#39.220 6/28/77

Memorandum 77-40

Subject: Study 39.220 - Enforcement of Judgments (Redemption From Execution Sales)

At the June meeting, the Commission decided to recommend that execution and foreclosure sales be delayed 90 days and that the laws permitting the redemption of real property be repealed. The staff believes that it would be useful to distribute a tentative recommendation on this subject since the proposed change is likely to be of particular interest. We are much more likely to receive comments on this proposal by sending it out alone than if it is buried in a lengthy recommendation on the entire subject of enforcement of judgments. Accordingly, we have prepared a staff draft of a Tentative Recommendation Relating to Redemption From Execution and Foreclosure Sales of Real Property which outlines the problem and sets forth the relevant proposed legislation which ultimately would be included in the comprehensive recommendation. If this recommendation is approved, subject to revision, we will distribute it for comment at the earliest opportunity.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

#39.220 6/27/77

TENTATIVE RECOMMENDATION

relating to

REDEMPTION FROM EXECUTION AND FORECLOSURE SALES OF REAL PROPERTY

INTRODUCTION

The Law Revision Commission is currently preparing a proposed revision of the laws pertaining to the enforcement of judgments.[1] This tentative recommendation involves one aspect of the overall study--judicial sales of real property and redemption from sale. This tentative recommendation is being separately distributed to interested attorneys and other persons for review and comment in order to determine their reaction to the Commission's proposals which represent a significant departure from existing law.

BACKGROUND

Statutory Redemption From Judicial Sales

In California, statutes providing a right of redemption from execution sales were first enacted in 1851.[2] This system, patterned after the provisions of the Field Code proposed for New York,[3] has been

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1. The full recommendation will be primarily concerned with the general laws pertaining to enforcement of judgments contained in Title 9 (Sections 681-724e) of the Code of Civil Procedure. The Commission is authorized to study creditors' remedies in general, and the enforcement of judgments and the right of redemption in particular, by 1972 Cal. Stats., Res. Ch. 27, at 3227.

2. 1851 Cal. Stats., Ch. 5, §§ 229-236. Statutory redemption from execution and foreclosure sales is currently governed by Code Civ. Proc. §§ 700a-707.

3. See New York Commissioners on Practice and Pleading, The Code of Civil Procedure of the State of New-York §§ 844-850 (1850). Although the redemption system proposed in the Field Code was not enacted in New York, it became the prevailing type of redemption in the United States. S. Riesenfeld, Creditors' Remedies and Debtors' Protection 150-51 (2d ed. 1975). The California statute in turn became the model for redemption laws in the western states. See Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 866 n.93 (1925).

described as the "scramble" type of redemption.[4] Under this system, the right to redeem is afforded the judgment debtor who owns the land, the successors in interest of the judgment debtor, and persons holding liens on the land which are subordinate to the lien under which the sale takes place.[5] Redemption may take place at any time within twelve months after the sale of the property.[6] Redemption is accomplished by paying the execution sale purchaser or prior redemptioner the amount paid to purchase or redeem the property plus the amount of a prior redemptioner's lien and specified amounts of interest and other expenses.[7] Redemption by the judgment debtor or a successor in interest terminates the effect of the sale so that the judgment debtor or successor in

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4. See generally, J. Hetland, Secured Real Estate Transactions §§ 7.7-7.19 (Cal. Cont. Ed. Bar 1974); S. Riesenfeld, Creditors' Remedies and Debtors' Protection 149-54 (2d ed. 1975); 5 B. Witkin, California Procedure Enforcement of Judgment §§ 98-102, at 3464-68 (2d ed. 1971); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846 (1964).

5. Code Civ. Proc. § 701. Creditors entitled to redeem are termed "redemptioners" by this section.

6. Code Civ. Proc. § 702. A redemption by a redemptioner must occur within 60 days after a redemption by a prior redemptioner. Code Civ. Proc. § 703. It has been suggested that these 60-day redemption periods conceivably may continue to run after the 12-month period as long as there are qualified redemptioners prepared to redeem within 60 days after a prior redemption. See Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 852-53 (1964).

7. See Code Civ. Proc. §§ 702-703. A person redeeming from the purchaser must pay two-thirds of one percent per month interest. Code Civ. Proc. § 702. A person redeeming from a redemptioner must pay, in addition, two percent of the amount paid by the prior redemptioner. Code Civ. Proc. § 703. The other items making up the redemption price specified in the statute are assessments, taxes, reasonable sums for fire insurance, maintenance, upkeep, or repair of improvements on the property, and sums necessarily paid on a prior obligation secured by the property. Code Civ. Proc. §§ 702-703. Rents and profits or the value of the use and occupation of the property may be set off against the redemption price. Code Civ. Proc. § 707; House v. Lala, 214 Cal. App.2d 238, 245-46, 29 Cal. Rptr. 450, 454 (1963). Section 702 provides a summary hearing procedure in the event of a disagreement over the redemption price. As the discussion in Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 863-69 (1964), fully demonstrates, the determination of the redemption price frequently is not an easy matter.

interest is restored to his estate.[8] However, liens which have not been paid off in the process of redemption reattach,[9] and a judgment lien under which the property was sold reattaches to the extent it has not been satisfied when the debtor redeems.[10] Redemption by a junior lienholder has the effect of satisfying the prior lien which is a part of the redemption price and preserving the lienholder's security in the property which would otherwise be lost by the sale at the end of the redemption period.[11]

These provisions apply as well to foreclosure sales under a mortgage or deed of trust.[12] If the property is sold for less than the amount of the obligation, the redemption period is 12 months, as in the case of redemption from an execution sale.[13] If the property is sold at a price sufficient to satisfy the judgment, including interest, costs, and expenses of sale, the redemption period is three months.[14] There

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8. Code Civ. Proc. § 703; Bateman v. Kellogg, 59 Cal. App. 464, 474-78, 211 P. 46, 51-52 (1922).

9. Code Civ. Proc. § 703; Kaiser v. Mansfield, 160 Cal. App.2d 620, 628-29, 325 P.2d 865, 870-71 (1958).

10. See Fry v. Bihr, 6 Cal. App.3d 248, 251, 85 Cal. Rptr. 742, 743 (1970); Moore v. Hall, 250 Cal. App.2d 25, 29, 58 Cal. Rptr. 70, 72 (1967).

11. Bank of America v. Hill, 9 Cal.2d 495, 502, 71 P.2d 258, 261 (1937).

12. Subdivision (a) of Code of Civil Procedure Section 700a provides in relevant part:

> Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption, as provided in this chapter.

Similar language in the law in effect in 1852 was termed "inapt" but found to be sufficiently comprehensive to apply to foreclosure sales. Kent & Cahoon v. Laffan, 2 Cal. 595 (1852).

13. Code Civ. Proc. § 725a. Even if there is a power of sale in the mortgage or deed of trust, a mortgagee or trustee must follow the judicial foreclosure procedures in order to be able to obtain a deficiency judgment for the difference between the fair market value of the property and the total debt. See Code Civ. Proc. §§ 580b, 580d, 726; Roseleaf Corp. v. Chierighino, 59 Cal.2d 35, 40, 378 P.2d 97, 99-101, 27 Cal. Rptr. 873, 875-77 (1963).

14. Code Civ. Proc. § 725a.

is, however, no statutory right of redemption after sale under a power of sale in a mortgage or deed of trust.[15]

Where there is a right of redemption, the judgment debtor or a tenant of the debtor is entitled to remain in possession of the real property during the redemption period.[16] The purchaser or last redemptioner is entitled to rent from the tenant or the value of the use and occupancy of the property from the debtor if the debtor does not redeem.[17] If the debtor redeems, such amounts paid to the purchaser or redemptioner are a credit on the redemption price.[18] If the purchaser or redemptioner has occupied the property, the debtor who redeems is entitled to the value of the use and occupancy of the property.[19]

Purpose of Statutory Redemption

The primary purpose of statutes permitting redemption from judicial sales of real property is to force the purchaser at the sale (almost always the judgment creditor or mortgagee)[20] to bid an amount near the

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15. Penryn Fruit Co. v. Sherman-Worrell Fruit Co., 142 Cal. 643, 645, 76 P. 484, 485 (1904); Py v. Pleitner, 70 Cal. App.2d 576, 579, 161 P.2d 393, 395 (1945); Hetland, Land Contracts in California Real Estate Secured Transactions § 3.78, at 130 (Cal. Cont. Ed. Bar 1970).

16. Code Civ. Proc. § 706; First Nat'l Trust & Sav. Bank v. Staley, 219 Cal. 225, 227, 25 P.2d 982 (1933).

17. Code Civ. Proc. § 707. See Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 865-69 (1964).

18. Code Civ. Proc. § 707.

19. House v. Lala, 214 Cal. App.2d 238, 245-46, 29 Cal. Rptr. 450, 454 (1963).

20. The defeasible title obtained at a sale subject to redemption, the lack of notice, and the requirement of cash payment by outside bidders while the judgment creditor or mortgagee can bid the amount of the judgment are the major factors discouraging bidding. See National Conference of Commissioners on Uniform State Laws, Handbook 258-59 (1922); G. Osborne, Handbook on the Law of Mortgages § 8, at 18 (2d ed. 1970); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 832-33 (1925); Madsen, Equitable Considerations of Mortgage Foreclosure and Redemption in Utah: A Need for Remedial Legislation, 1976 Utah L. Rev. 327, 335; Note, Redemption From Judicial Sales: A Study of the Illinois Statute, 5 U. Chi. L. Rev. 625, 626 (1938). In a study in New York in 1938, it was reported that, out of 40,853 foreclosures, the mortgagee bid in the property in 40,570 cases. Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 40 n.13 (1953).

property's fair value.[21] The theory behind permitting other lien creditors to redeem is that the property should be used to satisfy as many creditors as possible.[22] If the property is valuable enough, subordinate lienholders are enabled to protect security that they would otherwise lose.[23] There is also a feeling that the debtor should have one more chance to save the property by refinancing or otherwise finding assets sufficient to pay off the debt.[24]

It is impossible to assess with certainty the actual effect of statutory redemption. The states are almost evenly divided between those which permit redemption from execution or foreclosure sales and those which do not;[25] however, there do not appear to be any studies

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21. See Moore v. Hall, 250 Cal. App. 25, 29, 58 Cal. Rptr. 70, 73 (1967); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 839-41 (1925); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964).

22. S. Riesenfeld, Creditors' Remedies and Debtors' Protection 149 (2d ed. 1975).

23. See Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964).

24. See G. Osborne, Handbook on the Law of Mortgages § 8, at 18 (2d ed. 1970); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 839 (1925). The one-year redemption period has been termed a "farm mortgage proposition . . . based on the allowance to the mortgagor of possession of his farm for another crop year after default, to see if conditions will not better and he be able to save the farm." National Conference of Commissioners on Uniform State Laws, Handbook 270 (1922).

25. See G. Osborne, Handbook on the Law of Mortgages § 307 (2d ed. 1970); S. Riesenfeld, Creditors' Remedies and Debtors' Protection 150-51 (2d ed. 1975). Although there are some exceptions, redemption states usually permit redemption from both execution and foreclosure sales. Of the 27 states permitting redemption from execution sales, five permit only the judgment debtor to redeem, three permit redemption by the debtor and by creditors in order of priority, 13 provide "scramble" redemption, and six have some other variation. Among the states without redemption are Florida, Georgia, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas, and Virginia. Approximately 17 states have neither redemption nor any other special provisions designed to prevent sacrifice sales of real property.

comparing the results in redemption states as opposed to nonredemption states. It is certain that very few redemptions take place.[26]

RECOMMENDATIONS

The Commission has concluded that statutory redemption from execution and foreclosure sales has failed to achieve its purposes. The very existence of the right of redemption operates as the greatest impediment to the achievement of the primary purpose of obtaining a fair bid at the sale because the purchaser can only obtain title which is defeasible for another year.[27] The right of redemption thus makes "sacrifice" sales

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26. G. Osborne, Handbook on the Law of Mortgages § 8, at 18 (2d ed. 1970); Brodkey, Current Changes in Illinois Real Property Law, 10 DePaul L. Rev. 567, 578 (1961) (fewer than one percent of foreclosed properties are redeemed); Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 42 n.25 (1953) (reporting a 1938 study showing that, out of 22,000 properties foreclosed, only 204 were redeemed); Prather, Foreclosure of the Security Interest, 1957 U. Ill. L. F. 420, 432, 452; Stattuck, Washington Legislation 1961--Real Property Mortgage Foreclosure--Redemption, 36 Wash. L. Rev. 239, 309, 311 n.3 (1961) (reporting a four-year study showing that, out of 276 foreclosures, one redemption was made by a mortgagor and two by other persons). The records of the San Francisco Sheriff's Department from mid-1970 through mid-1975 show that there were three redemptions out of 86 sales of real property. Letter from Carl M. Olsen, County Clerk, City and County of San Francisco (October 20, 1975) (on file at office of California Law Revision Commission). It is interesting to note that one commentator has argued that, if the redemption statute works properly, there will be no redemptions because the possibility of a redemption acts as a threat to coerce adequate bids at the sale. See Note, Redemption From Judicial Sales: A Study of the Illinois Statute, 5 U. Chi. L. Rev. 625, 627 (1938). However, for redemption to work in this model fashion, the complicated scheme would have to be understood by the parties involved, there would have to be adequate notice, and potential redeemers would have to have adequate resources so that they can make the threat of redemption meaningful.

27. The commentators are nearly unanimous in recognizing the drastic effect the nature of the title obtained at a sale subject to redemption has on bidding. See G. Osborne, Handbook on the Law of Mortgages § 8, at 19 (2d ed. 1970); Carey, Brabner-Smith, & Sullivan, Studies in Foreclosures in Cook County: II. Foreclosure Methods and Redemption, 27 Ill. L. Rev. 595, 615 (1933); Durfee & Doddridge, Redemption From Foreclosure Sale--The Uniform Mortgage Act, 23 Mich. L. Rev. 825, 841 n.51 (1925) (Redemption "certainly

even more sacrificial. There are, no doubt, exceptional cases in which the purchase price is oppressively low and in which the debtor manages to obtain the money necessary to save the property. The Commission is not of the opinion that the protection afforded by the right to redeem in these exceptional cases justifies the detrimental effect in all cases of the existence of the right to redeem.

Accordingly, the Commission recommends that the statutory right of redemption be eliminated. Elimination of redemption will remove the greatest obstacle to obtaining a fair price at an execution or foreclosure sale of real property.

The Commission recognizes, however, that a hurried, forced sale of real property may result in a depressed price despite the sale being made absolute. Consequently, a 90-day grace period should be provided

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caps the wall we have built to keep the public away from the public sale. The best market for land is found among those who desire it for immediate use, and to them, obviously, the redemption feature is prohibitive."); Madsen, Equitable Considerations of Mortgage Foreclosure and Redemption in Utah: A Need for Remedial Legislation, 1976 Utah L. Rev. 327, 353 (The "statutory right of redemption in reality tends to depress foreclosure sale prices and to create other inequities."); Madway & Pearlman, A Mortgage Foreclosure Primer: Part III Proposals for Change, 8 Clearinghouse Rev. 473, 478-79 (1975) ("Protecting the title of the bid purchaser and eliminating post-sale redemption rights . . . would meet one of the major objections of mortgagees because these practices tend to depress foreclosure sale prices significantly."); Murray, Statutory Redemption: The Enemy of Home Financing, 28 Wash. L. Rev. 39, 40 (1953) ("A person's desire for a particular piece of property would have to be very strong to cause him to bid for it, as he knows he is buying a mere expectation. Public participation at the sale was one of the chief benefits that was expected to follow when foreclosure by judicial sale was first orginated, but it is clear that long redemption statutes have eliminated this benefit."); Prather, Foreclosure of the Security Interest, 1957 U. Ill. L. F. 420, 432 ("When [the redemption period] is added to the period required to foreclose, the period of suspense in times of economic uncertainty can become an almost intolerable burden."); Shattuck, Washington Legislation 1961--Real Property Mortgage Foreclosure--Redemption, 36 Wash. L. Rev. 239, 309, 310-11 (1961) ("Persons interested in buying land are not attracted to the sale. . . . The most they can acquire is a chance. Bidding is stifled by the risk, however remote, of redemption."); Comment, The Statutory Right of Redemption in California, 52 Calif. L. Rev. 846, 848 (1964) (The "conditional title is not attractive to investors."). It is interesting to note that the commentary following the redemption provisions in the Field Code, which served as the model for the California statute, questions whether redemption affords any benefit to the debtor. New York Commissioners on Practice and Pleading, The Code of Civil Procedure of the State of New-York 359 (1850).

between the time when notice of a levy of a writ of execution is given or service of an order of sale is made and the time when notice of sale is first given.[28] This 90-day period is analogous to the three-month period afforded the mortgagor or trustor for the purpose of curing the default under a mortgage or deed of trust containing a power of sale.[29] During this time, the judgment debtor may refinance the property in order to pay off the lien under which it would otherwise be sold, sell the property privately subject to valid liens in order to realize a higher price than would be obtained at a forced sale, or acquiesce in the judicial sale but seek potential buyers by advertising and personal contact.

The proposed scheme should better achieve the main purposes of the redemption statute--to obtain a higher price at execution and foreclosure sales and to provide the debtor with an opportunity to retain the property. The proposal would benefit judgment creditors and mortgagees since they would have to wait only 90 days rather than a year before receiving satisfaction in the amount of the value of the property. Junior lienholders may protect their interests by redeeming from the superior lien before the property is sold.[30] The proposal would also eliminate the speculative aspect of current law which results from the fluctuation in land values during a year's time. The proposed statute

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28. At least 20 days' notice of sales of real property is required by subdivision 3 of the Code of Civil Procedure Section 692. Hence, under this proposal, the property could not be sold on execution sooner than 110 days after notice of levy of execution is given the judgment debtor.

29. Civil Code § 2924.

30. Civil Code Section 2904 provides:

> 2904. One who has a lien inferior to another, upon the same property, has a right:
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> 1. To redeem the property in the same manner as its owner might, from the superior lien; and,
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> 2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

would balance the interests of both debtor and creditor and has the added virtures of being simple to understand and easy to administer.[31]

In the course of preparing this recommendation, the Commission considered several other alternatives to statutory redemption--most importantly, requiring court confirmation of sale,[32] fixing an upset price,[33] allowing advance bidding,[34] and extending antideficiency legislation to cover execution sales.[35] Although some of these options may be preferable to statutory redemption as it exists in California, they have their

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31. Indiana recently enacted a statute providing a six-month delay of execution sales coupled with an upset price of two-thirds the appraised value of the property. Ind. Code Ann. § 34-1-37-1, T.R. 69(a) (Burns 1973). One commentator suggested in 1938 that California substitute a grace period of a year for the one-year redemption period. King, The Enforcement of Money Judgments in California, 11 So. Cal. L. Rev. 224, 228-29 (1938).

32. Court confirmation, in the absence of an upset price feature, would be intended to protect against oppressively low sale prices. It does not appear that any state provides for court confirmation of execution sales without combining it with an upset price or advance bid procedure. In California, Code of Civil Procedure Section 568.5 provides for court confirmation of sales by receivers.

33. Five states have a procedure for appraising the property and setting an upset price, usually two-thirds of the appraised value. E.g., Ohio Rev. Code Ann. §§ 2329.17, 2329.20 (Page 1954). California provides an upset price of 90 percent of the appraised value in private probate sales by an executor or administrator. Prob. Code § 784. Appraisals are a matter of course in probate for tax purposes but would be an additional expense in execution and foreclosure sales.

34. Only North and South Carolina provide for continuing an execution sale so that the judgment debtor may find a buyer who will pay a specified amount over the last bid. N.C. Gen. Stat. §§ 1-339.64 to 1-339.68 (repl. vol. 1969); S.C. Code § 10-1770 (1962). California provides for advance bids at private partition and probate sales. Code Civ. Proc. §§ 873.730, 873.740; Prob. Code § 785.

35. Pennsylvania requires the judgment creditor to petition the court within six months of an execution sale to fix the fair market value of the property if the price obtained at the sale is insufficient to satisfy the judgment. Satisfaction is granted to the extent of the fair market value of the property. If a petition is not timely filed, the debtor is released from liability. Pa. Stat. Ann. tit. 12, §§ 2621.1-2621.10 (1967). Kansas also permits the court to credit the fair market value of property on the judgment. Kan. Stat. § 60-2415(b) (1976). California's antideficiency legislation applies only to foreclosures under mortgages and deeds of trust. Code Civ. Proc. §§ 580b, 580d, 726.

own drawbacks that are avoided in the proposed statute. Generally speaking, these alternatives would require a court hearing in every case, thereby increasing the expenditure of time and resources by the parties and the judicial system. The Commission is mindful of the fact that the costs incurred in such additional proceedings would also be borne by the judgment debtor and ultimately by borrowers and consumers in general. The proposed statute is most likely to forward the interests of both debtors and creditors.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following provisions, to be included in the forthcoming Tentative Recommendation Relating to Enforcement of Judgments:[36]

36. Section numbers in brackets in the proposed legislation are references to sections in the forthcoming comprehensive recommendation. Where appropriate, corresponding provisions of existing law are cited. Matter in the proposed legislation unrelated to the subject under consideration in this recommendation has been omitted.

968/606

[§ 703.515.] Right of possession before sale; restraint of or damages for waste

[703.515.] (a) From the time of levy of the writ until sale of real property, the judgment debtor or a tenant of the judgment debtor is entitled to the possession of the real property.

(b) The judgment creditor may apply on noticed motion for an order restraining waste and may bring an action for damages for waste committed between the levy of the writ and the sale.

Comment. Subdivision (a) makes clear that the judgment debtor or a tenant of the judgment debtor may remain thereon until the property is sold. The levy of a writ of execution establishes the lien of the judgment creditor if an earlier judgment or attachment lien has not already been created, and notice of levy begins the running of the 90-day grace period before notice of the sale of real property on execution or foreclosure can be given under Section [703.520(f)]. This right of possession is analogous to the right of possession during the period of redemption under former Section 706. See also Section 488.310(c) (notice of levy to be mailed to debtor within 15 days after levy).

Subdivision (b) makes explicit the right of the judgment creditor to enjoin waste or seek damages for waste already committed. See also Sections 732, 745. This right corresponds to the similar rights applicable during the redemption period under former Section 706 and Section 732. Cf. Mitchell v. Amador Canal & Mining Co., 75 Cal. 464, 495, 17 P. 246, ___ (1888) (equitable remedy of injunction and accounting by mortgagee against mortgagor's assignee in possession).

963/607

[§ 703.520.] Notice of sale

[703.520.] (a) Before the sale of property, the levying officer shall give notice of sale as provided in this section.

(b) The notice of sale shall be in writing and shall describe the property to be sold and state the time and place of sale. In the case of real property, the notice shall describe the property by giving its

street address or other common designation, if any. If a legal description of the real property is given, the validity of the notice is not affected by the fact that the street address or other common designation given is erroneous or omitted.

. . . .

(f) If an interest in real property is to be sold, not less than 20 days before the date of sale, notice of sale shall be given as provided in this subdivision. Notice of sale of an interest in real property may not be given until after the expiration of 90 days from the date notice of levy was mailed to the judgment debtor. Notice of sale shall be posted (1) in one public place in the city where the interest in the real property is to be sold, if it is to be sold in a city or, if not, then in one public place in the judicial district in which the interest in the real property is to be sold and (2) in some conspicuous place on the real property. A copy of the notice shall be published once a week for the same period in a newspaper of general circulation published in the city in which the real property or a part thereof is situated if any part thereof is situated in a city, or, if not, then in a newspaper of general circulation published in the judicial district in which the real property or a part thereof is situated. In case no newspaper of general circulation is published in the city or judicial district, a copy of the notice shall be published for such time in the county in which the real property or a part thereof is situated. Not less than 20 days before the date of sale, notice of the sale shall be mailed to any person who has requested notice pursuant to Section [702.090, to replace Section 692a] and to persons holding interests recorded in the office of the county recorder, and shall be delivered personally to the judgment debtor or mailed to the judgment debtor at the judgment debtor's business or residence address last know to the judgment creditor or mailed to the judgment debtor's attorney. As used in this subdivision, the term "newspaper of general circulation," has the meaning provided in Article 1 (commencing with Section 6000) of Chapter 1 of Divison 7 of Title 1 of the Government Code.

(g) In addition to the notice required by this section, the judgment creditor may advertise the sale in the classified or other adver-

tising section of a newspaper of general circulation or other periodical publication.

Comment. Subdivisions (a) to (f) of Section [703.520] are similar in substance to the first three subdivisions of former Section 692. . . . The second sentence of subdivision (f) has the effect of delaying the sale of interests in real property for 90 days.

Subdivision (g) is new. It provides for the publication of advertisements concerning the sale of the property in other periodicals. Such notice would be particularly appropriate where certain types of property with a specialized market are to be sold, such as stamps, coins, and rare books. The expense of advertising in this manner is a collectable cost under Section 1033.7.

The provisions of this section pertaining to sales of real property also apply to sales pursuant to foreclosure judgments. Code Civ. Proc. § 726.

968/615

[§ 703.660.] Absolute sales

[703.660.] A sale of property pursuant to this article is absolute.

Comment. Section [703.660] supersedes the first sentence of subdivision (a) of former Section 700a which made absolute only sales of personal property and of leasehold estates with unexpired terms of less than two years. Section [703.660] reflects the repeal of the statutory right of redemption from execution and foreclosure sales. See former Sections 700a-707. Sales of interests in real property are delayed 90 days, however, in order to provide an opportunity for the judgment debtor to redeem the property from the judgment creditor's lien or to advertise the sale and give notice to potential buyers. See Section [703.520(f)].

It should be noted that, in certain circumstances, there may be an equitable right to have an execution sale set aside where the price obtained at the sale is inadequate and there are other material ir-

regularities. See, e.g., Winbigler v. Sherman, 175 Cal. 270, 165 P. 943 (1917); Odell v. Cox, 151 Cal. 70, 90 P. 194 (1907); Smith v. Kessler, 43 Cal. App.3d 26, 32, 117 Cal. Rptr 470, ___ (1974); Baar v. Smith, 97 Cal. App. 398, 402-03, 275 P. 86, ___-__ (1929); Harsh v. Hall, 90 Cal. App. 547, 550-51, 265 P. 1030, ___-__(1928).