

## Memorandum 2014-37

**Trial Court Unification: Publication of Legal Notice  
(Draft Tentative Recommendation)**

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In this study, the Commission<sup>1</sup> is considering how to revise the judicial district notice publication statutes to ensure that the provisions effectively achieve local notice.<sup>2</sup>

At the June meeting, the Commission directed the staff to prepare a draft tentative recommendation based on the “Improved Status Quo” approach.<sup>3</sup> Attached to this memorandum is such a draft tentative recommendation for the Commission’s consideration.

The Commission needs to decide whether to approve the draft as a tentative recommendation (as is, or with revisions) to post to its website and circulate for comment.

**CHANGES TO THE PROPOSED LEGISLATION**

In preparing this draft tentative recommendation, the staff made several changes to the proposed legislation presented previously as a discussion draft in conjunction with Memorandum 2014-25. Many of these changes were minor technical and stylistic edits. There were also a few more significant changes, which are discussed below.

**Status of a Newspaper of General Circulation in a Judicial District**

Two of the staff’s changes relate to preserving the status of a newspaper that is currently recognized as a “newspaper of general circulation” in a particular

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Memorandum 2014-15, pp. 4-8.

3. Minutes (June 2014), p. 4.

judicial district. The first change relates to proposed Government Code Section 6086; the second change relates to the proposed amendment of Government Code Section 6008.

*Proposed Government Code Section 6086*

The discussion draft included a provision that was intended to ensure that the transition to publication districts would not disrupt the status of a newspaper of general circulation in a former judicial district. Specifically, proposed Government Code Section 6086 read:

6086. A newspaper of general circulation in a former judicial district is deemed to be a newspaper of general circulation in the publication district that replaced the former judicial district.

In preparing the draft tentative recommendation, the staff felt that the proposed language could be improved by clarifying how this section would operate in conjunction with the existing statutory provisions applicable to a newspaper of general circulation. For instance, the staff concluded that the language shown above could perhaps be read to broadly immunize a newspaper against losing its status as a newspaper of general circulation due to operational or business changes that would otherwise impact its standing as a newspaper of general circulation.

To prevent that result and address similar issues, the staff revised and expanded proposed Section 6086 and the accompanying Comment to read:

6086. (a) A newspaper of general circulation in a former judicial district is deemed to be a newspaper of general circulation in the publication district that replaced the former judicial district in accordance with this article.

(b) Notwithstanding Section 6027, when a newspaper is deemed to be a newspaper of general circulation in a publication district by the operation of this section, it is not required to obtain a judicial decree to operate as a newspaper of general circulation in that publication district.

(c) A newspaper deemed to be a newspaper of general circulation in a publication district by the operation of this section remains subject to all of the other conditions necessary to maintain its status as a newspaper of general circulation in that district.

**Comment.** Section 6086 is new. Replacement of a judicial district with a publication district under this article has no impact on the status of a newspaper that qualified as a newspaper of general circulation in the judicial district that was replaced.

Subdivision (a) preserves the status of a newspaper of general circulation in a judicial district upon the transition to publication districts as the location for the publication of legal notice.

Subdivision (b) makes explicit that such a newspaper is not required to seek a new judicial decree solely because a judicial district has been replaced with a publication district.

Subdivision (c) preserves any conditions that a newspaper of general circulation must satisfy to maintain its status. This section does not preclude a newspaper from ceasing to be a newspaper of general circulation under Section 6024 based on changed circumstances.

Subdivision (a) is largely the same as the language presented in the discussion draft, with the addition of a final clause. Subdivisions (b) and (c) are new. The Comment explains the purpose of each of these provisions.

**Are these revisions acceptable to the Commission?**

*Proposed Amendment of Government Code Section 6008*

The discussion draft included an amendment of Government Code Section 6008, which sets forth the criteria for establishing standing as a newspaper of general circulation. As shown below, the introductory clause of that amendment cross-referred to proposed Section 6086, the provision previously described:

**Gov't Code § 6008 (amended). Criteria for establishing standing as newspaper of general circulation**

SEC. \_\_\_\_ . Section 6008 of the Government Code is amended to read:

6008. (a) Notwithstanding any provision of law to the contrary, a newspaper is a “newspaper of general circulation” if it ~~meets~~ satisfies the requirements of Section 6086 or it meets all of the following criteria:

(~~a~~) (1) It is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, which has a bona fide subscription list of paying subscribers and has been established and published at regular intervals of not less than weekly in the city, district, or judicial publication district for which it is seeking adjudication for at least three years preceding the date of adjudication.

(~~b~~) (2) It has a substantial distribution to paid subscribers in the city, district, or judicial publication district in which it is seeking adjudication.

(~~e~~) (3) It has maintained a minimum coverage of local or telegraphic news and intelligence of a general character of not less than 25 percent of its total inches during each year of the three-year period.

~~(d)~~ (4) It has only one principal office of publication and that office is in the city, district, or ~~judicial~~ publication district for which it is seeking adjudication.

(b) For the purposes of Section 6020, a newspaper meeting the criteria of this section which desires to have its standing as a newspaper of general circulation ascertained and established, may, by its publisher, manager, editor, or attorney, file a verified petition in the superior court of the county in which it is established and published.

(c) As used in this section:

(1) "Established" means in existence under a specified name during the whole of the three-year period, except that a modification of name in accordance with Section 6024, where the modification of name does not substantially change the identity of the newspaper, shall not affect the status of the newspaper for the purposes of this definition.

(2) "Published" means issued from the place where the newspaper is sold to or circulated among the people and its subscribers during the whole of the three-year period.

(3) "Publication district" means the district established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of Division 7 of Title 1 of the Government Code.

**Comment.** Section 6008 is amended to (1) replace "judicial district" with "publication district" and (2) define the term "publication district."

This section is also amended to make technical changes.

In preparing the draft tentative recommendation, the staff omitted the cross-reference to proposed Section 6086. Instead, the amendment of Government Code Section 6008 would read:

6008. (a) Notwithstanding any provision of law to the contrary, a newspaper is a "newspaper of general circulation" if it meets all of the following criteria:

....

The staff took this approach because we were concerned that a cross-reference to Section 6086 might be interpreted to relieve a newspaper of an obligation to comply with the conditions that would otherwise be required to maintain that status.

**Is the new approach acceptable to the Commission?**

### **Cross-References to Commercial Code Section 6105**

The discussion draft included an amendment of Commercial Code Section 6105, which would, among other things, redesignate the subdivisions and

paragraphs in that section. After the June meeting, the staff checked for cross-references to Commercial Code Section 6105 and found three that would require updating to reflect the redesignation.

Specifically, Commercial Code Sections 6103, 6106.2, and 6108 all refer to “subdivision (a) of Section 6105.” The proposed legislation would redesignate the subdivisions in Section 6105 such that the material currently in subdivision (a) would be located in subdivision (b). Thus, the cross-references to this material would need to be updated accordingly. For that reason, conforming revisions of Sections 6103, 6106.2, and 6108 are now included in the proposed legislation.

### **Correction of Gendered Terminology**

When the staff prepared the conforming revisions of Commercial Code Sections 6103, 6106.2, and 6108, we reviewed those sections for consistency with California’s legislative drafting style and practice. We identified one issue that the Commission may want to address in its recommendation.

Section 6103(c)(16) includes a gendered term, “warehouseman.” It reads:

...  
(16) A transfer of goods in a warehouse where a warehouse receipt has been issued therefor by a **warehouseman** (Section 7102) and a copy of the receipt is kept at the principal place of business of the **warehouseman** and at the warehouse in which the goods are stored.

...<sup>4</sup>

Generally, the Commission corrects gendered terminology it encounters, consistent with California’s legislative drafting practice. The staff therefore reviewed the statutes to determine the appropriate gender-neutral term to replace “warehouseman.”

Commercial Code Section 6103 is part of California’s enactment of Article 6 of the Uniform Commercial Code (hereafter, “UCC”), but the full paragraph at issue (reproduced above) appears to be a non-uniform addition.<sup>5</sup> Therefore, the corresponding uniform provision does not provide any guidance on addressing this terminology issue.

However, Commercial Code Section 6103 cross-refers to Section 7102, which contains definitions. Section 7102 is a provision in California’s enactment of

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4. Emphasis added.

5. Unif. Com. Code § 6-103 (Rev. Art. 6), 2C U.L.A. 24-32 (2005).

Article 7 of the UCC. Section 7102 appears to be largely uniform.<sup>6</sup> The histories of Section 7102 and the corresponding UCC provision (UCC Section 7-102) provide helpful guidance as to the appropriate treatment of the “warehouseman” references in Commercial Code Section 6103.

Formerly, UCC Section 7-102 defined “warehouseman” as “a person engaged in the business of storing goods for hire.”<sup>7</sup> A 2006 law in California replaced the term “warehouseman” with “warehouse” throughout California’s enactment of UCC Article 7.<sup>8</sup> Currently, Commercial Code Section 7102 contains no use of the term “warehouseman.” Instead, the definition formerly assigned to “warehouseman” (above) is now the definition for “warehouse.”<sup>9</sup>

Thus, it appears that “warehouse” is the correct term with which to replace “warehouseman” in Section 6103(c)(16). Accordingly, the provision could be amended as follows:

...  
(16) A transfer of goods in a warehouse where a warehouse receipt has been issued therefor by ~~a warehouseman~~ the warehouse (Section 7102) and a copy of the receipt is kept at the principal place of business of the ~~warehouseman~~ warehouse and at the warehouse in which the goods are stored.

...

Usually, the staff would recommend such a correction be made. However, the use of both terms (“warehouse” and “warehouseman”) in the current language of Commercial Code Section 6103 complicates this particular amendment. The current language of Section 6103 appears to use “warehouseman” to refer to a person and “warehouse” to refer to a facility. Simply replacing “warehouseman” with “warehouse” results in the term “warehouse” referring to both a facility and a person in a single provision, which may cause confusion.

Although it may be possible to make additional changes to improve clarity (e.g., replace “warehouse” with “facility” where appropriate), the staff has reservations about doing so. Because this statute is only being included in the Commission’s proposal to update a cross-reference, the staff is inclined to limit

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6. Unif. Com. Code § 7-102 (Rev. Art. 7), 2C U.L.A. 122-125 (2005).

7. Prior Unif. Com. Code § 7-102(g) (Prior Art. 7), 2C U.L.A. 243 (2005); see also *id.* at 245 (noting California’s variations from official text; no variations are noted for this subsection).

8. 2006 Cal. Stat. ch. 254 (SB 1481 (Poochigian)). The Legislative Counsel’s Digest notes the substitution of the word “warehouse” for “warehouseman.”

9. See also Unif. Com. Code § 7-102(g) (Rev. Art. 6), 2C U.L.A. 24-32 (2005).

any proposed amendments to technical corrections and clear stylistic errors. Further, the staff is not closely familiar with the UCC and is concerned about the possibility of inadvertent changes (i.e., replacing uniform terminology with non-uniform terminology).

**What is the Commission’s preference on this issue?**

GOVERNMENT CODE SECTION 24052

Government Code Section 24052 relates to publication of notice by an officer of a county or judicial district:

24052. Whenever notice is required by law to be published in a newspaper by any officer of a county or **judicial district**, the person for whom the notice is to be given shall pay to the officer, if required, the fees for the publication, in advance. Failure of any officer to publish any notice required by law pertaining to the duties of his office is a misdemeanor.<sup>10</sup>

In June, the staff expressed concern that the boldfaced reference to “judicial district” is, at best, unclear, but possibly redundant. The Commission requested that the staff research Government Code Section 24052 to determine what, if any, changes to this section might be appropriate.<sup>11</sup>

In researching this issue, the staff realized that appropriately addressing the reference in Section 24052 to an “officer of a county or judicial district” would require answering complicated questions related to the allocation of functions in trial court restructuring. Specifically, prior to trial court restructuring, it appears that this provision would have covered both superior court officers (who were then officers of the county) and municipal court officers (who were officers of the judicial district). Now, determining whether this provision should govern officers of the superior court relates to the division of functions between the county and the state, which is a central question in trial court restructuring.

To ensure that the affected stakeholders are properly apprised of the issue and given a full opportunity to comment, the staff proposes to flag this provision for review in conjunction with Commission’s future work on trial court restructuring. Therefore, the attached draft tentative recommendation does not include Government Code Section 24052.

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10. Emphasis added.

11. Minutes (June 2014), p. 4; see also Memorandum 2014-25, pp. 13-14.

**Does the Commission have any concerns with the staff's proposed course of action?**

COMMISSION DECISION ON DRAFT TENTATIVE RECOMMENDATION

**Does the Commission approve the attached draft as a tentative recommendation (as is, or with revisions) for posting to its website and circulating for comment?**

Respectfully submitted,

Kristin Burford  
Staff Counsel

#J-1314

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

**STAFF DRAFT**

TENTATIVE RECOMMENDATION

**Trial Court Unification:  
Publication of Legal Notice**

September 2014

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN \_\_\_\_\_.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

Some statutes call for publication of a legally-required notice (such as a notice of a foreclosure sale) in a newspaper that is circulated within a particular “judicial district.” The purpose of that requirement is to provide notice locally, to a target population of potentially interested persons. This recommendation proposes modifications to improve the functioning of those statutes.

In the past, the judicial districts referenced in the publication statutes were primarily used for municipal court elections and municipal court business. However, the municipal and superior courts in each county unified their operations in the superior court over a decade ago. As such, these judicial districts are no longer used or maintained for the purposes of judicial elections or court business.

When the courts unified, the Law Revision Commission recommended continuing to use former judicial districts for the purpose of publishing legal notices. The Commission viewed that as a temporary solution. Accordingly, the Legislature directed the Commission to revisit the matter when appropriate.

Sufficient time has since elapsed for courts, newspapers, and others to gain experience with how the publication statutes are functioning post-unification. The Commission is thus studying the situation to assess whether changes are needed.

Based on the Commission’s research and public input thus far, it appears that the existing approach has become cumbersome and confusing. In particular, a person publishing a legal notice may have difficulty determining the boundaries of the “judicial district” in which publication must occur.

This tentative recommendation is intended to address the perceived problems. Consistent with the scope of the Commission’s authority, the proposed legislation seeks to improve the status quo without disturbing the longstanding legislative policy of providing notice locally.

Specifically, the revisions contained in this recommendation would:

- (1) Redesignate the judicial districts used for publishing legal notice as “publication districts.”
- (2) Replace “judicial district” with “publication district” in statutes that require publication of legal notice in a judicial district.
- (3) Require that information about the boundaries of each publication district be maintained in a central, statewide repository.
- (4) Designate the Judicial Council as the custodian of that information.
- (5) Delete obsolete provisions referring to judicial districts.
- (6) Make technical changes to the statutes addressed by this recommendation.

This recommendation was prepared pursuant to Government Code Section 70219.

TRIAL COURT UNIFICATION:  
PUBLICATION OF LEGAL NOTICE

1 In 1997, given the significant statutory changes required to accommodate trial  
2 court unification, the Legislature requested that the Commission make  
3 recommendations “pertaining to statutory changes that may be necessitated by  
4 court unification.”<sup>1</sup> The Commission did so through its 1998 recommendation on  
5 *Trial Court Unification: Revision of Codes*.<sup>2</sup>

6 When the Commission prepared that recommendation, it addressed the many  
7 references to a “judicial district” in the codes.<sup>3</sup> Generally, the Commission  
8 concluded that a statutory reference to a judicial district should be treated as a  
9 reference to the county after the courts unified. However, this rule was subject to  
10 exceptions. One exception related to the use of judicial districts to circumscribe  
11 the boundaries for publishing a legally-required notice, such as a notice of a  
12 foreclosure sale or a sale of stored property. The Commission recommended, and  
13 the Legislature enacted, a provision that retained former judicial district  
14 boundaries for that purpose.<sup>4</sup> However, the Commission recognized that this  
15 provision would need to be revisited.<sup>5</sup>

16 Now, over a decade has passed since all municipal and superior courts in  
17 California unified.<sup>6</sup> The Commission is in the process of reexamining the statutes  
18 that rely on former judicial districts to define boundaries for publishing legally-  
19 required notices. More specifically, it is trying to assess how those statutes are  
20 functioning post-unification, and whether they need any revisions to accomplish  
21 their underlying objectives.

22 Based on the information the Commission has obtained thus far, those statutes  
23 appear to be posing practical challenges. In particular, the boundaries of a judicial  
24 district can be difficult for parties to access and use.

25 To address these challenges, the Commission prepared this tentative  
26 recommendation. The proposed changes are intended to ensure the publication

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1. 1997 Cal. Stat. res. ch. 102; see also 1998 Cal. Stat. res. ch. 91.

2. 28 Cal. L. Revision Comm’n Reports 51 (1998) (hereafter, “*Revision of Codes*”).

3. *Id.* at 70. “Statutes refer to ‘judicial districts’ for various purposes. The references generally intend the ‘municipal court district’ in a county. On unification of the municipal and superior courts in a county, the former municipal court districts have little relevance for most purposes.” (footnote omitted)

4. See Gov’t Code § 71042.5 (retaining former municipal court districts for publication purposes if municipal and superior courts unify); see also *Revision of Codes*, *supra* note 2, at 72, 349.

5. *Revision of Codes*, *supra* note 2, at 86, n. 131.

6. Judicial Council of California, *Trial Court Unification Factsheet* (February 2005) (available at <http://www.courts.ca.gov/documents/tcunif.pdf>) (“By January 2001, all 58 California counties had voted to unify their municipal and superior court operations.”).

1 requirements are clear and the notice boundaries are easily determinable, without  
2 disrupting the current legislative policy of providing notice locally. The proposed  
3 legislation was also crafted to preserve existing rights for the newspapers of  
4 general circulation that publish notice in judicial districts.

5 **Background on Trial Court Unification and Judicial Districts**

6 Senate Constitutional Amendment 4 (Lockyer) provided “for unification of the  
7 municipal and superior courts in a county on a vote of a majority of the municipal  
8 court judges and a majority of the superior court judges in that county.”<sup>7</sup> This  
9 measure, titled Proposition 220, was approved by the voters at the statewide  
10 election on June 2, 1998, and became operative the day after the election.<sup>8</sup>

11 Before Proposition 220, each of California’s 58 counties was required to have a  
12 superior court and at least one municipal court.<sup>9</sup> The number of municipal courts  
13 varied from county to county. In counties with multiple municipal courts, the  
14 county was subdivided into municipal court districts.<sup>10</sup> In general, a county’s  
15 Board of Supervisors was responsible for maintaining boundaries for the  
16 municipal court districts.<sup>11</sup>

17 By early 2001, the superior and municipal courts in every county had unified as  
18 authorized by Proposition 220.<sup>12</sup>

19 ***Pre-Unification Statutes Referring to a “Judicial District”***

20 Before unification, many statutes referred to a “judicial district” for one reason  
21 or another. In general, such a statute was intended to refer to a “municipal court  
22 district” in a county.<sup>13</sup>

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7. *Revision of Codes*, *supra* note 2, at 59; see also 1996 Cal. Stat. res. ch. 36.

8. *Revision of Codes*, *supra* note 2, at 59 (citing Cal. Const. XVIII, § 4).

9. Former Cal. Const. art. VI, §§ 4, 5 (1997).

10. See former Cal. Const. art. VI, § 16(b) (1997); *Trial Court Unification: Constitutional Revision* (SCA 3), 24 Cal. L. Revision Comm’n Reports 1, 41 (1994).

11. See California Courts and Judges 32 (James Publishing, 1998 ed.); see also 1953 Cal. Stat. ch. 1130, § 1 (former Gov’t Code § 71040); 1967 Cal. Stat. ch. 1226, § 1 (former Gov’t Code § 71042).

12. Trial Court Unification Factsheet, *supra* note 6.

13. As the Commission previously concluded,

Statutes refer to “judicial districts” for various purposes. The references generally intend the “municipal court district” in a county.

*Revision of Codes*, *supra* note 2, at 70 (footnote omitted).

The Commission cited Elections Code Section 325 (since repealed) as an example of a statute in which the phrase “judicial district” was intended to refer to a municipal court district. *Id.* at 70 n.53. The Commission also pointed out that “[t]here appear to be only two instances in the codes where ‘judicial district’ might have been intended to mean ‘superior court district’ (see Food & Agric. Code § 31622; Ins. Code § 11542.2), and one where ‘judicial district’ means ‘court of appeal district’ (see Pub. Util. Code § 1756).” *Id.*

1 For the purposes of this recommendation and the statutes discussed herein, a  
2 reference to a “judicial district” means the pertinent former municipal court  
3 district.

4 ***General Approach to Statutes Referring to a “Judicial District”***

5 Upon a vote to unify, the municipal and superior courts in a county would  
6 combine their operations in a unified, countywide superior court,<sup>14</sup> effectively  
7 eliminating the function of judicial districts in municipal court administration and  
8 judicial elections. Thus, upon unification, “the former municipal court districts  
9 have little relevance for most purposes.”<sup>15</sup>

10 In its previous work determining how to revise the codes to reflect trial court  
11 unification, the Commission considered how to address the many pre-unification  
12 statutes that referred to a “judicial district.”<sup>16</sup> Amending each such statute would  
13 have been prohibitive under the applicable time constraints. Instead, the  
14 Commission proposed, and the Legislature enacted, Code of Civil Procedure  
15 Section 38, which gives general guidance on how to interpret a statutory reference  
16 to a “judicial district.”<sup>17</sup>

17 As a result of this provision, after trial court unification, a statutory reference to  
18 a “judicial district” usually means “the county.”<sup>18</sup> However, the Commission  
19 provided an exception from this general rule for statutes using the term “judicial  
20 district” to specify the location for the publication of legally-required notice.<sup>19</sup>

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14. See former Cal. Const. art. VI, § 5(e) (see 1996 Cal. Stat. res. ch. 36), approved by the voters June 2, 1998 (Proposition 220).

15. *Revision of Codes*, *supra* note 2, at 70.

16. See *id.* at 70-72.

17. Code of Civil Procedure Section 38, as recommended by the Commission and enacted by the Legislature, states:

38. Unless the provision or context otherwise requires, a reference in a statute to a judicial district means:

- (a) As it relates to a court of appeal, the court of appeal district.
- (b) As it relates to a superior court, the county.
- (c) As it relates to a municipal court, the municipal court district.
- (d) As it relates to a county in which there is no municipal court, the county.

The accompanying Comment explains:

Section 38 is intended for drafting convenience. See also Section 17 (“judicial district” includes city and county). Court of appeal districts and municipal court districts are constitutionally mandated. See Cal. Const. art. VI, §§ 3, 5. Superior court districts do not exist except in Los Angeles County. See Gov’t Code §§ 69640-69650.

By operation of this section, in a county in which the superior and municipal courts have unified, a statutory reference to a judicial district means the county rather than a former municipal court district. This general rule is subject to exceptions. See, e.g., Gov’t Code § 71042.5 (preservation of judicial districts for purpose of publication).

18. See Code Civ. Proc. § 38(d) (reproduced in note 17 *supra*).

19. *Revision of Codes*, *supra* note 2, at 72.

1 ***Special Rule for Publication of Legal Notice***

2 In its recommendation on trial court unification, the Commission concluded that  
3 special treatment was necessary to address the statutes that referred to a “judicial  
4 district” to specify the location in which certain legally-required notices must be  
5 published. To avoid modifying publication requirements, the Commission  
6 proposed to preserve the former judicial districts and to continue using district  
7 boundaries for publishing legal notice.<sup>20</sup>

8 This was accomplished by amending Government Code Section 71042.5, which  
9 operated when two judicial districts were consolidated, and preserved preexisting  
10 boundaries for the purpose of publication of legal notice within a judicial district.  
11 The amendment of Section 71042.5 extended this same principle to unification.<sup>21</sup>  
12 Thus, after unification of the municipal and superior courts in a county, the  
13 boundaries of former judicial districts would continue to be used as the location  
14 for publication of legal notice.

15 “[F]or the purposes of establishing boundaries under Section 71042.5,”  
16 Government Code Section 71042.6 requires each county recorder to maintain a  
17 map showing the boundaries of former judicial districts.

18 Although the Commission proposed to retain the former municipal court  
19 districts to serve as the location for the publication of legal notice, it recognized  
20 that this approach “may be unsatisfactory in the long-term ....”<sup>22</sup> Thus, the

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20. The Commission’s recommendation on trial court unification gives the following explanation of the approach:

**Publication in Former Municipal Court Districts**

The general rule that judicial districts are countywide in a county in which the courts have unified is subject to a significant exception for legal publication requirements. Under existing law, if the municipal courts in a county consolidate, the former municipal court districts are preserved for purposes of publication. The proposed law applies the same principle if the municipal courts in a county unify with the superior court.

*Revision of Codes, supra* note 2, at 72 (footnote omitted).

21. The Commission proposed and the Legislature enacted the following amendment to Government Code Section 71042.5.

71042.5. Notwithstanding any other provision of law, upon consolidation of judicial districts or unification of municipal and superior courts in a county, the territory embraced within the respective prior component judicial districts shall be separate judicial districts for the purpose of publication within a judicial district.

See *Revision of Codes, supra* note 2, at 349; 1998 Cal. Stat. ch. 931, § 263. The accompanying Comment explains:

Section 71042.5 is amended to accommodate unification of the municipal and superior courts in a county. Cal. Const. art. VI, § 5(e). This preserves the effect of statutes that specify publication by judicial district, rather than by county. See, e.g., Bus. & Prof. Code § 21707; Civ. Code §§ 2924f, 3440.1, 3440.5; Code Civ. Proc. §§ 701.540, 1208.5; Com. Code §§ 6105, 7210; Rev. & Tax. Code §§ 3381, 3702. *Cf.* Code Civ. Proc. § 38 (“judicial district” defined, subject to contrary statute).

In the intervening time, the judicial district references in two of the sections identified in this Comment have been removed. See Code Civ. Proc. § 1208.5; Com. Code § 7210.

22. *Revision of Codes, supra* note 2, at 86, n. 131.

1 Commission identified that matter as appropriate for future study.<sup>23</sup> The  
2 Legislature assigned that work, along with several other projects, as the  
3 Commission proposed.<sup>24</sup>

4 Since then, the Commission has completed work on all but one of the topics it  
5 identified for future study in its recommendation on revising the codes to reflect  
6 trial court unification.<sup>25</sup> This recommendation addresses the final, outstanding  
7 issue identified for future work by the Commission: “[p]ublication of legal notice  
8 in a county with a unified superior court.”<sup>26</sup>

### 9 **Scope of this Recommendation**

10 In preparing this recommendation, the Commission was mindful of the narrow  
11 scope of its original task, addressing statutory changes necessitated by trial court  
12 unification. Throughout its work on that topic, the Commission took great care to  
13 preserve existing statutory rights and procedures, while making the statutes  
14 workable in a unified court system.<sup>27</sup>

15 The Commission took a similarly restrained approach in developing this  
16 tentative recommendation, purposefully avoiding broad questions of policy related  
17 to legal notice. Specifically, the proposal does not address questions regarding the  
18 best medium for providing notice, the appropriate timing of notice, the required  
19 content for notice, or the remedies for inadequate notice.

20 The Commission recognizes that legal notice policy questions have been the  
21 subject of legislative attention in recent years.<sup>28</sup> In this recommendation, the  
22 Commission takes no position on those policy questions.

23 Rather, this recommendation focuses solely on determining what, if any,  
24 changes to the judicial district references in the notice publication statutes are

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23. See *id.* at 86.

24. Gov’t Code § 70219; see also 1998 Cal. Stat. ch. 931, § 257 (former Gov’t Code § 70219).

25. See *Trial Court Unification: Issues Identified for Future Study*, 30 Cal. L. Revision Comm’n Reports 507 (2000); see also *Authority to Appoint Receivers*, 30 Cal. L. Revision Comm’n Reports 291 (2000); 2001 Cal. Stat. ch. 44 (SB 562 (Morrow)) (implementing Commission recommendation on authority to appoint receivers); *Cases in Which Court Reporter Is Required*, 31 Cal. L. Revision Comm’n Reports 223 (2001); 2002 Cal. Stat. ch. 71 (SB 1371 (Morrow)) (implementing Commission recommendation on cases in which court reporter is required); *Stay of Mechanic’s Lien Enforcement Pending Arbitration*, 30 Cal. L. Revision Comm’n Reports 307 (2000); 2003 Cal. Stat. ch. 22 (SB 113 (Ackerman)) (implementing Commission recommendation on stay of mechanic’s lien enforcement pending arbitration); *Obsolete Reporting Requirements*, 33 Cal. L. Revision Comm’n Reports 267 (2003); 2004 Cal. Stat. ch. 193 (SB 111 (Knight)) (implementing Commission recommendation on obsolete reporting requirements).

26. *Revision of Codes*, *supra* note 2, at 86.

27. *Id.* at 60.

28. See, e.g., AB 642 (Rendon), as introduced February 20, 2013; SB 617 (Evans), as amended May 28, 2013; SB 1199 (Hancock), as introduced February 20, 2014.

1 necessary to ensure that the statutes continue to function effectively in a unified  
2 court system.

3 **Function of Judicial District References in Notice Publication Statutes**

4 As an initial matter, the Commission considered the function of the references to  
5 judicial districts in the notice publication statutes prior to trial court unification.

6 At that time, judicial districts provided a set of geographical boundaries that  
7 circumscribed an area for the publication of legal notice. Based on the  
8 constitutional requirements for municipal court districts, the geographical area of a  
9 judicial district necessarily was contained within a single county.<sup>29</sup> In general,  
10 each city was fully contained within a single judicial district.<sup>30</sup>

11 In order to publish notice in a judicial district in accordance with the statutory  
12 requirements, the notice had to be published in a “newspaper of general  
13 circulation” in the relevant district.<sup>31</sup> Generally, in order to qualify as a newspaper  
14 of general circulation in the judicial district, a newspaper had to meet certain  
15 criteria specified in Government Code Section 6008, including having “a  
16 substantial distribution to paid subscribers in the ... judicial district ....”<sup>32</sup>

17 Thus, the requirements for the publication of legal notice within a judicial  
18 district offered a means to target a notice to a less-than-countywide, local  
19 population and ensure a substantial distribution of the notice to the target  
20 population. In proposing this tentative recommendation, the Commission sought to  
21 respect that legislative preference for local publication.

22 **Notice Publication After Trial Court Unification**

23 The Commission has been attempting to determine whether the judicial district  
24 references in the notice publication statutes are continuing to achieve local notice  
25 as intended after trial court unification. Based on the research and information  
26 gathered thus far, there appear to be some significant problems.

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29. Former Cal. Const. art. VI, § 5(a) (see 1996 Cal. Stat. res. ch. 36). (“Each county shall be divided into municipal court districts as provided by statute...”).

30. *Id.* (“...[A] city may not be divided into more than one district.”); but see *id.* § 5(d) (“Notwithstanding subdivision (a), any city in San Diego County may be divided into more than one municipal court district if the Legislature determines that unusual geographic conditions warrant such division.”)

31. All of the statutes that provide for the publication of legal notice in a judicial district require that the notice be published in a “newspaper of general circulation.” See Bus. & Prof. Code § 21707 (notice requirement for self-storage facility lien sale); Civ. Code §§ 2924f (home foreclosures made under power of sale), 3440.1 (conditions for exemption from fraudulent transfer rules), 3440.5 (conditions for exemption of security agreements from fraudulent transfer rules); Code Civ. Proc. § 701.540 (notice of sale of interest in real property in enforcement of judgment); Com. Code § 6105 (notice requirement for bulk sales); Rev. & Tax. Code §§ 3381 (alternate means of notice of intent to sell property of delinquent taxpayers), 3702 (notice of intended sale of property of delinquent taxpayers).

32. Gov’t Code § 6008(b).

1 ***Confusing Terminology***

2 After trial court unification, the term “judicial district” is itself a potential source  
3 of confusion. In the absence of judicial districts actively maintained for municipal  
4 court purposes, a person required to publish notice in a judicial district must first  
5 determine what the judicial district reference means. Currently, it is not apparent  
6 that a reference to a “judicial district” in a statute requiring publication of legal  
7 notice is meant to refer to a former municipal court district, as per Government  
8 Code Section 71042.5. Consequently, it may be difficult for a person to correctly  
9 publish legal notice in accordance with the statutory requirements.

10 For instance, a layperson and even a trained legal professional could easily  
11 overlook Section 71042.5, which preserves the former municipal court districts for  
12 purposes of publication. Such a person could mistakenly conclude that, under  
13 Code of Civil Procedure Section 38, the reference to “judicial district” means “the  
14 county.”<sup>33</sup> Thus, in this situation, a person might erroneously publish notice in a  
15 newspaper with countywide circulation, as opposed to a newspaper circulating in  
16 the former municipal court district.

17 Given the possibility of confusion regarding the term “judicial district,” a  
18 statutory requirement that legal notice be published in a judicial district may not  
19 give sufficient guidance to persons who must comply with this obligation.

20 ***Difficulty of Ascertaining Notice Boundaries***

21 Under Government Code Section 71042.5, a “judicial district” reference in a  
22 statute governing publication of legal notice means either (1) a judicial district that  
23 existed prior to pre-unification consolidation of two or more judicial districts, or  
24 (2) a municipal court district that existed prior to trial court unification. Because  
25 trial court unification was completed in early 2001, the relevant judicial district  
26 boundaries have been frozen for at least thirteen years. If the judicial districts were  
27 consolidated prior to unification, the relevant boundaries may be much older than  
28 that.

29 In preparing this tentative recommendation, the Commission received  
30 stakeholder input suggesting that determining the relevant boundaries for judicial  
31 district publication poses practical difficulties.<sup>34</sup> Although Government Code  
32 Section 71042.6 requires that the county recorder maintain a map of the relevant  
33 judicial district boundaries for legal notice publication, these maps may not be  
34 easily accessible by the public.

35 For instance, one stakeholder sought judicial district maps in several counties  
36 and found that those maps were often difficult to access. In at least one case, no

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33. Subdivision (d) of Code of Civil Procedure Section 38 provides that, “[a]s it relates to a county in which there is no municipal court,” judicial district means “the county.”

34. See Commission Staff Memorandum 14-15 (March 28, 2014), p. 10, Exhibit pp. 1-3.

1 map was available.<sup>35</sup> In addition, when a map was available, it was generally  
2 difficult to read, impeding the ability to ascertain the exact boundaries.<sup>36</sup>

3 These practical difficulties in ascertaining judicial district boundaries place a  
4 non-trivial burden on parties required to publish notice in a judicial district.

5 ***Potentially Serious Consequences of Publishing Notice in the Wrong Location***

6 If notice is mistakenly published in the wrong location, the underlying action  
7 could be challenged by an interested party. Resolving a challenge to the adequacy  
8 of notice could require litigation and considerable public and private expense.

9 **Changes Recommended by the Commission**

10 In light of the difficulties in ascertaining the boundaries used for notice  
11 publication and the potentially serious consequences of an error, the Commission  
12 recommends a number of changes, as described below.<sup>37</sup>

13 ***Redesignate the Pertinent Districts as “Publication Districts”***

14 Following trial court unification, judicial districts are no longer directly used by  
15 the judiciary or the court system. Continuing to use “judicial district” terminology  
16 in statutes pertaining to legal notice publication could lead to confusion.  
17 Therefore, the Commission recommends redesignating the pertinent districts as  
18 “publication districts.”

19 Although the Commission recommends changing the name of the districts, the  
20 Commission does not suggest any changes to their boundaries. Preserving the  
21 existing boundaries permits the status quo to be maintained with regard to (1) the  
22 area in which notices must be published and (2) which newspapers are eligible to  
23 publish those notices.

24 ***Provide Publication District Boundary Information in a Central, Statewide Repository***

25 In order to facilitate compliance with the statutes governing the publication of  
26 legal notice, the Commission recommends that the publication district boundaries  
27 be consolidated in a central, statewide repository that is maintained on the Internet.  
28 This would improve accessibility and usability of the boundary information. In  
29 addition, providing the boundary information on an Internet website would be

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35. *Id.* at Exhibit pp. 1, 3.

36. *Id.* at Exhibit p. 1.

37. In addition to the changes discussed in the text, the Commission also recommends amending Government Code Section 26203, which refers to a judicial district census. After unification, judicial districts are no longer maintained for municipal court elections and administration. Thus, the power to seek a judicial district census is obsolete. The Commission recommends deleting the obsolete language pertaining to a judicial district census. See proposed amendment to Gov’t Code § 26203 & Comment *infra*.

1 more efficient both for the person needing to access the boundary information and  
2 for the government agency acting as the custodian of that information.

3 *Designate the Judicial Council as the Custodian of the Boundary Information*

4 In proposing a shift from county-by-county maintenance to a central repository,  
5 the Commission considered who should serve as the custodian for information  
6 about the publication district boundaries. The Commission recommends  
7 designating the Judicial Council to serve in that role.

8 To the extent that research to determine district boundaries is necessary, the  
9 Judicial Council appears well-suited to conduct such research and determine the  
10 publication district boundaries. As compared to other entities, the Judicial Council  
11 probably has the best access to historical information on the municipal court  
12 districts and their boundaries.

13 Maintaining information on the boundaries of publication districts also seems a  
14 suitable role for the Judicial Council. This boundary information is germane to the  
15 administration of justice generally because the boundaries govern the distribution  
16 of notices that are required by law and may ultimately be decisive in court  
17 proceedings.

18 **REQUEST FOR COMMENT**

19 The Commission seeks public comment on all of the proposed statutory changes  
20 included in this tentative recommendation. Input from knowledgeable persons is  
21 critical in the Commission's study process, and may cause the Commission to  
22 substantially revise its proposal. Comments supporting the proposed approach are  
23 just as important as comments suggesting changes to that approach or expressing  
24 other views. The Commission would especially appreciate comments on any issue  
25 it has flagged for attention through the use of a Note in the proposed legislation.



## Contents

BUSINESS AND PROFESSIONS CODE .....	13
Bus. & Prof. Code § 21707 (amended). Notice requirement for self-storage facility lien sale .....	13
CIVIL CODE .....	13
Civ. Code § 2924f (amended). Home foreclosure sale made under power of sale .....	13
Civ. Code § 3440.1 (amended). Exemption for debtor’s conveyance of personal property without delivery from fraudulent transfer rules .....	18
Civ. Code § 3440.5 (amended). Exemption of certain security agreements from fraudulent transfer rules .....	20
CODE OF CIVIL PROCEDURE .....	21
Code Civ. Proc. § 38 (amended). Judicial districts .....	21
Code Civ. Proc. § 701.540 (amended). Notice of sale of interest in real property .....	21
COMMERCIAL CODE .....	23
Com. Code § 6103 (amended). Applicability of provisions governing bulk sale .....	23
Com. Code § 6105 (amended). Notice requirement for bulk sale .....	25
Com. Code § 6106.2 (amended). Special rule for bulk sale of two million dollars or less and substantially all cash or obligation to pay cash .....	27
Com. Code § 6108 (amended). Bulk sale by auction .....	28
GOVERNMENT CODE .....	29
Gov’t Code § 6008 (amended). Criteria for establishing standing as newspaper of general circulation .....	29
Gov’t Code §§ 6080-6086 (added). Publication districts .....	30
Gov’t Code § 6080. Publication of notice in publication district .....	30
Gov’t Code § 6082. Replacement of judicial district with publication district for purposes of notice publication .....	30
Gov’t Code § 6084. Publication of boundary descriptions .....	31
Gov’t Code § 6086. Status of newspaper of general circulation in judicial district .....	31
Gov’t Code § 26203 (amended). Power of board of supervisors to order census .....	32
Gov’t Code §§ 71042.5-71043 (repealed). Preservation of judicial districts .....	32
REVENUE AND TAXATION CODE .....	33
Rev. & Tax. Code § 3381 (amended). Alternate means of notice of intent to sell property of delinquent taxpayer .....	33
Rev. & Tax. Code § 3702 (amended). Means of notice of intended sale of property of delinquent taxpayer .....	34
Rev. & Tax. Code § 3703 (amended). Alternate means of notice if property is lower in value than cost of publication .....	34



PROPOSED LEGISLATION

BUSINESS AND PROFESSIONS CODE

**Bus. & Prof. Code § 21707 (amended). Notice requirement for self-storage facility lien sale**

SEC. \_\_\_\_\_. Section 21707 of the Business and Professions Code is amended to read:

21707. (a) After the expiration of the time given in the notice of lien sale, pursuant to subdivision (b) of Section 21705, or following the failure of a claimant to pay rent or obtain a court order pursuant to Section 21709, an advertisement of the sale shall be published once a week for two weeks consecutively in a newspaper of general circulation published in the ~~judicial~~ publication district where the sale is to be held. The advertisement shall include a general description of the goods, the name of the person on whose account they are being stored, and the name and location of the storage facility. If there is no newspaper of general circulation published in the ~~judicial~~ publication district where the sale is to be held, the advertisement shall be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The sale shall be conducted in a commercially reasonable manner. After deducting the amount of the lien and costs of sale, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within one year of the date of sale. Thereafter, the owner shall pay any remaining excess proceeds to the treasury of the county in which the sale was held.

(b) For the purposes of this section, "publication district" means the district established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of Division 7 of Title 1 of the Government Code.

**Comment.** Section 21707 is amended to (1) replace "judicial district" with "publication district" and (2) define the term "publication district."

CIVIL CODE

**Civ. Code § 2924f (amended). Home foreclosure sale made under power of sale**

SEC. \_\_\_\_\_. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, "property" means real property or a leasehold estate therein, and "calendar week" means Monday through Saturday, inclusive.

(b)(1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to

1 subdivision (c) of Section 2924h, notice of the sale thereof shall be given by  
2 posting a written notice of the time of sale and of the street address and the  
3 specific place at the street address where the sale will be held, and describing the  
4 property to be sold, at least 20 days before the date of sale in one public place in  
5 the city where the property is to be sold, if the property is to be sold in a city, or, if  
6 not, then in one public place in the ~~judicial~~ publication district in which the  
7 property is to be sold, and publishing a copy once a week for three consecutive  
8 calendar weeks.

9 (2) The first publication to be at least 20 days before the date of sale, in a  
10 newspaper of general circulation published in the city in which the property or  
11 some part thereof is situated, if any part thereof is situated in a city, if not, then in  
12 a newspaper of general circulation published in the ~~judicial~~ publication district in  
13 which the property or some part thereof is situated, or in case no newspaper of  
14 general circulation is published in the city or ~~judicial~~ publication district, as the  
15 case may be, in a newspaper of general circulation published in the county in  
16 which the property or some part thereof is situated, or in case no newspaper of  
17 general circulation is published in the city or ~~judicial~~ publication district or county,  
18 as the case may be, in a newspaper of general circulation published in the county  
19 in this state that is contiguous to the county in which the property or some part  
20 thereof is situated and has, by comparison with all similarly contiguous counties,  
21 the highest population based upon total county population as determined by the  
22 most recent federal decennial census published by the Bureau of the Census.

23 (3) A copy of the notice of sale shall also be posted in a conspicuous place on  
24 the property to be sold at least 20 days before the date of sale, where possible and  
25 where not restricted for any reason. If the property is a single-family residence the  
26 posting shall be on a door of the residence, but, if not possible or restricted, then  
27 the notice shall be posted in a conspicuous place on the property; however, if  
28 access is denied because a common entrance to the property is restricted by a  
29 guard gate or similar impediment, the property may be posted at that guard gate or  
30 similar impediment to any development community.

31 (4) The notice of sale shall conform to the minimum requirements of Section  
32 6043 of the Government Code and be recorded with the county recorder of the  
33 county in which the property or some part thereof is situated at least 20 days prior  
34 to the date of sale.

35 (5) The notice of sale shall contain the name, street address in this state, which  
36 may reflect an agent of the trustee, and either a toll-free telephone number or  
37 telephone number in this state of the trustee, and the name of the original trustor,  
38 and also shall contain the statement required by paragraph (3) of subdivision (c).  
39 In addition to any other description of the property, the notice shall describe the  
40 property by giving its street address, if any, or other common designation, if any,  
41 and a county assessor's parcel number; but if the property has no street address or  
42 other common designation, the notice shall contain a legal description of the  
43 property, the name and address of the beneficiary at whose request the sale is to be

1 conducted, and a statement that directions may be obtained pursuant to a written  
2 request submitted to the beneficiary within 10 days from the first publication of  
3 the notice. Directions shall be deemed reasonably sufficient to locate the property  
4 if information as to the location of the property is given by reference to the  
5 direction and approximate distance from the nearest crossroads, frontage road, or  
6 access road. If a legal description or a county assessor's parcel number and either  
7 a street address or another common designation of the property is given, the  
8 validity of the notice and the validity of the sale shall not be affected by the fact  
9 that the street address, other common designation, name and address of the  
10 beneficiary, or the directions obtained therefrom are erroneous or that the street  
11 address, other common designation, name and address of the beneficiary, or  
12 directions obtained therefrom are omitted.

13 (6) (A) The term "newspaper of general circulation," as used in this section, has  
14 the same meaning as defined in Article 1 (commencing with Section 6000) of  
15 Chapter 1 of Division 7 of Title 1 of the Government Code.

16 (B) The term "publication district," as used in this section, means the district  
17 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of  
18 Division 7 of Title 1 of the Government Code.

19 (7) The notice of sale shall contain a statement of the total amount of the unpaid  
20 balance of the obligation secured by the property to be sold and reasonably  
21 estimated costs, expenses, advances at the time of the initial publication of the  
22 notice of sale, and, if republished pursuant to a cancellation of a cash equivalent  
23 pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided,  
24 that the trustee shall incur no liability for any good faith error in stating the proper  
25 amount, including any amount provided in good faith by or on behalf of the  
26 beneficiary. An inaccurate statement of this amount shall not affect the validity of  
27 any sale to a bona fide purchaser for value, nor shall the failure to post the notice  
28 of sale on a door as provided by this subdivision affect the validity of any sale to a  
29 bona fide purchaser for value.

30 (8)(A) On and after April 1, 2012, if the deed of trust or mortgage containing a  
31 power of sale is secured by real property containing from one to four single-family  
32 residences, the notice of sale shall contain substantially the following language, in  
33 addition to the language required pursuant to paragraphs (1) to (7), inclusive:  
34

35 NOTICE TO POTENTIAL BIDDERS: If you are considering bidding on this  
36 property lien, you should understand that there are risks involved in bidding at a  
37 trustee auction. You will be bidding on a lien, not on the property itself. Placing  
38 the highest bid at a trustee auction does not automatically entitle you to free and  
39 clear ownership of the property. You should also be aware that the lien being  
40 auctioned off may be a junior lien. If you are the highest bidder at the auction, you  
41 are or may be responsible for paying off all liens senior to the lien being auctioned  
42 off, before you can receive clear title to the property. You are encouraged to  
43 investigate the existence, priority, and size of outstanding liens that may exist on

1 this property by contacting the county recorder's office or a title insurance  
2 company, either of which may charge you a fee for this information. If you consult  
3 either of these resources, you should be aware that the same lender may hold more  
4 than one mortgage or deed of trust on the property.

5  
6 NOTICE TO PROPERTY OWNER: The sale date shown on this notice of sale  
7 may be postponed one or more times by the mortgagee, beneficiary, trustee, or a  
8 court, pursuant to Section 2924g of the California Civil Code. The law requires  
9 that information about trustee sale postponements be made available to you and to  
10 the public, as a courtesy to those not present at the sale. If you wish to learn  
11 whether your sale date has been postponed, and, if applicable, the rescheduled  
12 time and date for the sale of this property, you may call [telephone number for  
13 information regarding the trustee's sale] or visit this Internet Web site [Internet  
14 Web site address for information regarding the sale of this property], using the file  
15 number assigned to this case [case file number]. Information about postponements  
16 that are very short in duration or that occur close in time to the scheduled sale may  
17 not immediately be reflected in the telephone information or on the Internet Web  
18 site. The best way to verify postponement information is to attend the scheduled  
19 sale.

20  
21 (B) A mortgagee, beneficiary, trustee, or authorized agent shall make a good  
22 faith effort to provide up-to-date information regarding sale dates and  
23 postponements to persons who wish this information. This information shall be  
24 made available free of charge. It may be made available via an Internet Web site, a  
25 telephone recording that is accessible 24 hours a day, seven days a week, or  
26 through any other means that allows 24 hours a day, seven days a week, no-cost  
27 access to updated information. A disruption of any of these methods of providing  
28 sale date and postponement information to allow for reasonable maintenance or  
29 due to a service outage shall not be deemed to be a violation of the good faith  
30 standard.

31 (C) Except as provided in subparagraph (B), nothing in the wording of the  
32 notices required by subparagraph (A) is intended to modify or create any  
33 substantive rights or obligations for any person providing, or specified in, either of  
34 the required notices. Failure to comply with subparagraph (A) or (B) shall not  
35 invalidate any sale that would otherwise be valid under Section 2924f.

36 (D) Information provided pursuant to subparagraph (A) does not constitute the  
37 public declaration required by subdivision (d) of Section 2924g.

38 (9) If the sale of the property is to be a unified sale as provided in subparagraph  
39 (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code,  
40 the notice of sale shall also contain a description of the personal property or  
41 fixtures to be sold. In the case where it is contemplated that all of the personal  
42 property or fixtures are to be sold, the description in the notice of the personal  
43 property or fixtures shall be sufficient if it is the same as the description of the

1 personal property or fixtures contained in the agreement creating the security  
2 interest in or encumbrance on the personal property or fixtures or the filed  
3 financing statement relating to the personal property or fixtures. In all other cases,  
4 the description in the notice shall be sufficient if it would be a sufficient  
5 description of the personal property or fixtures under Section 9108 of the  
6 Commercial Code. Inclusion of a reference to or a description of personal property  
7 or fixtures in a notice of sale hereunder shall not constitute an election by the  
8 secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph  
9 (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate  
10 the secured party to conduct a unified sale pursuant to subparagraph (B) of  
11 paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in  
12 no way shall render defective or noncomplying either that notice or a sale pursuant  
13 to that notice by reason of the fact that the sale includes none or less than all of the  
14 personal property or fixtures referred to or described in the notice. This paragraph  
15 shall not otherwise affect the obligations or duties of a secured party under the  
16 Commercial Code.

17 (c)(1) This subdivision applies only to deeds of trust or mortgages which contain  
18 a power of sale and which are secured by real property containing a single-family,  
19 owner-occupied residence, where the obligation secured by the deed of trust or  
20 mortgage is contained in a contract for goods or services subject to the provisions  
21 of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4  
22 of Division 3).

23 (2) Except as otherwise expressly set forth in this subdivision, all other  
24 provisions of law relating to the exercise of a power of sale shall govern the  
25 exercise of a power of sale contained in a deed of trust or mortgage described in  
26 paragraph (1).

27 (3) If any default of the obligation secured by a deed of trust or mortgage  
28 described in paragraph (1) has not been cured within 30 days after the recordation  
29 of the notice of default, the trustee or mortgagee shall mail to the trustor or  
30 mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A
_____,
(Deed of trust or mortgage)
DATED _____. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

1 (4) All sales of real property pursuant to a power of sale contained in any deed  
2 of trust or mortgage described in paragraph (1) shall be held in the county where  
3 the residence is located and shall be made to the person making the highest offer.  
4 The trustee may receive offers during the 10-day period immediately prior to the  
5 date of sale and if any offer is accepted in writing by both the trustor or mortgagor  
6 and the beneficiary or mortgagee prior to the time set for sale, the sale shall be  
7 postponed to a date certain and prior to which the property may be conveyed by  
8 the trustor to the person making the offer according to its terms. The offer is  
9 revocable until accepted. The performance of the offer, following acceptance,  
10 according to its terms, by a conveyance of the property to the offeror, shall operate  
11 to terminate any further proceeding under the notice of sale and it shall be deemed  
12 revoked.

13 (5) In addition to the trustee fee pursuant to Section 2924c, the trustee or  
14 mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall  
15 be entitled to charge an additional fee of fifty dollars (\$50).

16 (6) This subdivision applies only to property on which notices of default were  
17 filed on or after the effective date of this subdivision.

18 (d) With respect to residential real property containing no more than four  
19 dwelling units, a separate document containing a summary of the notice of sale  
20 information in English and the languages described in Section 1632 shall be  
21 attached to the notice of sale provided to the mortgagor or trustor pursuant to  
22 Section 2923.3.

23 **Comment.** Section 2924f is amended to (1) replace “judicial district” with “publication  
24 district” and (2) define the term “publication district.”

25 **Civ. Code § 3440.1 (amended). Exemption for debtor’s conveyance of personal property**  
26 **without delivery from fraudulent transfer rules**

27 SEC. \_\_\_\_ . Section 3440.1 of the Civil Code is amended to read:

28 3440.1. This chapter does not apply to any of the following:

29 (a) Things in action.

30 (b) Ships or cargoes if either are at sea or in a foreign port.

31 (c) The sale of accounts, chattel paper, payment intangibles, or promissory notes  
32 governed by the Uniform Commercial Code, security interests, and contracts of  
33 bottomry or respondentia.

34 (d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers  
35 or owners of the wines or brandies, or other persons having possession, care, and  
36 control of the wines or brandies, and the pipes, casks, and tanks in which the wines  
37 or brandies are contained, if the transfers are made in writing and executed and  
38 acknowledged, and if the transfers are recorded in the book of official records in  
39 the office of the county recorder of the county in which the wines, brandies, pipes,  
40 casks, and tanks are situated.

41 (e) A transfer or assignment made for the benefit of creditors generally or by any  
42 assignee acting under an assignment for the benefit of creditors generally.

1 (f) Property exempt from enforcement of a money judgment.

2 (g) Standing timber.

3 (h) Subject to the limitations in Section 3440.3, a transfer of personal property if  
4 all of the following conditions are satisfied:

5 (1) Prior to the date of the intended transfer, the transferor or the transferee files  
6 a financing statement, with respect to the property transferred, authorized in an  
7 authenticated record by the transferor. The financing statement shall be filed in the  
8 office of the Secretary of State in accordance with Chapter 5 (commencing with  
9 Section 9501) of Division 9 of the Commercial Code, but may use the terms  
10 “transferor” in lieu of “debtor” and “transferee” in lieu of “secured party.” The  
11 provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the  
12 Commercial Code shall apply as appropriate to the financing statement.

13 (2) The transferor or the transferee publishes a notice of the intended transfer  
14 one time in a newspaper of general circulation published in the ~~judicial~~ publication  
15 district in which the personal property is located, if there is one, and if there is  
16 none in the ~~judicial~~ publication district, then in a newspaper of general circulation  
17 in the county embracing the ~~judicial~~ publication district. The publication shall be  
18 completed not less than 10 days before the date the transfer occurs. The notice  
19 shall contain the name and address of the transferor and transferee and a general  
20 statement of the character of the personal property intended to be transferred, and  
21 shall indicate the place where the personal property is located and a date on or  
22 after which the transfer is to be made.

23 (i) Personal property not located within this state at the time of the transfer or  
24 attachment of the lien if the provisions of this subdivision are not used for the  
25 purpose of evading this chapter.

26 (j) A transfer of property that (1) is subject to a statute or treaty of the United  
27 States or a statute of this state that provides for the registration of transfers of title  
28 or issuance of certificates of title and (2) is so far perfected under that statute or  
29 treaty that a bona fide purchaser cannot acquire an interest in the property  
30 transferred that is superior to the interest of the transferee.

31 (k) A transfer of personal property in connection with a transaction in which the  
32 property is immediately thereafter leased by the transferor from the transferee  
33 provided the transferee purchased the property for value and in good faith  
34 (subdivision (c) of Section 10308 of the Commercial Code).

35 (l) Transition property, as defined in Section 840 of the Public Utilities Code, or  
36 recovery property, as defined in Section 848 of the Public Utilities Code.

37 (m) A transfer of property by any governmental entity.

38 (n) For the purposes of this section, “publication district” means the district  
39 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of  
40 Division 7 of Title 1 of the Government Code.

41 **Comment.** Section 3440.1 is amended to (1) replace “judicial district” with “publication  
42 district” and (2) define the term “publication district.”

1 **Civ. Code § 3440.5 (amended). Exemption of certain security agreements from fraudulent**  
2 **transfer rules**

3 SEC. \_\_\_\_ . Section 3440.5 of the Civil Code is amended to read:

4 3440.5 (a) This chapter does not affect the rights of a secured party who, for  
5 value and in good faith, acquires a security interest in the transferred personal  
6 property from the transferee, or from the transferee’s successor in interest, if the  
7 transferor is no longer in possession of the personal property at the time the  
8 security interest attaches.

9 (b) Additionally, except as provided in Section 3440.3, this chapter does not  
10 affect the rights of a secured party who acquires a security interest from the  
11 transferee, or from the transferee’s successor in interest, in the personal property,  
12 if all of the following conditions are satisfied:

13 (1) On or before the date the security agreement is executed, the intended debtor  
14 or secured party files a financing statement with respect to the property  
15 transferred, signed by the intended debtor. The financing statement shall be filed  
16 in the office of the Secretary of State in accordance with Chapter 5 (commencing  
17 with Section 9501) of Division 9 of the Commercial Code, but shall use the terms  
18 “transferor” in lieu of “debtor,” “transferee” in lieu of “secured party,” and  
19 “secured party” in lieu of “assignee of secured party.” The provisions of Chapter 5  
20 (commencing with Section 9501) of Division 9 of the Commercial Code shall  
21 apply as appropriate to ~~such a~~ the financing statement. For the purpose of  
22 indexing, and in any certification of search, the Secretary of State may refer to any  
23 financing statement filed pursuant to this paragraph as a financing statement under  
24 the Commercial Code and may describe the transferor as a debtor and the  
25 transferee as a secured party.

26 ~~Compliance with this paragraph shall, however, not perfect the security interest~~  
27 ~~of the secured party. Perfection of such a security interest shall be governed by~~  
28 ~~Division 9 (commencing with Section 9101) of the Commercial Code.~~

29 (2) The intended debtor or secured party publishes a notice of the transfer one  
30 time in a newspaper of general circulation published in the ~~judicial~~ publication  
31 district in which the personal property is located, if there is one, and if there is  
32 none in the ~~judicial~~ publication district, then in a newspaper of general circulation  
33 in the county embracing the ~~judicial~~ publication district. The publication shall be  
34 completed not less than 10 days before the date of execution by the intended  
35 debtor of the intended security agreement. The notice shall contain the names and  
36 addresses of the transferor and transferee and of the intended debtor and secured  
37 party, a general statement of the character of the personal property transferred and  
38 intended to be subject to the security interest, the location of the personal property,  
39 and the date on or after which the security agreement is to be executed by the  
40 intended debtor.

41 (c) Compliance with paragraph (1) of subdivision (b) shall not perfect the  
42 security interest of the secured party. Perfection of that security interest shall be

1 governed by Division 9 (commencing with Section 9101) of the Commercial  
2 Code.

3 (d) For the purposes of this section, “publication district” means the district  
4 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of  
5 Division 7 of Title 1 of the Government Code.

6 **Comment.** Section 3440.5 is amended to (1) replace “judicial district” with “publication  
7 district” and (2) define the term “publication district.”

8 The section is also amended to label, relocate, and make a stylistic revision in an unlabeled  
9 paragraph. This is not a substantive change.

## 10 CODE OF CIVIL PROCEDURE

### 11 **Code Civ. Proc. § 38 (amended). Judicial districts**

12 SEC. \_\_\_\_ . Section 38 of the Code of Civil Procedure is amended to read:

13 38. Unless the provision or context otherwise requires, a any reference in a  
14 statute to a judicial district means:

15 (a) As it relates to a court of appeal, the court of appeal district.

16 (b) As it relates to a superior court, the county.

17 (c) As it relates to a municipal court, the municipal court district.

18 (d) As it relates to a county in which there is no municipal court, the county.

19 (e) As it relates to the location for publishing legal notice, the publication district  
20 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of  
21 Division 7 of Title 1 of the Government Code.

22 **Comment.** Section 38 is amended to reflect the replacement of judicial districts with  
23 publication districts for notice publication purposes. See Gov’t Code § 6080(c); see generally  
24 Gov’t Code §§ 6080-6086 (publication districts) & Comments.

25 In addition, Section 38 is amended to make a technical change.

### 26 **Code Civ. Proc. § 701.540 (amended). Notice of sale of interest in real property**

27 SEC. \_\_\_\_ . Section 701.540 of the Code of Civil Procedure is amended to read:

28 701.540. (a) Notice of sale of an interest in real property shall be in writing,  
29 shall state the date, time, and place of sale, shall describe the interest to be sold,  
30 and shall give a legal description of the real property and its street address or other  
31 common designation, if any. If the real property has no street address or other  
32 common designation, the notice of sale shall include a statement that directions to  
33 its location may be obtained from the levying officer upon oral or written request  
34 or, in the discretion of the levying officer, the notice of sale may contain directions  
35 to its location. Directions are sufficient if information as to the location of the real  
36 property is given by reference to the direction and approximate distance from the  
37 nearest crossroads, frontage road, or access road. If an accurate legal description  
38 of the real property is given, the validity of the notice and sale is not affected by  
39 the fact that the street address or other common designation, or directions to its  
40 location, are erroneous or omitted.

1 (b) Not less than 20 days before the date of sale, notice of sale of an interest in  
2 real property shall be served, mailed, and posted by the levying officer as provided  
3 in subdivisions (c), (d), (e), and (f).

4 (c) Notice of sale shall be served on the judgment debtor. Service shall be made  
5 personally or by mail.

6 (d) Notice of sale shall be posted in the following places:

7 (1) One public place in the city in which the interest in the real property is to be  
8 sold if it is to be sold in a city or, if not to be sold in a city, one public place in the  
9 county in which the interest in the real property is to be sold.

10 (2) A conspicuous place on the real property.

11 (e) At the time notice is posted pursuant to paragraph (2) of subdivision (d),  
12 notice of sale shall be served or service shall be attempted on one occupant of the  
13 real property. Service on the occupant shall be made by leaving the notice with the  
14 occupant personally or, in the occupant's absence, with any person of suitable age  
15 and discretion found upon the real property at the time service is attempted who is  
16 either an employee or agent of the occupant or a member of the occupant's  
17 household. If the levying officer is unable to serve ~~such~~ an occupant as specified at  
18 the time service is attempted, the levying officer is not required to make any  
19 further attempts to serve an occupant.

20 (f) If the property described in the notice of sale consists of more than one  
21 distinct lot, parcel, or governmental subdivision and any of the lots, parcels, or  
22 governmental subdivisions lies with relation to any of the others so as to form one  
23 or more continuous, unbroken tracts, only one service pursuant to subdivision (e)  
24 and posting pursuant to paragraph (2) of subdivision (d) need be made as to each  
25 continuous, unbroken tract.

26 (g) Notice of sale shall be published pursuant to Section 6063 of the  
27 Government Code, with the first publication at least 20 days prior to the time of  
28 sale, in a newspaper of general circulation published in the city in which the real  
29 property or a part thereof is situated if any part thereof is situated in a city or, if  
30 not, in a newspaper of general circulation published in the ~~judicial~~ publication  
31 district in which the real property or a part thereof is situated. If no newspaper of  
32 general circulation is published in the city or ~~judicial~~ publication district, notice of  
33 sale shall be published in a newspaper of general circulation in the county in  
34 which the real property or a part thereof is situated.

35 (h) Not earlier than 30 days after the date of levy, the judgment creditor shall  
36 determine the names of all persons having liens on the real property on the date of  
37 levy that are of record in the office of the county recorder and shall instruct the  
38 levying officer to mail notice of sale to each ~~such person~~ lienholder at the address  
39 used by the county recorder for the return of the instrument creating the ~~person's~~  
40 lien after recording. The levying officer shall mail notice to each ~~such person~~  
41 lienholder, at the address given in the instructions, not less than 20 days before the  
42 date of sale.

1 (i) For the purposes of this section, “publication district” means the district  
2 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of  
3 Division 7 of Title 1 of the Government Code.

4 **Comment.** Section 701.540 is amended to (1) replace “judicial district” with “publication  
5 district” and (2) define the term “publication district.”

6 This section is also amended to make technical changes.

## 7 COMMERCIAL CODE

### 8 **Com. Code § 6103 (amended). Applicability of provisions governing bulk sale**

9 SEC. \_\_\_\_ . Section 6103 of the Commercial Code is amended to read:

10 6103. (a) Except as otherwise provided in subdivision (c), this division applies  
11 to a bulk sale if both of the following are satisfied:

12 (1) The seller’s principal business is the sale of inventory from stock, including  
13 those who manufacture what they sell, or that of a restaurant owner.

14 (2) On the date of the bulk-sale agreement the seller is located in this state or, if  
15 the seller is located in a jurisdiction that is not a part of the United States, the  
16 seller’s major executive office in the United States is in this state.

17 (b) A seller is deemed to be located at its place of business. If a seller has more  
18 than one place of business, the seller is deemed located at its chief executive  
19 office.

20 (c) This division does not apply to any of the following:

21 (1) A transfer made to secure payment or performance of an obligation.

22 (2) A transfer of collateral to a secured party pursuant to Section 9609.

23 (3) A disposition of collateral pursuant to Section 9610.

24 (4) Retention of collateral pursuant to Section 9620.

25 (5) A sale of an asset encumbered by a security interest or lien if (i) all the  
26 proceeds of the sale are applied in partial or total satisfaction of the debt secured  
27 by the security interest or lien or (ii) the security interest or lien is enforceable  
28 against the asset after it has been sold to the buyer and the net contract price is  
29 zero.

30 (6) A general assignment for the benefit of creditors or to a subsequent transfer  
31 by the assignee.

32 (7) A sale by an executor, administrator, receiver, trustee in bankruptcy, debtor  
33 in possession, or any public officer under judicial process.

34 (8) A sale made in the course of judicial or administrative proceedings for the  
35 dissolution or reorganization of an organization.

36 (9) A sale to a buyer whose principal place of business is in the United States  
37 and who satisfies each of the following:

38 (i) Not earlier than 21 days before the date of the bulk sale, (A) obtains from the  
39 seller a verified and dated list of claimants of whom the seller has notice three  
40 days before the seller sends or delivers the list to the buyer or (B) conducts a  
41 reasonable inquiry to discover the claimants.

1 (ii) Assumes in full the debts owed to claimants of whom the buyer has  
2 knowledge on the date the buyer receives the list of claimants from the seller or on  
3 the date the buyer completes the reasonable inquiry, as the case may be.

4 (iii) Is not insolvent after the assumption.

5 (iv) Records and publishes notice of the assumption not later than 30 days after  
6 the date of the bulk sale in the manner provided in Section 6105.

7 (10) A sale to a buyer whose principal place of business is in the United States  
8 and who satisfies each of the following:

9 (i) Assumes in full the debts that were incurred in the seller's business before the  
10 date of the bulk sale.

11 (ii) Is not insolvent after the assumption.

12 (iii) Records and publishes notice of the assumption not later than 30 days after  
13 the date of the bulk sale in the manner provided by Section 6105.

14 (11) A sale to a new organization that is organized to take over and continue the  
15 business of the seller and that has its principal place of business in the United  
16 States if each of the following conditions are satisfied:

17 (i) The buyer assumes in full the debts that were incurred in the seller's business  
18 before the date of the bulk sale.

19 (ii) The seller receives nothing from the sale except an interest in the new  
20 organization that is subordinate to the claims against the organization arising from  
21 the assumption.

22 (iii) The buyer records and publishes notice of the assumption not later than 30  
23 days after the date of the bulk sale in the manner provided in Section 6105.

24 (12) A sale of assets having either of the following:

25 (i) A value, net of liens and security interests, of less than ten thousand dollars  
26 (\$10,000). If a debt is secured by assets and other property of the seller, the net  
27 value of the assets is determined by subtracting from their value an amount equal  
28 to the product of the debt multiplied by a fraction, the numerator of which is the  
29 value of the assets on the date of the bulk sale and the denominator of which is the  
30 value of all property securing the debt on the date of the bulk sale.

31 (ii) A value of more than five million dollars (\$5,000,000) on the date of the  
32 bulk-sale agreement.

33 (13) A sale required by, and made pursuant to, statute.

34 (14) A transfer of personal property, if the personal property is leased back to  
35 the transferor immediately following the transfer and either there has been  
36 compliance with subdivision (h) of Section 3440.1 of the Civil Code or the  
37 transfer is exempt under subdivision (k) of Section 3440.1 of the Civil Code.

38 (15) A transfer which is subject to and complies with Article 5 (commencing  
39 with Section 24070) of Chapter 6 of Division 9 of the Business and Professions  
40 Code, if the transferee records and publishes notice of the transfer at least 12  
41 business days before the transfer is to be consummated in the manner provided in  
42 Section 6105 and the notice contains the information set forth in paragraphs (1) to  
43 (4) inclusive, of subdivision ~~(a)~~ (b) of Section 6105.

1 (16) A transfer of goods in a warehouse where a warehouse receipt has been  
2 issued therefor by a warehouseman (Section 7102) and a copy of the receipt is  
3 kept at the principal place of business of the warehouseman and at the warehouse  
4 in which the goods are stored.

5 (d) The notice under subparagraph (iv) of paragraph (9) of subdivision (c) shall  
6 state each of the following:

7 (1) That a sale that may constitute a bulk sale has been or will be made.

8 (2) The date or prospective date of the bulk sale.

9 (3) The individual, partnership, or corporate names and the addresses of the  
10 seller and buyer.

11 (4) The address to which inquiries about the sale may be made, if different from  
12 the seller's address.

13 (5) That the buyer has assumed or will assume in full the debts owed to  
14 claimants of whom the buyer has knowledge on the date the buyer receives the list  
15 of claimants from the seller or completes a reasonable inquiry to discover the  
16 claimants.

17 (e) The notice under subparagraph (iii) of paragraph (10) of subdivision (c) and  
18 subparagraph (iii) of paragraph (11) of subdivision (c) shall state each of the  
19 following:

20 (1) That a sale that may constitute a bulk sale has been or will be made.

21 (2) The date or prospective date of the bulk sale.

22 (3) The individual, partnership, or corporate names and the addresses of the  
23 seller and buyer.

24 (4) The address to which inquiries about the sale may be made, if different from  
25 the seller's address.

26 (5) That the buyer has assumed or will assume the debts that were incurred in  
27 the seller's business before the date of the bulk sale.

28 (f) For purposes of paragraph (12) of subdivision (c), the value of assets is  
29 presumed to be equal to the price the buyer agrees to pay for the assets. However,  
30 in a sale by auction or a sale conducted by a liquidator on the seller's behalf, the  
31 value of assets is presumed to be the amount the auctioneer or liquidator  
32 reasonably estimates the assets will bring at auction or upon liquidation.

33 **Comment.** Paragraph (c)(15) of Section 6103 is amended to update a cross-reference.

34 **Com. Code § 6105 (amended). Notice requirement for bulk sale**

35 SEC. \_\_\_\_\_. Section 6105 of the Commercial Code is amended to read:

36 6105. (a) In order to comply with subdivision (b) of Section ~~6104~~ each of the  
37 ~~following shall be satisfied:~~ 6104, each requirement of subdivision (b) and each  
38 requirement of subdivision (c) of this section shall be satisfied.

39 ~~(a)~~ (b) The notice shall comply with each of the following:

40 (1) State that a bulk sale is about to be made.

1 (2) State the name and business address of the seller together with any other  
2 business name and address listed by the seller (subdivision (a) of Section 6104)  
3 and the name and business address of the buyer.

4 (3) State the location and general description of the assets.

5 (4) State the place and the anticipated date of the bulk sale.

6 (5) State whether or not the bulk sale is subject to Section 6106.2 and, if so  
7 subject, the matters required by subdivision (f) of Section 6106.2.

8 ~~(b)~~ (c) At least 12 business days before the date of the bulk sale, the notice shall  
9 be:

10 (1) Recorded in the office of the county recorder in the county or counties in this  
11 state in which the tangible assets are located and, if different, in the county in  
12 which the seller is located (paragraph (2) of subdivision (a) of Section 6103).

13 (2) (A) Published at least once in a newspaper of general circulation published  
14 in the ~~judicial~~ publication district in this state in which the tangible assets are  
15 located and in the ~~judicial~~ publication district, if different, in which the seller is  
16 located (paragraph (2) of subdivision (a) of Section 6103), if in either case there is  
17 one, and if there is none, then in a newspaper of general circulation in the county  
18 in which the ~~judicial~~ publication district is located.

19 ~~(3) Delivered or sent by registered or certified mail to the county tax collector in~~  
20 ~~the county or counties in this state in which the tangible assets are located. If~~  
21 ~~delivered during the period from January 1 to May 7, inclusive, the notice shall be~~  
22 ~~accompanied by a completed business property statement with respect to property~~  
23 ~~involved in the bulk sale pursuant to Section 441 of the Revenue and Taxation~~  
24 ~~Code.~~

25 (B) If the tangible assets are located in more than one ~~judicial~~ publication  
26 district in this state, the publication required in paragraph (2) shall be in a  
27 newspaper of general circulation published in the ~~judicial~~ publication district in  
28 this state in which a greater portion of the tangible assets are located, on the date  
29 the notice is published, than in any other ~~judicial~~ publication district in this state  
30 and, if different, in the ~~judicial~~ publication district in which the seller is located  
31 (paragraph (2) of subdivision (a) of Section 6103). ~~As used in this subdivision,~~  
32 ~~“business day” means any day other than a Saturday, Sunday, or day observed as a~~  
33 ~~holiday by the state government.~~

34 ~~(3) Delivered or sent by registered or certified mail to the county tax collector in~~  
35 ~~the county or counties in this state in which the tangible assets are located. If~~  
36 ~~delivered during the period from January 1 to May 7, inclusive, the notice shall be~~  
37 ~~accompanied by a completed business property statement with respect to property~~  
38 ~~involved in the bulk sale pursuant to Section 441 of the Revenue and Taxation~~  
39 ~~Code.~~

40 (d)(1) As used in this section, “publication district” means the district  
41 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of  
42 Division 7 of Title 1 of the Government Code.

1       (2) As used in this section, “business day” means any day other than a Saturday,  
2       Sunday, or day observed as a holiday by the state government.

3       **Comment.** Section 6105 is amended to (1) replace “judicial district” with “publication district”  
4       and (2) define the term “publication district.”

5       **Com. Code § 6106.2 (amended). Special rule for bulk sale of two million dollars or less and**  
6       **substantially all cash or obligation to pay cash**

7       SEC. \_\_\_\_\_. Section 6106.2 of the Commercial Code is amended to read:

8       6106.2. (a) This section applies only to a bulk sale where the consideration is  
9       two million dollars (\$2,000,000) or less and is substantially all cash or an  
10       obligation of the buyer to pay cash in the future to the seller or a combination  
11       thereof.

12       (b) Upon every bulk sale subject to this section except one made by sale at  
13       auction or a sale or series of sales conducted by a liquidator on the seller’s behalf,  
14       it is the duty of the buyer or, if the transaction is handled through an escrow, the  
15       escrow agent to apply the cash consideration in accordance with this section so far  
16       as necessary to pay those debts of the seller for which claims are due and payable  
17       on or before the date of the bulk sale and are received in writing on or prior to the  
18       date specified as the last date to file claims with the person designated in the  
19       notice to receive claims. This duty of the buyer or escrow agent runs to each  
20       claimant timely filing the claim.

21       (c) If the seller disputes whether a claim is due and payable on the date of the  
22       bulk sale or the amount of any claim, the buyer or escrow agent shall withhold  
23       from distribution an amount equal to (1) 125 percent of the first seven thousand  
24       five hundred dollars (\$7,500) of the claim, and (2) an amount equal to that portion  
25       of the claim in excess of the first seven thousand five hundred dollars (\$7,500), or  
26       the pro rata amount under subdivision (b) of Section 6106.4, if applicable, and  
27       shall send a written notice to the claimant filing the claim on or before two  
28       business days after the distribution that the amount will be paid to the seller, or to  
29       the other claimants in accordance with subdivision (b) of Section 6106.4, as the  
30       case may be, unless attached within 25 days from the mailing of the notice. Any  
31       portion of the amount withheld which is not attached by the claimant within that  
32       time shall be paid by the buyer or escrow agent to the seller, or to the other  
33       claimants in accordance with subdivision (b) of Section 6106.4 if they have not  
34       been paid in full. An attachment of any amount so withheld shall be limited in its  
35       effect to the amount withheld for the attaching claimant and shall give the  
36       attaching claimant no greater priority or rights with respect to its claim than the  
37       claimant would have had if the claim had not been disputed. For purposes of this  
38       subdivision, a claimant may obtain the issuance of an attachment for a claim  
39       which is less than five hundred dollars (\$500) and which otherwise meets the  
40       requirements of Section 483.010 of the Code of Civil Procedure or which is a  
41       secured claim or lien of the type described in Section 483.010 of the Code of Civil  
42       Procedure. The remedy in this subdivision shall be in addition to any other

1 remedies the claimant may have, including any right to attach the property  
2 intended to be transferred or any other property.

3 (d) If the cash consideration payable is not sufficient to pay all of the claims  
4 received in full, where no escrow has been established pursuant to Section 6106.4,  
5 the buyer shall follow the procedures specified in subdivisions (a) to (c), inclusive,  
6 of Section 6106.4, and the immunity established by paragraph (3) of subdivision  
7 (a) of that section shall apply to the buyer.

8 (e) The buyer or escrow agent shall, within 45 days after the buyer takes legal  
9 title to any of the goods, either pay to the extent of the cash consideration the  
10 claims filed and not disputed, or the applicable portion thereof to the extent of the  
11 cash consideration under subdivision (b) of Section 6106.4, or institute an action  
12 in interpleader pursuant to subdivision (b) of Section 386 of the Code of Civil  
13 Procedure and deposit the consideration with the clerk of the court pursuant to  
14 subdivision (c) of that section. The action shall be brought in the appropriate court  
15 in the county where the seller had its principal place of business in this state.  
16 Sections 386.1 and 386.6 of the Code of Civil Procedure shall apply in the action.

17 (f) The notice shall state, in addition to the matters required by Section 6105, the  
18 name and address of the person with whom claims may be filed and the last date  
19 for filing claims, which shall be the business day before the date stated in the  
20 notice pursuant to paragraph (4) of subdivision ~~(a)~~ (b) of Section 6105. Claims  
21 shall be deemed timely filed only if actually received by the person designated in  
22 the notice to receive claims before the close of business on the day specified in the  
23 notice as the last date for filing claims.

24 (g) This section shall not be construed to release any security interest or other  
25 lien on the property which is the subject of the bulk sale except upon a voluntary  
26 release by the secured party or lienholder.

27 **Comment.** Subdivision (f) of Section 6106.2 is amended to update a cross-reference.

28 **Com. Code § 6108 (amended). Bulk sale by auction**

29 SEC. \_\_\_\_ . Section 6108 of the Commercial Code is amended to read:

30 6108. (a) Sections 6104, 6105, and 6107 apply to a bulk sale by auction and a  
31 bulk sale conducted by a liquidator on the seller's behalf with the following  
32 modifications:

33 (1) "Buyer" refers to auctioneer or liquidator, as the case may be.

34 (2) "Net contract price" refers to net proceeds of the auction or net proceeds of  
35 the sale, as the case may be.

36 (3) The written notice required under subdivision ~~(a)~~ (b) of Section 6105 shall  
37 be accompanied by a statement that the sale is to be by auction or by liquidation,  
38 the name of the auctioneer or liquidator, and the time and place of the auction or  
39 the time and place on or after which the liquidator will begin to sell assets on the  
40 seller's behalf.

41 (4) In a single bulk sale the cumulative liability of the auctioneer or liquidator  
42 for failure to comply with the requirements of this section may not exceed the

1 amount of the net proceeds of the sale allocable to inventory and equipment sold  
2 less the amount of the portion of any part of the net proceeds paid to or applied for  
3 the benefit of a creditor which is allocable to the inventory and equipment.

4 (b) A payment made by the auctioneer or liquidator to a person to whom the  
5 auctioneer or liquidator is, or believes it is, liable under this section reduces pro  
6 tanto the auctioneer's or liquidator's cumulative liability under paragraph (4) of  
7 subdivision (a).

8 (c) A person who buys at a bulk sale by auction or conducted by a liquidator  
9 need not comply with the requirements of Section 6104 and is not liable for the  
10 failure of an auctioneer or liquidator to comply with the requirements of this  
11 section.

12 **Comment.** Paragraph (a)(3) of Section 6108 is amended to update a cross-reference.

## 13 GOVERNMENT CODE

### 14 **Gov't Code § 6008 (amended). Criteria for establishing standing as newspaper of general** 15 **circulation**

16 SEC. \_\_\_\_ . Section 6008 of the Government Code is amended to read:

17 6008. (a) Notwithstanding any provision of law to the contrary, a newspaper is a  
18 "newspaper of general circulation" if it meets all of the following criteria:

19 ~~(a)~~ (1) It is a newspaper published for the dissemination of local or telegraphic  
20 news and intelligence of a general character, which has a bona fide subscription  
21 list of paying subscribers and has been established and published at regular  
22 intervals of not less than weekly in the city, district, or ~~judicial~~ publication district  
23 for which it is seeking adjudication for at least three years preceding the date of  
24 adjudication.

25 ~~(b)~~ (2) It has a substantial distribution to paid subscribers in the city, district, or  
26 ~~judicial~~ publication district in which it is seeking adjudication.

27 ~~(c)~~ (3) It has maintained a minimum coverage of local or telegraphic news and  
28 intelligence of a general character of not less than 25 percent of its total inches  
29 during each year of the three-year period.

30 ~~(d)~~ (4) It has only one principal office of publication and that office is in the  
31 city, district, or ~~judicial~~ publication district for which it is seeking adjudication.

32 (b) For the purposes of Section 6020, a newspaper meeting the criteria of this  
33 section which desires to have its standing as a newspaper of general circulation  
34 ascertained and established, may, by its publisher, manager, editor, or attorney,  
35 file a verified petition in the superior court of the county in which it is established  
36 and published.

37 (c) As used in this section:

38 (1) "Established" means in existence under a specified name during the whole of  
39 the three-year period, except that a modification of name in accordance with  
40 Section 6024, where the modification of name does not substantially change the

1 identity of the newspaper, shall not affect the status of the newspaper for the  
2 purposes of this definition.

3 (2) “Published” means issued from the place where the newspaper is sold to or  
4 circulated among the people and its subscribers during the whole of the three-year  
5 period.

6 (3) “Publication district” means the district established pursuant to Article 6  
7 (commencing with Section 6080) of Chapter 1 of Division 7 of Title 1 of the  
8 Government Code.

9 **Comment.** Section 6008 is amended to (1) replace “judicial district” with “publication district”  
10 and (2) define the term “publication district.”

11 This section is also amended to make technical changes.

12 ~~is~~ **Note.** The Commission welcomes input on any aspect of this tentative recommendation,  
13 but would especially appreciate comments identifying any additional newspaper-related  
14 provisions that would need to be modified to reflect the replacement of “judicial district” with  
15 “publication district” as the location for publishing legal notice.

16 **Gov’t Code §§ 6080-6086 (added). Publication districts**

17 SEC. \_\_\_\_\_. Article 6 (commencing with Section 6080) is added to Chapter 1 of  
18 Division 7 of Title 1 of the Government Code to read:

19 Article 6. Publication Districts

20 **Gov’t Code § 6080. Publication of notice in publication district**

21 6080. (a) Each county is divided into one or more publication districts.

22 (b) Any provision of law that requires publication of notice in a publication  
23 district is governed by this article.

24 (c) Any provision of law that requires publication of notice in a judicial district  
25 shall be construed as requiring publication in a publication district.

26 **Comment.** Section 6080 is new. This section establishes publication districts as a location for  
27 publication of legal notice.

28 **Gov’t Code § 6082. Replacement of judicial district with publication district for purposes of**  
29 **notice publication**

30 6082. (a) On January 1, 2016, each judicial district designated for the  
31 publication of notices pursuant to former Section 71042.5 is replaced with a  
32 publication district.

33 (b) Each publication district established pursuant to this section shall have the  
34 same boundaries as the judicial district that it replaces.

35 (c) This section is repealed by operation of law on January 1, 2020, unless a  
36 later enacted statute that becomes operative on or before January 1, 2020, deletes  
37 or extends that date.

38 **Comment.** Section 6082 is new. This section establishes a publication district for each former  
39 judicial district used for notice publication under former Section 71042.5 with the same  
40 boundaries as the former judicial district.

1 This section is transitional. Subdivision (c) is a sunset clause that will repeal this provision on  
2 January 1, 2020, after publication district boundaries are published by the Judicial Council in  
3 accordance with Section 6084.

4 **Gov't Code § 6084. Publication of boundary descriptions**

5 6084. (a) On or before January 1, 2017, the Judicial Council shall publish the  
6 boundaries of the publication districts established pursuant to this article.

7 (b) The Judicial Council shall maintain the publication district boundary  
8 information on an Internet Web site in a form that allows the general public to  
9 determine the location of each publication district.

10 (c) A boundary description published pursuant to this section is conclusively  
11 presumed to be correct and may be offered as evidence in a legal proceeding.

12 (d) A person who reasonably relies on the publication district boundary  
13 information provided by the Judicial Council and publishes notice accordingly is  
14 deemed to be in substantial compliance with a requirement that the notice be  
15 published in a particular publication district.

16 **Comment.** Section 6084 is new. This section requires the Judicial Council to publish  
17 publication district boundaries and maintain the district boundary information on a website.

18 Nothing in this section limits the form in which the Judicial Council may publish the  
19 publication district boundary information.

20 Subdivision (c) is similar to the last sentence of former Section 71042.6, 2002 Cal. Stat. ch.  
21 784, § 344 (conclusive presumption that judicial district maps are correct).

22 **Note.** This section proposes to designate the Judicial Council as the custodian of publication  
23 district boundaries. Creating a central, statewide resource may improve the accessibility of the  
24 district boundary information. The Commission seeks comment on other appropriate state-level  
25 candidates, and on whether this information should instead continue to be maintained at the local  
26 level.

27 **Gov't Code § 6086. Status of newspaper of general circulation in judicial district**

28 6086. (a) A newspaper of general circulation in a former judicial district is  
29 deemed to be a newspaper of general circulation in the publication district that  
30 replaced the former judicial district in accordance with this article.

31 (b) Notwithstanding Section 6027, when a newspaper is deemed to be a  
32 newspaper of general circulation in a publication district by the operation of this  
33 section, it is not required to obtain a judicial decree to operate as a newspaper of  
34 general circulation in that publication district.

35 (c) A newspaper deemed to be a newspaper of general circulation in a  
36 publication district by the operation of this section remains subject to all of the  
37 other conditions necessary to maintain its status as a newspaper of general  
38 circulation in that district.

39 **Comment.** Section 6086 is new. Replacement of a judicial district with a publication district  
40 under this article has no impact on the status of a newspaper that qualified as a newspaper of  
41 general circulation in the judicial district that was replaced.

42 Subdivision (a) preserves the status of a newspaper of general circulation in a judicial district  
43 upon the transition to publication districts as the location for the publication of legal notice.

1 Subdivision (b) makes explicit that such a newspaper is not required to seek a new judicial  
2 decree solely because a judicial district has been replaced with a publication district.

3 Subdivision (c) preserves any conditions that a newspaper of general circulation must satisfy to  
4 maintain its status. This section does not preclude a newspaper from ceasing to be a newspaper of  
5 general circulation under Section 6024 based on changed circumstances.

6 **Gov't Code § 26203 (amended). Power of board of supervisors to order census**

7 SEC. \_\_\_\_\_. Section 26203 of the Government Code is amended to read:

8 26203. In years other than those in which a census is taken by the United States,  
9 the board of supervisors by ordinance may cause a census of the county or any  
10 district therein to be taken which shall be validated by the Population Research  
11 Unit of the Department of Finance. ~~The board of supervisors shall cause a census~~  
12 ~~of a judicial district to be taken upon presentation to it of a petition signed by not~~  
13 ~~less than 40 percent of the qualified electors residing in the district whose names~~  
14 ~~appear upon the great register of the county at the last general election.~~ The  
15 persons taking the census shall enumerate all the inhabitants of the county or  
16 district. The census shall be validated by the Population Unit. Any expense ~~The~~  
17 ~~expenses~~ of taking that such census is a county charge.

18 **Comment.** Section 26203 is amended to delete a sentence on taking a census of a judicial  
19 district. That sentence is obsolete, because counties are no longer subdivided into judicial districts  
20 for any purpose. See Gov't Code §§ 6080-6086 (establishing publication districts, which replace  
21 judicial districts for purposes of publishing legal notices) & Comments; see also Code Civ. Proc.  
22 § 38, former Gov't Code § 71042.5 (2002 Cal. Stat. ch. 784, § 344), which temporarily preserved  
23 particular judicial districts (i.e., municipal court districts) for purposes of publishing legal notices  
24 after trial court unification.

25 **Gov't Code §§ 71042.5-71043 (repealed). Preservation of judicial districts**

26 SEC. \_\_\_\_\_. Article 2 (commencing with Section 70142.5) of Chapter 6 of Title 8  
27 of the Government Code is repealed.

28 **Comment.** Sections 71042.5-71043 are repealed. The judicial districts designated for the  
29 publication of notice in the former provisions are replaced with publication districts having the  
30 same territorial boundaries as the former judicial districts. See Gov't Code §§ 6080-6084.

31 **Note.** The text of the repealed article is set forth below.

32 Article 2. Preservation of Judicial Districts

33 71042.5. Notwithstanding any other provision of law, where judicial districts in  
34 a county have been consolidated, or where the municipal and superior courts in a  
35 county have unified, the territory embraced within the respective prior component  
36 judicial districts shall be separate judicial districts for the purpose of publication  
37 within a judicial district.

38 71042.6. For the purpose of establishing boundaries under Section 71042.5, a  
39 map approved by the county surveyor shall be kept on file with the county  
40 recorder showing the boundaries of all consolidated or unified districts and  
41 component districts as of the date of consolidation or unification. The map shall be

1 conclusively presumed to be accurate and may be used in evidence in any  
2 proceeding involving application of Section 71042.5.

3 71043. The determination of whether a judicial district or former judicial district  
4 has a population above or below 40,000 shall be made on the latest occurring of  
5 the following bases:

6 (a) As shown by the last preceding federal census of the district or of the  
7 aggregate cities and other political subdivisions situated within the district,  
8 whichever is greater.

9 (b) As shown by a subsequent census taken pursuant to Section 26203.

10 (c) As may have been found to be the fact in any proceeding for declaratory  
11 relief brought in a court having jurisdiction.

## 12 REVENUE AND TAXATION CODE

### 13 **Rev. & Tax. Code § 3381 (amended). Alternate means of notice of intent to sell property of** 14 **delinquent taxpayer**

15 SEC. \_\_\_\_ . Section 3381 of the Revenue and Taxation Code is amended to read:

16 3381. (a) In each county where the tax collector or, if the county is a chartered  
17 county, the board of supervisors determines that the public interest, convenience  
18 and necessity require the local publication of the delinquent list required by  
19 Section 3371, or the published notice of power and intent to sell required by  
20 Section 3361, in order to afford adequate notice, all items required to be published  
21 shall be published as provided in this article.

22 (b) After the determination, the tax collector or, if the county is a chartered  
23 county, the board of supervisors shall divide and distribute the items to be  
24 published and cause the same to be published either within ~~(a)~~ (1) the municipal  
25 corporations, ~~(b)~~ (2) the elementary, high school, or junior college districts, ~~(c)~~ (3)  
26 the supervisorial districts, ~~(d) judicial~~ (4) publication districts established pursuant  
27 to Article 6 (commencing with Section 6080) of Chapter 1 of Division 7 of Title 1  
28 of the Government Code, ~~(e)~~ (5) tax districts, areas included in map books, or tax  
29 code areas, or ~~(f)~~ (6) by any annexation or annexations of same, or any  
30 combination of same, or any combination of those districts, annexations, areas  
31 included in map books, and code areas, within the county as they shall determine  
32 most likely to afford adequate notice to owners of the property.

33 (c) Except as provided in this article, the publication shall be in the same manner  
34 as provided in Article 1.7 (commencing with Section 3371).

35 (d) The publication provided for in this article shall be made once a week for  
36 two successive weeks in a newspaper or newspapers of general circulation. The  
37 publication shall be made in a newspaper published not less frequently than once a  
38 week.

39 **Comment.** Section 3381 is amended to (1) replace “judicial district” with “publication district”  
40 and (2) include a cross-reference to the Government Code provisions establishing publication  
41 districts.

1 This section is also amended to insert subdivision labels and make other technical changes.

2 **Rev. & Tax. Code § 3702 (amended). Means of notice of intended sale of property of**  
3 **delinquent taxpayer**

4 SEC. \_\_\_\_ . Section 3702 of the Revenue and Taxation Code is amended to read:

5 3702. (a) The tax collector shall publish the notice of intended sale once a week  
6 for three successive weeks in a newspaper of general circulation published in the  
7 county seat and in a newspaper of general circulation published in the ~~judicial~~  
8 publication district in which the property is situated. If the same newspaper of  
9 general circulation is published in both the county seat and in ~~such that~~ district, or  
10 if the publication of the notice of sale is made in a newspaper which is determined  
11 pursuant to Section 3381 as most likely to afford adequate notice of the sale, a  
12 publication in ~~such that~~ paper shall satisfy the requirements for publication set  
13 forth in this section. If there is no newspaper published in the county seat or in the  
14 ~~judicial~~ publication district, then publication may be made by posting notice in  
15 three public places in the county seat or in the ~~judicial~~ publication district, as the  
16 case may be, where no ~~such~~ newspaper of general circulation is published. The  
17 publication shall be started not less than 21 days prior to the date of the sale.

18 (b) For the purposes of this section, “publication district” means the district  
19 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of  
20 Division 7 of Title 1 of the Government Code.

21 **Comment.** Section 3702 is amended to (1) replace “judicial district” with “publication district”  
22 and (2) define the term “publication district.”

23 This section is also amended to make technical changes.

24 **Rev. & Tax. Code § 3703 (amended). Alternate means of notice if property is lower in value**  
25 **than cost of publication**

26 SEC. \_\_\_\_ . Section 3703 of the Revenue and Taxation Code is amended to read:

27 3703. (a) If in the judgment of the board of supervisors any property to be sold  
28 under this chapter will bring at auction less than the cost of publication in a  
29 newspaper, the publication of the notice of intended sale may be made in the same  
30 manner as if there were no newspaper published in the county seat or in the  
31 ~~judicial~~ publication district.

32 (b) For the purposes of this section, “publication district” means the district  
33 established pursuant to Article 6 (commencing with Section 6080) of Chapter 1 of  
34 Division 7 of Title 1 of the Government Code.

35 **Comment.** Section 3703 is amended to (1) replace “judicial district” with “publication district”  
36 and (2) define the term “publication district.”