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)