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September 18, 1981

TO COUNTY ASSESSORS:

EXECUTION SALES

Under California law, property belonging to a judgment debtor can be sold to satisfy the claims of creditors. Execution or judicial sales, held by a sheriff or other duly qualified public officer, are examples of this procedure. An execution sale is a sale of property by the aforesaid public officer, under authority of a previously levied writ of execution that was issued on a money judgment against the owner of the property for a designated sum. Judicial sales differ from execution sales in that they are made pursuant to an order of the court, rather than a writ issued by the clerk of the court; and further, in that the court order directs the sale of specifically designated property, whereas the writ of execution is nonspecific as to the property to be sold.

Both judgment debtor's real and personal property, not otherwise exempted by law, are subject to execution sale. In the case of personal property, the purchaser at auction receives a certificate of sale and immediate possession of the goods. In the case of real property, he receives a certificate of sale from the officer conducting the sale, but not immediate possession. He must wait for a period of 12 months following the purchase before he can take possession of the real property. During this period, the judgment debtor has the right to redeem his property by satisfying the judgments against him. The purchaser's title, which passed to him at the execution sale, is subject to defeasance by redemption during the 12 month period and subject also to the debtor's right to remain in possession until the redemption period has expired and a sheriff's deed to the property has been executed. Although the purchaser does not have the right of possession from the time of sale until redemption, he is entitled to receive from the tenant in possession the rents of the property sold, or the value of the use and occupation thereof.

The purchaser at an execution or judicial sale, therefore, acquires only a qualified estate in the property until the time for redemption has expired. His title is not absolute until the waiting period has ended, at which time he is entitled to a conveyance by the sheriff or public officer. However, a sheriff's deed is not essential to the vesting of title, it simply perfects his existing claim to the property.

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It relates back to the date on which the purchaser's title became effective. It gives the purchaser no new title and simply shows the title of such grantee has become absolute, upon the expiration of the redemption period.

For county assessors and others concerned with tax assessments, the important point to note with regard to execution sales is that the change of ownership, for property tax purposes, occurs at the end of the redemption period, and not the time to which the title relates back. We have stressed in our past statement on change of ownership, that there are three requirements that must be met for a transfer to qualify as a change of ownership: (1) the transfer must be of a present interest in real property, (2) there must be the right to beneficial use of the property, and (3) the value of the rights transferred must be substantially equivalent to the fee value of the property. Since the purchaser does not receive the right to present use and possession of the property, there is no change of ownership at the time of sale. The purchaser's right to future absolute ownership of the property, and to any income generated by the property during the redemption period, do not together constitute the substantial equivalent of fee ownership of the property.

This view of execution sales is consistent with the treatment accorded foreclosure. Property Tax Rule 462 (Title 18, California Administrative Code), Change in Ownership, reads in part:

"(g) FORECLOSURE.

(1) Mortgage or deed of trust foreclosed by judicial action is a sufficient change in ownership only:

- (A) After the period of redemption has passed and property has not been redeemed, or
- (B) Upon redemption when title vests in the original debtor's successor in interest."

Here again, the important elements are present interest, beneficial use and substantial equivalence to fee value of property. These three requirements are not met until the end of the redemption period following the execution sale of real property, assuming redemption has not occurred. Therefore, the reappraisal of property sold at an execution sale should not be made until the end of the redemption period.

The technical reference for the legal provisions regulating execution sales is Volume 30, Cal Jur, 3rd edition (Bancroft-Whitney, 1976).

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division