

**California
Adverse
Possession
Statutes
& related definitions**

Relevant sections (to this case) of the CODE OF CIVIL PROCEDURE have been emboldened & highlighted in green for the purpose of simplification of interpretation. Words used to interpret the previous section of the code have been emboldened & highlighted in red.

CODE OF CIVIL PROCEDURE from *Official California Legislative Information* website:¹

SECTION 315-330

318. No action for the recovery of real property, or for the recovery of the possession thereof, can be maintained, unless it appear that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the property in question within five years before the commencement of the action.

Section 318 tacitly establishes: "An action" is required for the recovery of the possession of real property when the property is possessed by another occupant. No action may be maintained for the recovery of real property after five years of possession of the property by an occupant who has fulfilled "statutory requirements".

Definition of TACIT, Black's Law Dictionary:

“Silent; not expressed; implied or inferred; manifested by the refraining from contradiction or objection; inferred from the situation and circumstances, in the absence of express matter. Thus, tacit consent is consent inferred from the fact that the party kept silence when he had an opportunity to forbid or refuse.”²

Definition of REAL PROPERTY, Black's Law Dictionary:

“A term that is applied to land and immovable property on land such as buildings.”³

1 “CALIFORNIA CODE OF CIVIL PROCEDURE”, *Table of Contents, on Official California Legislative Information website*: http://www.leginfo.ca.gov/.html/ccp_table_of_contents.html

2 “Black's Law Dictionary”, *2nd Edition* on TACIT: <http://thelawdictionary.org/tacit/>

3 “Black's Law Dictionary”, *2nd Edition*, on REAL PROPERTY: <http://thelawdictionary.org/real-property/>

321. In every action for the recovery of real property *(from a person who is lawfully possessing such property)*, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for five years before the commencement of the action *(in which case, see SECTION 322, next page)*.

“EVICTION”, *Black's Law Dictionary, 2nd Edition:*

Dispossession by process of law ; the act of depriving a person of the possession of lands which he has held, in pursuance of the judgment of a court. Reasonerv. Edmundson, 5 Ind. 395; Cowdrey v. Coit, 44 N. Y. 392, 4 Am. Rep. 690; HomeLife Ins. Co. v. Sherman, 46 N. Y. 372. **Technically, the dispossession must be by judgment of law; if otherwise, it is an ouster.** Mitchell v. Warner, 5 Conn. 497. **In the civil law. The abandonment which one is obliged to make of a thing, in pursuance of a sentence by which he is condemned to do so.** Poth. Contr. Sale. pt. 2, c.1,⁴

4 Black's Law Dictionary, 2nd Edition, on EVICTION: <http://thelawdictionary.org/eviction/>

322. When it appears that the occupant, or those under whom he claims (*guests, partner, family members*), entered into the possession of the property under claim of title, exclusive of other right (*title holder did not contest*), founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent Court, and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property, under such claim, for five years, the property so included is deemed to have been held adversely.

Section 322 re-inforces that: *A person has a right to seek to adversely possess a property so long as they physically reside there while in the process of fulfilling statutory requirements (next page). After five years, the property has been successfully "held adversely", & such occupant may then file an action to obtain the title in order to prove they have held the land in possession at least five years and fulfilled statutory requirements in order to perfect their claim & thus acquire the title.*

Note: This section clearly defines "statutory requirements" for "perfecting an adverse possession claim":

323. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved;
2. Where it has been protected by a substantial inclosure;
3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant;
4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Section 323(4) establishes that: "If part of the lot has been improved, all parts of the property typically considered "part of that same lot" are also considered to be 'in possession'."

324. Where it appears that there has been an actual continued occupation of land, under a claim of title (after 5 years of possessing the property, when presenting to the court to secure the title), exclusive of any other right (as in "title holder did not exert their right to evict the possessor within given time period"), but not founded upon a written instrument (as in, "even when no initial paperwork was filed", judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

Section 324 establishes that: "Even when the occupation of the land is 'not founded upon a written instrument', a land is still considered 'held adversely' by a person who has continuously occupied the land & fulfilled statutory requirements. This statute recognizes a person's right to occupy an unoccupied & neglected land, & to cultivate that land & make improvements, in pursuit to perfecting an adverse possession claim.

325. (a) For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

(1) Where it has been protected by a substantial enclosure.

(2) Where it has been usually cultivated or improved.

(b) In no case shall adverse possession be considered established under the provision of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have timely paid all state, county, or municipal taxes that have been levied and assessed upon the land for the period of five years during which the land has been occupied and claimed. Payment of those taxes by the party or persons, their predecessors and grantors shall be established by certified records of the county tax collector.⁵

Section 325 establishes that the possessor must "pay taxes in a timely manner".

⁵ <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=ccp&group=00001-01000&file=315-330>

A person following the previous statutory requirements in order to perfect such claim is considered the

HOLDER IN DUE COURSE

for the *title deed*.

“Definition of **HOLDER IN DUE COURSE:**

A term for the original holder of an instrument that takes it in good faith and exchanges something valuable for it. AKA protected holder.”⁶

⁶ “Black's Law Dictionary”, *2nd Edition*, on **HOLDER IN DUE COURSE**: <http://thelawdictionary.org/holder-in-due-course/>

An Additional Consideration:

***The Lockean Proviso &*
The Lockean Theory of Labor**

“To prejudge other men's notions before we have looked into them is not to show their darkness but to put out our own eyes.”

John Locke

Lockean Proviso

John Locke's *Second Treatise on Civil Government* was published in 1690 as part of *Two Treatises of Government*, & refuted the theory of *The Divine Right of Kings*.

The Divine Right of Kings was used as a political & religious doctrine to justify royal & political legitimacy; *it asserts that a monarch is subject to no earthly authority, deriving the right to rule directly from the will of God; the king is thus not subject to the will of his people, the aristocracy, or any other estate of the realm, including the Church*. It implies that only God can judge an unjust king, & that any attempt to *depose, dethrone or restrict his powers runs contrary to the will of God & may constitute a sacrilegious (punishable) act*.

Two Treatises of Government was published anonymously in 1689 by John Locke. The *First Treatise* attacks patriarchalism in the form of sentence-by-sentence refutation of Robert Filmer's *Patriarcha*, while the *Second Treatise* outlines Locke's ideas for a more *civilized society* based on natural rights & *contract theory*.⁷

Locke's works were well-known & frequently quoted by colonial leaders, being *the most quoted authority on government in the 1760-1776 period prior to American independence*. Thomas Jefferson was accused of *plagiarizing (copying)* Locke in certain sections of the Declaration of Independence by fellow Virginian delegate Richard Henry Lee.⁸

In his *Second Treatise on Government*, Locke asked *by what right an individual can claim to own one part of the world, when, according to the Bible, God gave the world to all humanity in common*. He answered that persons own *themselves* and *therefore* their own labor. When a person works, that labor enters into the object. Thus, the object becomes the property of that person.

Locke held that individuals have a natural right to homestead, but that they can do so only "...at least where there is enough, and as good, left in common for others". The proviso maintains that appropriation of unused resources is a diminution of the rights of others to it, & would be acceptable only so long as it does not make anyone worse off than they would have been before.

7 Laslett, Peter. "Introduction." *Two Treatises of Government*. Cambridge: Cambridge University Press (1988), 9.

8 From "John Locke – A Philosophical Founder of America", the *Wallbuilders* website: <http://www.wallbuilders.com/libissuesarticles.asp?id=99156#FN33>

Excerpts From *Second Treatise of Government*:

Sec. 33. Nor was this appropriation of any parcel of land, by improving it, any prejudice to any other man, since there was still enough, and as good left; & more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his enclosure for himself: for he that leaves as much as another can make use of, does as good as take nothing at all.

Sec. 34. God gave the world to men in common; but since he gave it them for their benefit, & the greatest conveniencies of life they were capable to draw from it... He gave it to the use of the industrious & rational, (*and labour was to be his title to it;*) not to the fancy or covetousness of the quarrelsome & contentious. He that had as good left for his improvement, as was already taken up, needed not complain, ought not to meddle with what was already improved by another's labour: if he did, it is plain he desired the benefit of another's pains, which he had no right to, & not the ground which God had given him in common with others to labour on, & whereof there was as good left, as that already possessed, & more than he knew what to do with, or his industry could reach to.”⁹

⁹ Constitution Society, *Transcript of Second Treatise*: <http://www.constitution.org/jl/2ndtr05.htm>

**California
Homesteading
Statutes**
& related definitions

Definition of HOMESTEAD, *Black's Law Dictionary, 2nd Ed. Online:*

The home place; the place where the home is. It is the home, the house and the adjoining land, where the head of the family dwells; the home farm. The fixed residence of the head of a family, with the land and buildings surrounding the main house. See *Oliver v. Snowden*, 15 Fla. 825, 43 Am. Itep. 33S; *In re Allen (Cal.)* 16Pac. 319; *McKeough v. McKeough*, 69 Vt. 34, 37 Atl. 275; *Iioitt v. Webb*, 36 N. II. 158; *Frazer v. Weld*, 177 Mass. 513, 59 N. E. IIS; *Lyou v. Hardin*, 129 Ala. 643, 29 South.777; *Xorris v. Kidd*, 28 Ark. 493. **Technically, however, and under the modern homestead laws, a homestead is an artificial estate in land, devised to protect the possession and enjoyment of the owner against the claims of his creditors, by withdrawing the property from execution and forced sale, so long as the land is occupied as a home.** *Buckingham v. Buckingham*, 81Mich. S9, 45 X. W. 504; *Campbell v. Moran*, 71 Xeb. 615, 99 N. W. 499; *Ikeu v. Olenict*, 42 Tex. 19S; *Jones v. Britton*, 102 N. C. 106. 9 S. E. 554, 4 L. It. A. 178; *Thomas v. Fulford*, 117 X. C. 667, 23 S. E. 635; *Ellinger v. Thomas*, 04 Kan. ISO, 07 Pac. 529; *Galligherv. Smiley*, 28 Xeb. 189, 44 N. W. 187, 20 Am. St. Rep. 319.”¹⁰

JUDGMENT DEBTOR:

“An order to pay a debt is made against this entity”¹¹

ENTITY:

“Legally, equal to a person who might owe taxes. A generic term inclusive of person, partnership, organization, or business. An entity can be legally bound. An entity is uniquely identifiable from any other entity.”¹²

LIEN:

“A qualified right of property which a creditor has in or over specific property of his debtor, as security for the debt or charge or for performance of some act. In every ease in which property, either real or personal, is charged with the payment of a debt or duty, every such charge may be denominated a lien on the property. Whitak. Liens, p. 1. A lien is a charge imposed upon specific property, by which it is made security for the performance of an act Code Civil Proc. Cal.”¹³

10 Definition of HOMESTEAD, *Black's Law Dictionary*: <http://thelawdictionary.org/homestead/>

11 Definition of JUDGMENT DEBTOR, *Black's Law Dictionary*: <http://thelawdictionary.org/judgment-debtor/>

12 ENTITY: <http://thelawdictionary.org/entity/>

13 LIEN: <http://thelawdictionary.org/lien/>

California Homesteading Statutes:

CODE OF CIVIL PROCEDURE SECTION 704.710-704.850¹⁴

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 mobile home 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.

¹⁴ Official California Legislative Information *website*: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=ccp&group=00001-01000&file=704.710-704.850>

(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 decreeing 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 twenty-five thousand dollars (\$25,000) 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 thirty-five thousand dollars (\$35,000) 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.