



Mr. Verne Walton

October 3, 1984

Thad Gebacz

### SBE Policy on Execution Sales

This is in reply to your memorandum of August 16, 1984, regarding a letter from Kenneth Swearingen, Mapping and Ownership Supervisor of Tulare County. In his letter, Mr. Swearingen raised a question about the impact of certain changes in the California Code of Civil Procedure as they pertain to judicial/execution sales and the SBE policy on change in ownership. He wants to know if our policy is current since the Code of Civil Procedure has undergone significant revision in this area since Letter to Assessors No. 81/114 was published.

Mr. Swearingen's letter refers primarily to Code of Civil Procedure Sections 701.640 and 701.680. These two sections were added in 1982 following the repeal of CCP 700(a) et seq., which eliminated the statutory right of redemption on execution sales of real property under the Enforcement of Judgments Law. The application of this new law would abolish the right of redemption and with limited exceptions, make all sales absolute.

However, the right of redemption is continued in one area: when the creditor foreclosing a mortgage or a deed of trust pursuant to CCP 726 seeks a deficiency judgment. In such cases, the right of redemption is governed by CCP 729.010 et seq. The property may be redeemed only by the judgment debtor or his successor in interest (CCP 729.020) and the redemption period is three months (if the proceeds are sufficient to satisfy the obligation) or one year (if the proceeds are not sufficient) (CCP 729.030).

Mr. Swearingen's basic question is whether or not Property Tax Rule 462 (18 Cal. Admin. Code § 462) presently reflects these changes. The affected provision reads, in pertinent 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 the property has not been redeemed, or (B) upon redemption when title vests in the original debtors successor and interest."

The initial guidance on this subject from the Board of Equalization was contained in Letter to Assessors No. 81/114, dated September 18, 1981. It reflected the status of California law at that time. The Letter to Assessors was correct in stating that there was a statutory period of redemption, twelve months, following the purchase before the purchaser could take possession of the real property. During this period the judgment debtor had the right to redeem his property by satisfying those judgments against him. The purchaser's title was, therefore, subject to defeasance at any time during the 12-month period by redemption of the judgment debtor. This title was also subject to the debtor's right to remain in possession until the statutory period had expired and a sheriff's deed to the property had been executed.

The purchaser at the execution or judicial sale, therefore, acquired only a qualified estate in the property until the time for redemption had expired. His title was not absolute until the statutory redemption period had expired at which time he would be entitled to a conveyance by the sheriff or other public officer.

However, the statutory period of redemption which was in effect at the time of the Board's letter was eliminated by the changes to the Enforcement of Judgment Law, which became effective on January 1, 1983, and became operative on July 1, 1983 (added Stats. 1982, Ch. 1364, Section 2, operative July 1, 1983). Thus, the discussion in Letter to Assessors No. 81/114 no longer reflects current law. Mr. Swearingen indicates that CCP Sections 701.649 and 701.680 are controlling in the instant matter. These provisions deal with the enforcement of a money judgment by a writ of execution and are contained in Title 9, Division 2, Chapter 3, Article 6 of the Code of Civil Procedure. These sections were also added by Statutes of 1982, Chapter 1364.

Statutes pertaining to actions for foreclosure of trust deeds and mortgages are found in Title 19, Chapter 1, Sections 725(a)-730.5 of the Code of Civil Procedure. The legislative committee comment pertaining to the 1982 amendment of Section 725(a) indicates this section was amended to limit provisions relating to the statutory right of redemption which were set forth in Sections 726(e), 729.010-729.090.

The Legislative Committee comment for Sections 729.010-729.090 states:

"Sections 729.010-729.090 provide a limited procedure for redemption of real property from sale. Under Section 729.010, redemption is available only in a case where a judgment creditor is seeking a deficiency judgment. If the proceeds of sale are insufficient to satisfy the secured indebtedness, the property may be redeemed until one year after the sale; if the secured indebtedness is satisfied by the sale, the redemption is three months. See Section 729.030. This continues a former portion of Section 725(a)."

Section 729.030 states:

"The redemption period during which property may be redeemed from a foreclosure sale under this chapter ends:

(a) three months after the date of sale if the proceeds of the sale are sufficient to satisfy the secured indebtedness with interest and cost of action and sale.

(b) one year after the date of sale if the proceeds of the sale are not sufficient to satisfy the secured indebtedness with interests and cost of action and of sale."  
(Added Stats. 1982, Ch. 497, Sec. 50, operative July 1, 1983.)

Under this section it is apparent that limited redemption is still available to a judgment debtor when there is a foreclosure of a trust deed or mortgage. If the proceeds

of sale are insufficient to satisfy the secured indebtedness, the property may be redeemed for up to one year after the sale; if the secured indebtedness is satisfied by the sale, the redemption period is three months.

Based upon the foregoing, it is our opinion that the Board's basic view of change in ownership as pertains to foreclosure of a trust deed or mortgage has not been significantly modified. The underlying statute (CCP § 729.030, formerly CCP § 725(a)) has merely shortened one of the periods for statutory redemption. Title passes and is effective under Rule 462(g) either three months or one year after the foreclosure sale, depending on the circumstances. A change in the text of the regulation is not necessary because it does not specify the period of redemption.

I believe that the foregoing is responsive to your inquiry; and if I may be of any further assistance, please do not hesitate to call me.

GTG:fr

cc: Mr. Lawrence M. Nichols  
Tulare County Assessor  
Mr. Gordon P. Adelman  
Mr. Robert H. Gustafson