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## CCP 704.710-704.850

704.710. As used in this article:

(a) "Dwelling" means a place where a person resides and may include but is not limited to the following:

(1) A house together with the outbuildings and the land upon which they are situated.

(2) A mobilehome together with the outbuildings and the land upon which they are situated.

(3) A boat or other waterborne vessel.

(4) A condominium, as defined in Section 783 of the **Civil Code**.

(5) A planned development, as defined in Section 11003 of the Business and Professions Code.

(6) A stock cooperative, as defined in Section 11003.2 of the Business and Professions Code.

(7) A community apartment project, as defined in Section 11004 of the Business and Professions Code.

(b) "Family unit" means any of the following:

(1) The judgment debtor and the judgment debtor's spouse if the spouses reside together in the **homestead**.

(2) The judgment debtor and at least one of the following persons who the judgment debtor cares for or maintains in the **homestead**:

(A) The minor child or minor grandchild of the judgment debtor or the judgment debtor's spouse or the minor child or grandchild of a deceased spouse or former spouse.

(B) The minor brother or sister of the judgment debtor or judgment debtor's spouse or the minor child of a deceased brother or sister of either spouse.

(C) The father, mother, grandfather, or grandmother of the judgment debtor or the judgment debtor's spouse or the father, mother, grandfather, or grandmother of a deceased spouse.

(D) An unmarried relative described in this paragraph who has attained the age of majority and is unable to take care of or support himself or herself.

(3) The judgment debtor's spouse and at least one of the persons listed in paragraph (2) who the judgment debtor's spouse cares for or maintains in the **homestead**.

(c) "**Homestead**" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a **homestead**. Where exempt proceeds from the sale or damage or destruction of a **homestead** are used toward the acquisition of a dwelling within the six-month period provided by Section 704.720, "**homestead**" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a **homestead**, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

(d) "Spouse" does not include a married person following entry of a judgment

decreasing legal separation of the parties, unless such married persons reside together in the same dwelling.

704.720. (a) A **homestead** is exempt from sale under this division to the extent provided in Section 704.800.

(b) If a **homestead** is sold under this division or is damaged or destroyed or is acquired for public use, the proceeds of sale or of insurance or other indemnification for damage or destruction of the **homestead** or the proceeds received as compensation for a **homestead** acquired for public use are exempt in the amount of the **homestead** exemption provided in Section 704.730. The proceeds are exempt for a period of six months after the time the proceeds are actually received by the judgment debtor, except that, if a **homestead** exemption is applied to other property of the judgment debtor or the judgment debtor's spouse during that period, the proceeds thereafter are not exempt.

(c) If the judgment debtor and spouse of the judgment debtor reside in separate homesteads, only the **homestead** of one of the spouses is exempt and only the proceeds of the exempt **homestead** are exempt.

(d) If a judgment debtor is not currently residing in the **homestead**, but his or her separated or former spouse continues to reside in or exercise control over possession of the **homestead**, that judgment debtor continues to be entitled to an exemption under this article until entry of judgment or other legally enforceable agreement dividing the community property between the judgment debtor and the separated or former spouse, or until a later time period as specified by court order. Nothing in this subdivision shall entitle the judgment debtor to more than one exempt **homestead**.

Notwithstanding subdivision (d) of Section 704.710, for purposes of this article, "spouse" may include a separated or former spouse consistent with this subdivision.

704.730. (a) The amount of the **homestead** exemption is one of the following:

(1) Seventy-five thousand dollars (\$75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the **homestead** is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse of the judgment debtor who resides in the **homestead** is at the time of the attempted sale of the **homestead** a member of a family unit, and there is at least one member of the family unit who owns no interest in the **homestead** or whose only interest in the **homestead** is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the **homestead** is at the time of the attempted sale of the **homestead** any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than fifteen thousand dollars (\$15,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than twenty thousand dollars (\$20,000) and the sale is an involuntary sale.

(b) Notwithstanding any other provision of this section, the combined **homestead** exemptions of spouses on the same judgment shall not exceed the amount specified in paragraph (2) or (3), whichever is applicable, of subdivision (a), regardless of whether the spouses are jointly obligated on the judgment and regardless of whether

the **homestead** consists of community or separate property or both. Notwithstanding any other provision of this article, if both spouses are entitled to a **homestead** exemption, the exemption of proceeds of the **homestead** shall be apportioned between the spouses on the basis of their proportionate interests in the **homestead**.

704.740. (a) Except as provided in subdivision (b), the interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article and the dwelling exemption shall be determined under this article.

(b) If the dwelling is personal property or is real property in which the judgment debtor has a leasehold estate with an unexpired term of less than two years at the time of levy:

(1) A court order for sale is not required and the procedures provided in this article relating to the court order for sale do not apply.

(2) An exemption claim shall be made and determined as provided in Article 2 (commencing with Section 703.510).

704.750. (a) Promptly after a dwelling is levied upon (other than a dwelling described in subdivision (b) of Section 704.740), the levying officer shall serve notice on the judgment creditor that the levy has been made and that the property will be released unless the judgment creditor complies with the requirements of this section. Service shall be made personally or by mail. Within 20 days after service of the notice, the judgment creditor shall apply to the court for an order for sale of the dwelling and shall file a copy of the application with the levying officer. If the judgment creditor does not file the copy of the application for an order for sale of the dwelling within the allowed time, the levying officer shall release the dwelling.

(b) If the dwelling is located in a county other than the county where the judgment was entered:

(1) The judgment creditor shall apply to the superior court of the county where the dwelling is located.

(2) The judgment creditor shall file with the application an abstract of judgment in the form prescribed by Section 674 or, in the case of a judgment described in Section 697.320, a certified copy of the judgment.

(3) The judgment creditor shall pay the filing fee for a motion as provided in subdivision (a) of Section 70617 of the Government Code.

704.760. The judgment creditor's application shall be made under oath, shall describe the dwelling, and shall contain all of the following:

(a) A statement whether or not the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling and the person or persons who claimed any such exemption.

(b) A statement, which may be based on information and belief, whether the dwelling is a **homestead** and the amount of the **homestead** exemption, if any, and a statement whether or not the records of the county recorder indicate that a **homestead** declaration under Article 5 (commencing with Section [704.910](#)) that describes the dwelling has been recorded by the judgment debtor or the spouse of the judgment debtor.

(c) A statement of the amount of any liens or encumbrances on the dwelling, the name of each person having a lien or encumbrance on the dwelling, and the address of such person used by the county recorder for the return of the instrument creating such person's lien or encumbrance after recording.

704.770. (a) Upon the filing of the application by the judgment creditor, the court shall set a time and place for hearing and order the judgment debtor to show cause why an order for sale should not be made in accordance with the application. The time set for hearing shall be not later than 45 days after the application is filed or such later time as the court orders upon a showing of good cause.

(b) Not later than 30 days before the time set for hearing, the judgment creditor shall do both of the following:

(1) Serve on the judgment debtor a copy of the order to show cause, a copy of the application of the judgment creditor, and a copy of the notice of the hearing in the form prescribed by the Judicial Council. Service shall be made personally or by mail.

(2) Personally serve a copy of each document listed in paragraph (1) on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of each document in a conspicuous place at the dwelling.

704.780. (a) The burden of proof at the hearing is determined in the following manner:

(1) If the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor or the judgment debtor's spouse, the judgment creditor has the burden of proof that the dwelling is not a **homestead**. If the records of the county tax assessor indicate that there is not a current homeowner's exemption or disabled veteran's exemption for the dwelling claimed by the judgment debtor or the judgment debtor's spouse, the burden of proof that the dwelling is a **homestead** is on the person who claims that the dwelling is a **homestead**.

(2) If the application states the amount of the **homestead** exemption, the person claiming the **homestead** exemption has the burden of proof that the amount of the exemption is other than the amount stated in the application.

(b) The court shall determine whether the dwelling is exempt. If the court determines that the dwelling is exempt, the court shall determine the amount of the **homestead** exemption and the fair market value of the dwelling. The court shall make an order for sale of the dwelling subject to the **homestead** exemption, unless the court determines that the sale of the dwelling would not be likely to produce a bid sufficient to satisfy any part of the amount due on the judgment pursuant to Section 704.800. The order for sale of the dwelling subject to the **homestead** exemption shall specify the amount of the proceeds of the sale that is to be distributed to each person having a lien or encumbrance on the dwelling and shall include the name and address of each such person. Subject to the provisions of this article, the sale is governed by Article 6 (commencing with Section 701.510) of Chapter 3. If the court determines that the dwelling is not exempt, the court shall make an order for sale of the property in the manner provided in Article 6 (commencing with Section 701.510) of Chapter 3.

(c) The court clerk shall transmit a certified copy of the court order (1) to the levying officer and (2) if the court making the order is not the court in which the judgment was entered, to the clerk of the court in which the judgment was entered.

(d) The court may appoint a qualified appraiser to assist the court in determining the fair market value of the dwelling. If the court appoints an appraiser, the court shall fix the compensation of the appraiser in an amount determined by the court to be reasonable, not to exceed similar fees for similar services in the community where the dwelling is located.

704.790. (a) This section applies in any case where the court makes an order for sale of the dwelling upon a hearing at which none of the following appeared:

- (1) The judgment debtor.
- (2) The judgment debtor's spouse.
- (3) The attorney for the judgment debtor.

(4) The attorney for the judgment debtor's spouse.

(b) Not later than 10 days after the date of the order for sale, the judgment creditor shall serve a copy of the order and a notice of the order in the form prescribed by the Judicial Council:

(1) Personally or by mail on the judgment debtor and the judgment debtor's spouse.

(2) Personally on an occupant of the dwelling or, if there is no occupant present at the time service is attempted, post a copy of the order and notice in a conspicuous place at the dwelling.

(c) Proof of service and of any posting shall be filed with the court and with the levying officer. If the judgment creditor fails to comply with this subdivision and with subdivision (b) in any case where this section applies, the dwelling may not be sold under the order for sale.

(d) If, within 10 days after service of notice of the order, the judgment debtor or the judgment debtor's spouse files with the levying officer a declaration that the absence of the judgment debtor and the judgment debtor's spouse or the attorney for the judgment debtor or the judgment debtor's spouse from the hearing was due to mistake, inadvertence, surprise, or excusable neglect and that the judgment debtor or spouse of the judgment debtor wishes to assert the **homestead** exemption, the levying officer shall transmit the declaration forthwith to the court. Upon receipt of the declaration, the court shall set a time and place for hearing to determine whether the determinations of the court should be modified. The time set for hearing shall be not later than 20 days after receipt of the declaration. The court clerk shall cause notice of the hearing promptly to be given to the parties.

704.800. (a) If no bid is received at a sale of a **homestead** pursuant to a court order for sale that exceeds the amount of the **homestead** exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property, including but not limited to any attachment or judgment lien, the **homestead** shall not be sold and shall be released and is not thereafter subject to a court order for sale upon subsequent application by the same judgment creditor for a period of one year.

(b) If no bid is received at the sale of a **homestead** pursuant to a court order for sale that is 90 percent or more of the fair market value determined pursuant to Section 704.780, the **homestead** shall not be sold unless the court, upon motion of the judgment creditor, does one of the following:

(1) Grants permission to accept the highest bid that exceeds the amount of the minimum bid required by subdivision (a).

(2) Makes a new order for sale of the **homestead**.

704.810. Levy on a **homestead** that is subject to a lien or encumbrance is not by itself grounds for acceleration of the obligation secured by the lien or encumbrance, notwithstanding any provision of the obligation, lien, or encumbrance and if the **homestead** is sold pursuant to court order under this article the amount payable to satisfy a lien or encumbrance shall not include any penalty for prepayment.

704.820. If the dwelling is owned by the judgment debtor as a joint tenant or tenant in common or if the interest of the judgment debtor in the dwelling is a leasehold or other interest less than a fee interest:

(a) At an execution sale of a dwelling, the interest of the judgment debtor in the dwelling and not the dwelling shall be sold. If there is more than one judgment debtor of the judgment creditor, the interests of the judgment debtors in the

dwelling shall be sold together and each of the judgment debtors entitled to a **homestead** exemption is entitled to apply his or her exemption to his or her own interest.

(b) For the purposes of this section, all references in this article to the "dwelling" or "**homestead**" are deemed to be references to the interest of the judgment debtor in the dwelling or **homestead**.

704.830. The provisions of Sections 703.590 and 703.600 apply to proceedings under this article.

704.840. (a) Except as provided in subdivision (b), the judgment creditor is entitled to recover reasonable costs incurred in a proceeding under this article.

(b) If no bid is received at a sale of a **homestead** pursuant to a court order for sale that exceeds the amount of the **homestead** exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property, the judgment creditor is not entitled to recover costs incurred in a proceeding under this article or costs of sale.

704.850. (a) The levying officer shall distribute the proceeds of sale of a **homestead** in the following order:

(1) To the discharge of all liens and encumbrances, if any, on the property.

(2) To the judgment debtor in the amount of any applicable exemption of proceeds pursuant to Section 704.720.

(3) To the levying officer for the reimbursement of the levying officer's costs for which an advance has not been made.

(4) To the judgment creditor to satisfy the following:

(A) First, costs and interest accruing after issuance of the writ pursuant to which the sale is conducted.

(B) Second, the amount due on the judgment with costs and interest, as entered on the writ.

(5) To the judgment debtor in the amount remaining.

(b) Sections 701.820 and 701.830 apply to distribution of proceeds under this section.