order an action brought in the superior court to foreclose such liens. (Streets and Highways Code 8770, 8830) The judgment for foreclosure may order sale of real property. If the real property does not contain a dwelling for more than four families, the judgment will direct that notice of sale be given any time after the expiration of 20 days (instead of 120 days) after the date notice of levy was served on the judgment debtor. In addition, the time for giving notice of sale is 10 days. (Street and Highways Code 8832(a)(2), GC 53356.5) The legislative body may hire a trustee to handle the foreclosure. (Streets and Highways Code 8830(b))

A judgment for sale declaring a right to redemption is barred by Yancy v. Fink 226 CA 3d 1334.

A lot or parcel of real property may not be sold unless the amount paid on the bid equals or exceeds the total of:

- The amount of the judgment with costs and interest (Streets and Highways Code 8832(b)(1))
- Costs and interest on the judgment accruing after issuance of the writ (Streets and Highways Code 8832(b)(2))
- The levying officer's costs (Streets and Highways Code 8832(b)(3))
- Any other amounts required by law (Streets and Highways Code 8832(b)(4))
- Preferred labor claims required to be satisfied from the proceeds (CCP 701.620(a)(1))
- State tax liens that are superior to the creditor's lien (CCP 701.620(a)(2))
- If the purchaser is not the judgment creditor, the amount of any deposit made pursuant to CCP 720.260 with interest at the rate on money judgments from the date of the deposit to the date of the sale (CCP 701.620(a)(3))

• 6-26/900.00 Return of Writ

The writ must be returned by the levying officer in accordance with the mandates for returning writs of execution (CCP 699.560, 712.050) See 6-20/800.00 Return of Writ.
