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))