

Memorandum 88-72

Subject: Study D-1000 - Creditors' Remedies (Comments on Tentative Recommendation)

This memorandum reviews comments we have received on the *Tentative Recommendation Relating to Creditors' Remedies* that was distributed for comment after the July meeting. A revised copy of the recommendation is attached to this memorandum. Letters containing substantive comments are included in the exhibits attached to this memorandum.

In order to save time and supplies, we have not reproduced letters that approve the tentative recommendation without critical comment. We have received such letters from William E. Fox of Paso Robles, Richard H. Keatinge of Los Angeles, and Elizabeth R. McKee of Richmond.

The points raised by interested persons are considered in notes following the relevant sections in the revised tentative recommendation.

The staff has made some editorial revisions in the explanatory text at the beginning of the recommendation. Several changes have been made in response to the suggestions submitted by John C. Hoag, Vice President and Senior Associate Title Counsel of Ticor Title Insurance. (See Exhibit 2.)

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

Peter D. Bogart

August 12, 1988

COMMUN

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RECEIVED

California Law Revision Commission
4000 Middlefield Rd Suite D2
Palo Alto CA 94303-4739

Re: Tentative Recommendation re Creditors Remedies. (July 1988)

Gentlemen:

I wish to point out ambiguous language in your recommendation to amend CCP 695.070.

The Section is ambiguous now. A lien is "created" with entry of judgment. The better way would be to specify that the lien attaches only after it is recorded in official records of the County Recorder of the County where the property is located.

The proposed amendment "except that exemptions do not apply to transferred property" is also ambiguous. Is this an attempt to invalidate marital exemptions, bankruptcy exemptions, the homestead exemptions of a surviving spouse which is also a "transferee" and the personal exemptions of the surviving spouse etc. Even an extraneous bona-fide purchaser should be entitled to personal and homestead exemptions from execution. This is doubly important as virtually all title insurance policies do not protect a transferee against liens which are not recorded in County Recorders records. As a matter of fact, we recently lost a case where a City "forgot" to record a demolition lien, as it was required to do by its own ordinance and state law. The Court of Appeal, in an unpublished opinion, simply ignored the recording requirements.

I'd propose the following clarification:

695.070 (a) Notwithstanding the transfer or encumbrance of property after a lien is recorded in official records of the County Recorder in the County where the property is situated, if the property remains subject to the lien after the transfer or encumbrance, the money judgment may be enforced against the interest of the judgment debtor in the property in the same manner and to the same extent as if it had not been transferred or encumbered, except that the personal exemptions of the judgment debtor do not apply to transferred property.

(b) (stet)

Although I personally feel that a person's death should wipe out any involuntary liens, such as judgment liens, to clear the records and facilitate settling the estate, I fear we are not prepared to do so as yet.

Also, CCP § 701.680 (c) (1) should be amended by striking from it the words "if the purchaser at the sale is the judgment creditor". This is necessary on constitutional Equal Protection grounds, as well as to avoid "lifting the veil" of sham purchasers.

Sincerely yours,

P. BOGART

EXHIBIT 2

Comments of John C. Hoag
Vice President & Senior Associate Title Counsel
Ticor Title Insurance

Tentative Recommendation

Relating to

CREDITORS' REMEDIES

Revival of Junior Liens ^{If} Where Execution Sale Set Aside

^{If} When property is sold to ^{satisfy} enforce a money judgment, generally the sale is absolute and there is no right of redemption.¹ The creditor's lien and all junior liens on the property sold are extinguished by the sale.² However, if the judgment creditor purchases the property at the sale held to satisfy its judgment, the sale may be set aside if ^{it} is improper.³ This is a limited right, ^{and} An action to set the sale aside must be commenced within six months of the ^{date upon which the} sale ^{is held.}

who exceeds
? what does "it" refer to?

Existing law does not ^{address} deal with the question of what happens to ^{junior} the liens that are extinguished by the sale in a case ^{in which} where the sale is later set aside.⁷ The Commission concludes that junior lienholders should be restored to their former positions as if the sale had not occurred. The impropriety of the sale should be charged to the judgment creditor, and not to junior lienholders.

is the meaning of this word clear?

Time for Setting Sale Aside

The Commission also recommends that the six-month period for bringing an action to set aside the sale⁴ be shortened to 60 days. The six-month period is ^{*}unnecessarily long, particularly as applied to

] proof idea. Any due process problems?

1. See Code Civ. Proc. § 701.680.
2. Code Civ. Proc. § 701.630.
3. Code Civ. Proc. § 701.680(c).
4. Code Civ. Proc. § 701.680(c)(1).

*[comment: not for judgment debtor nor for junior lienors]

*** Term "satisfy", is a term of art in your revision. Since sale was held to satisfy lien, it is illogical to say "actually satisfy" here.*

real property sales. Because of the cloud on title resulting from the debtor's right to bring an action to set aside the sale, the creditor who purchases the property at the sale may not be able to resell the property, and actually ~~satisfy~~ ^{satisfy} the outstanding money judgment. The statute already requires a delay of 140 days between levy and sale of real property.⁵ This ^{140-day period is} ~~should be~~ ^{adequate time for} to discover any defects in the ^{execution} proceedings up to the time of sale, and the 60-day period should be sufficient time after sale. This revision would not affect the debtor's remedy of suing for damages caused by the improper levy or sale.⁶

Enforcement of Judgment Lien on Transferred Property After Death of Transferor-Debtor

The Commission recommends that the Enforcement of Judgments Law be revised to clarify the procedure for enforcing a judgment lien on real property that has been transferred subject to the lien and the transferor dies after the transfer. There is [?] a gap in the statute. The Enforcement of Judgments Law deals with enforcement of a judgment lien on property that has been transferred, but only while the debtor is still alive. After the death of the judgment debtor, enforcement of the judgment is governed by the Probate Code.⁷ The Probate Code deals with enforcement against property "in the estate."⁸ Property transferred subject to a lien before the debtor's death is not property in the decedent's estate. It is assumed that the creditor could bring an equitable action to foreclose the lien on the property in the hands of the transferee,⁹ although the statute is silent on the point.

Should you express this more clearly??

5. See Code Civ. Proc. §§ 701.540 (20-day notice of sale), 701.545 (120-day delay of notice of sale of real property).

6. See Code Civ. Proc. § 701.680(c)(2).

7. Code Civ. Proc. § 686.020.

8. See Prob. Code §§ 9300.

9. See Hibernia Sav. & Loan Soc'y v. London & Lancashire Fire Ins. Co., 138 Cal. 257, 259, 71 P. 334 (1903).

to make it clear that

The law should be clarified, [^] The creditor should be able to use all remedies appropriate to enforcement against property under the control of a third person.¹⁰ The same rules should apply to both real and personal property, although the need to enforce a lien against transferred property is most likely to arise with regard to real property.

The Enforcement of Judgments Law would be revised to provide that the Probate Code procedures apply only to property in the decedent's estate. Hence, the normally available enforcement procedures would continue to apply to property transferred subject to an enforcement lien.

10. These remedies include enforcement by ^(a) writ of execution, ^(b) by an equitable action to foreclose the lien, or ^(c) by any other applicable procedure provided by the Enforcement of Judgments Law.

Proposed Legislation

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 686.020, 695.070, and 701.680 of the Code of Civil Procedure, relating to creditors' remedies.

The people of the State of California do enact as follows:

Code of Civil Procedure § 686.020 (amended). Enforcement of judgment after death of judgment debtor

686.020. After the death of the judgment debtor, enforcement of a judgment against property in the judgment debtor debtor's estate is governed by the Probate Code. *Why NOT refer to the specific probate code §§?

Comment. Section 686.020 is amended for conformity with the scope of the Probate Code provisions relating to enforcement of judgments. See Prob. Code §§ 9300-9304, 9391. As a consequence, property transferred subject to an enforcement lien before the death of the judgment debtor may be applied to the satisfaction of a money judgment as if the judgment debtor had not died. See Section 695.070 (enforcement of lien after transfer).

Code of Civil Procedure § 695.070 (amended). Property subject to lien after transfer

695.070. (a) Notwithstanding the transfer or encumbrance of property subject to a lien created under this division, if the property remains subject to the lien after the transfer or encumbrance, the money judgment may be enforced against the property in the same manner and to the same extent as if it had not been transferred or encumbered, except that exemptions do not apply to transferred property.

(b) If the judgment debtor dies after the transfer of property that remains subject to a lien created under this division, the money judgment may be enforced against the property as provided in subdivision (a).

Comment. Section 695.070 is amended to clarify the manner of enforcement of a money judgment against property of a decedent in a situation where the property was transferred during the judgment debtor's lifetime subject to an enforcement lien. For provisions relating to continuation of liens after transfer, see Sections 697.390 (judgment lien on real property), 697.610 (judgment lien on personal property), 697.720-697.750 (execution lien), 697.920 (other liens).

*Code of Civil Procedure
This statute refers to the Probate Code. The Probate Code refers back to the Code of Civil Procedure. Why this circular statutory arrangement? Substantively, the statute is fine.*

Without that reference, the statute is obscure.

in which

Under subdivision (b), the judgment creditor may enforce the money judgment against the transferred property after the judgment debtor's death using any appropriate procedure available before death. Thus, the death of the judgment debtor has no effect on the judgment creditor's remedies against property that was transferred subject to an enforcement lien. The judgment creditor may use a writ of execution, or any other applicable enforcement procedure provided in this division, or an action against the owner of the property to foreclose the lien. Enforcement under this section may proceed only against the property subject to the lien and only in the amount of the lien on the transferred property, as is the case when enforcing a lien on transferred property while the judgment debtor is alive. See Sections 695.210 (amount required to satisfy judgment), 697.010 (amount of lien). As to enforcement of a judgment against property in the decedent's estate, see Code Civ. Proc. § 686.020 (enforcement against property in deceased judgment debtor's estate governed by Probate Code); Prob. Code §§ 9300-9304 (enforcement of claims established by judgment).

that's contained in
division
97(only)?

The provision relating to the unavailability of exemptions is added at the end of subdivision (a) to avoid any implication that the judgment debtor may claim an exemption for property that has been transferred.

Code of Civil Procedure § 701.680. Sales absolute; exception

701.680. (a) Except as provided in paragraph (1) of subdivision (c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is reversed, vacated, or otherwise set aside, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest at the rate on money judgments to the extent the proceeds were applied to the satisfaction of the judgment.

(c) If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) The judgment debtor, or the judgment debtor's successor in interest, may commence an action within six-months 60 days after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor. Subject to paragraph (2), if the sale is set aside, the judgment of the judgment creditor is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so revived as if the sale had not been made. Any liens extinguished by

Would this include the lien of the recorded abstract of judgment? If it does, then would that lien retain its original recording and entry priority dates?

the sale of the property are revived and reattach to the property with the same effect as if the sale had not been made.

(2) The judgment debtor, or the judgment debtor's successor in interest, may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

(d) For the purposes of subdivision (c), the purchaser of the property at the sale is not a successor in interest.

Comment. Subdivision (c)(1) of Section 701.680 is revised to provide for the reattachment of liens on property sold at an execution sale that is later held to be improper. In this case, the liens that were extinguished by operation of Section 701.630, including the lien of the judgment creditor sought to be satisfied by the sale, are revived and reattach to the property as if the execution sale had not taken place. Other things being equal, revived liens attach in the amounts and with the priority that they would have had if not extinguished by the sale under the superior lien of the judgment creditor.

Subdivision (c)(1) is also amended to shorten the time for bringing an action to set aside the sale from six months to 60 days.

Shouldn't
this be
said with
amended
statute itself?

I would
refer to
CCP
729.080
(e) too.

What ceteris paribus motions
do you have in mind?

STATE OF CALIFORNIA
California Law Revision Commission

Staff Draft

RECOMMENDATION
relating to
CREDITORS' REMEDIES

*Revival of Junior Liens Where Execution Sale Set Aside
Enforcement of Judgment Lien on Transferred Property
After Death of Transferor-Debtor*

October 1988

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

October 24, 1988

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The Enforcement of Judgments Law was enacted on Commission recommendation in 1982. See Code Civ. Proc. §§ 680.010-724.260; *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980). Several matters have come to the attention of the Commission in recent years suggesting the need for some technical revisions.

The Commission has continued to review the law relating to creditors' remedies to determine whether any substantive or technical changes are needed. As a result of this review, the Commission proposes revisions to clarify the statutes relating to actions to set aside execution sales and enforcement of liens on property transferred to another person before a judgment debtor's death.

This recommendation is submitted pursuant to Resolution Chapter 40 of the Statutes of 1983.

Respectfully submitted,

Forrest A. Plant
Chairperson

09/19/88

CREDITORS' REMEDIES

Revival of Junior Liens Where Execution Sale Set Aside

When property is sold to satisfy a money judgment, generally the sale is absolute and there is no right of redemption.¹ The enforcing creditor's lien and all junior liens on the property sold are extinguished by the sale.² However, if the judgment creditor purchases the property at the sale held to satisfy its judgment, the sale may be set aside if the proceedings were improper.³ This is a limited right. An action to set the sale aside must be commenced within six months of the sale.

Existing law does not deal with the question of what happens to the junior liens that are extinguished by the sale in a case where the sale is later set aside. The Commission concludes that junior lienholders should be restored to their former positions as if the sale had not occurred. The judgment creditor, and not the junior lienholders, should suffer the consequences of the improper sale.

Time for Setting Sale Aside

The Commission also recommends that the six-month period for bringing an action to set aside the sale⁴ be shortened to 60 days. The six-month period is unnecessarily long, particularly as applied to real property sales. Because of the cloud on title resulting from the

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1. See Code Civ. Proc. § 701.680.
 2. Code Civ. Proc. § 701.630.
 3. Code Civ. Proc. § 701.680(c).
 4. Code Civ. Proc. § 701.680(c)(1).

debtor's right to bring an action to set aside the sale, the creditor who purchases the property at the sale may not be able to resell the property in a timely manner and so reduce the satisfaction to cash. The statute already requires a delay of 140 days between levy and sale of real property.⁵ This period is adequate for discovery of any defects in the execution proceedings up to the time of sale. The 60-day period should be sufficient after sale. The proposed revision would not affect the debtor's remedy of suing for damages caused by the improper levy or sale.⁶

**Enforcement of Judgment Lien on Transferred Property
After Death of Transferor-Debtor**

The Commission recommends that the Enforcement of Judgments Law be revised to clarify the procedure for enforcing a judgment lien on real property that has been transferred subject to the lien and the transferor dies after the transfer. There is a gap in the coverage of the applicable statutes in the Code of Civil Procedure and the Probate Code. The Enforcement of Judgments Law deals with enforcement of a judgment lien on property that has been transferred, but only while the debtor is still alive. After the death of the judgment debtor, enforcement of the judgment is governed by the Probate Code.⁷ The Probate Code is concerned with enforcement against property "in the estate."⁸ Property transferred subject to a lien before the debtor's death is not property in the decedent's estate. It is assumed that the creditor could bring an equitable action to foreclose the lien on the

5. See Code Civ. Proc. §§ 701.540 (20-day notice of sale), 701.545 (120-day delay of notice of sale of real property).

6. See Code Civ. Proc. § 701.680(c)(2).

7. Code Civ. Proc. § 686.020.

8. See Prob. Code § 9300.

property in the hands of the transferee,⁹ although the statute is silent on the point.

The law should be clarified. The creditor should be able to use all remedies appropriate to enforcement against property under the control of a third person.¹⁰ The same rules should apply to both real and personal property, although the need to enforce a lien against transferred property is most likely to arise with regard to real property.

The Enforcement of Judgments Law would be revised to provide that the Probate Code procedures apply only to property in the decedent's estate. Hence, the normally available enforcement procedures would continue to apply to property transferred subject to an enforcement lien.

9. See *Hibernia Sav. & Loan Soc'y v. London & Lancashire Fire Ins. Co.*, 138 Cal. 257, 259, 71 P. 334 (1903).

10. These remedies include enforcement by writ of execution, by an equitable action to foreclose the lien, or by any other applicable procedure provided by the Enforcement of Judgments Law.

Proposed Legislation

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 686.020, 695.070, and 701.680 of the Code of Civil Procedure, relating to creditors' remedies.

The people of the State of California do enact as follows:

Code of Civil Procedure § 686.020 (amended). Enforcement of judgment after death of judgment debtor

SECTION 1. Section 686.020 of the Code of Civil Procedure is amended to read:

686.020. After the death of the judgment debtor, enforcement of a judgment against property in the judgment debtor's estate is governed by the Probate Code.

Comment. Section 686.020 is amended for conformity with the scope of the Probate Code provisions relating to enforcement of judgments. See Prob. Code §§ 9300-9304, 9391. As a consequence, property transferred subject to an enforcement lien before the death of the judgment debtor may be applied to the satisfaction of a money judgment as if the judgment debtor had not died. See Section 695.070 (enforcement of lien after transfer).

Note. John C. Hoag suggests that this section be revised to refer to specific sections, rather than the Probate Code in general. (See Exhibit 2.) This provision was originally enacted on Commission recommendation in 1980. The staff is reluctant to attempt to list specific sections. We would not want to omit any relevant sections. In addition, a general reference avoids the need to amend this section when revisions are made in the Probate Code.

Mr. Hoag also objects to the circularity of cross-references. Section 686.020 refers to the Probate Code, while some Probate Code sections refer back to the enforcement provisions of the Code of Civil Procedure. The staff recognizes that the situation is not ideal, but we believe it is the clearest and most efficient treatment of the matter. Actually, the cross-references are not truly circular; the situation is more complicated than that. Section 686.020 directs traffic to the Probate Code. Then the Probate Code, in several sections, makes the necessary distinctions between enforcement of money judgments (see Prob. Code § 9300), judgments for possession or sale of property (see Prob. Code § 9302), execution liens on property in the decedent's estate (see Prob. Code § 9303), and judgment liens on property in the estate (see Prob. Code § 9391).

Code of Civil Procedure § 695.070 (amended). Property subject to lien after transfer

SEC. 2. Section 695.070 of the Code of Civil Procedure is amended to read:

695.070. (a) Notwithstanding the transfer or encumbrance of property subject to a lien created under this division, if the property remains subject to the lien after the transfer or encumbrance, the money judgment may be enforced against the property in the same manner and to the same extent as if it had not been transferred or encumbered, except that the judgment debtor's exemptions do not apply to the transferred property.

(b) If the judgment debtor dies after the transfer of property that remains subject to a lien created under this division, the money judgment may be enforced against the property as provided in subdivision (a).

Comment. Section 695.070 is amended to clarify the manner of enforcement of a money judgment against property of a decedent in a situation where the property was transferred during the judgment debtor's lifetime subject to an enforcement lien. For provisions relating to continuation of liens after transfer, see Sections 697.390 (judgment lien on real property), 697.610 (judgment lien on personal property), 697.720-697.750 (execution lien), 697.920 (other liens).

Under subdivision (b), the judgment creditor may enforce the money judgment against the transferred property after the judgment debtor's death using any appropriate procedure available before death. Thus, the death of the judgment debtor has no effect on the judgment creditor's remedies against property that was transferred subject to an enforcement lien. The judgment creditor may use a writ of execution, any other applicable enforcement procedure provided in this division, or an action against the owner of the property to foreclose the lien. Enforcement under this section may proceed only against the property subject to the lien and only in the amount of the lien on the transferred property, as is the case when enforcing a lien on transferred property while the judgment debtor is alive. See Sections 695.210 (amount required to satisfy judgment), 697.010 (amount of lien). As to enforcement of a judgment against property in the decedent's estate, see Code Civ. Proc. § 686.020 (enforcement against property in deceased judgment debtor's estate governed by Probate Code); Prob. Code §§ 9300-9304 (enforcement of claims established by judgment).

The provision relating to the unavailability of exemptions is added at the end of subdivision (a) to avoid any implication that the judgment debtor may claim an exemption for property that has been transferred.

Note. Peter D. Bogart raises several questions concerning the language of Section 695.070 and proposes a number of revisions. (See letter in Exhibit 1.) Mr. Bogart believes that the existing section is

ambiguous and states that a lien is "created" upon entry of judgment. This is not true under the Enforcement of Judgments Law. A lien is created when a levy is made, when an abstract of judgment is recorded, when a notice is filed with the Secretary of State, but not when judgment is entered. See Code Civ. Proc. §§ 697.010 et seq. As to a judgment lien on real property, which appears to be Mr. Bogart's main concern, the lien is created when an abstract of a money judgment is recorded. See Code Civ. Proc. § 697.310(a). Its priority may relate back if the property was subject to an attachment lien, but the judgment has nothing to do with it. See Code Civ. Proc. § 697.020.

Mr. Bogart also raises a general policy issue. He suggests that a "person's death should wipe out any involuntary liens, such as judgment liens, to clear the records and facilitate settling the estate." He recognizes that "we are not prepared to so do as yet" and in this the staff concurs.

Finally, Mr. Bogart objects to the language in subdivision (a) providing that exemptions do not apply to transferred property. In order to avoid the suspicions suggested in Mr. Bogart's letter, the staff had added "judgment debtor's" before "exemptions." The purpose of the amendment is simply to avoid any implication that the debtor's exemptions could be claimed against the judgment debtor who seeks to enforce the lien on the transferred property.

Code of Civil Procedure § 701.680 (amended). Sales absolute; exception

SEC. 3. Section 701.680 of the Code of Civil Procedure is amended to read:

701.680. (a) Except as provided in paragraph (1) of subdivision (c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is reversed, vacated, or otherwise set aside, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest at the rate on money judgments to the extent the proceeds were applied to the satisfaction of the judgment.

(c) If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) The judgment debtor, or the judgment debtor's successor in interest, may commence an action within ~~six-months~~ 60 days after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor. Subject to paragraph (2), if the sale is set aside, the judgment of the judgment creditor is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so

revived as if the sale had not been made. Any liens extinguished by the sale of the property are revived and reattach to the property with the same priority and effect as if the sale had not been made.

(2) The judgment debtor, or the judgment debtor's successor in interest, may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

(d) For the purposes of subdivision (c), the purchaser of the property at the sale is not a successor in interest.

Comment. Subdivision (c)(1) of Section 701.680 is revised to provide for the reattachment of liens on property sold at an execution sale that is later held to be improper. In this case, the liens that were extinguished by operation of Section 701.630, including the lien of the judgment creditor sought to be satisfied by the sale, are revived and reattach to the property as if the execution sale had not taken place. Other things being equal, revived liens attach in the amounts and with the priority that they would have had if not extinguished by the sale under the superior lien of the judgment creditor.

Subdivision (c)(1) is also amended to shorten the time for bringing an action to set aside the sale from six months to 60 days.

Note. John C. Hoag asks whether the revival of the judgment creditor's judgment under subdivision (c)(1) includes the judgment lien and, if so, whether the lien would retain its original priority. (See Exhibit 2.) The last sentence of subdivision (c)(1) provides that extinguished liens reattach with the same effect. "Priority" has been added to emphasize the point. This language applies to the selling creditor's lien, as well as junior liens, since they are all liens "extinguished by the sale" as provided in Section 701.630. This is made clear in the comment. Mr. Hoag also approves the reduction of the time from six months to 60 days.

Peter D. Bogart suggests that distinguishing between judgment creditors and nonparties at execution sales violates the equal protection clause of the constitution. (See the letter in Exhibit 1.) The staff disagrees that there is a constitutional issue here. If the Commission wishes, we will give further study to the matter.

Mr. Bogart also suggests that applying Section 701.680(c) to all purchasers at execution sales would have the effect of "lifting the veil" on sham purchasers. The staff disagrees. The major problem with execution sales historically has been low prices. A major factor in low prices obtained at sales is the uncertainty of title. In preparation of the Enforcement of Judgments Law, the Commission sought to improve the situation at execution sales by providing time before the sale to give interested buyers adequate notice, by eliminating the right of redemption from execution sales, and by cutting down the right of the debtor to challenge the sale years after. Section 701.680(c)(1) thus provides only a very limited right to challenge the sale based on

irregularities in the proceedings, and subjects only the judgment creditor to the risk of procedural irregularities, for obvious reasons. If we understand what Mr. Bogart means by "sham purchasers," we doubt that it is a significant problem and we assume that a court could find adequate remedies to protect a judgment debtor should such a case arise.