

ASSEMBLY BILL

No. 2317

Introduced by Assembly Member Maienschein

February 21, 2014

An act to amend Section 701.680 of the Code of Civil Procedure, relating to enforcement of judgments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2317, as introduced, Maienschein. Execution: sale of property.

Existing law provides that a sale of property pursuant to specified statutory provisions regarding enforcement of judgments is absolute and may not be set aside for any reason. The judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest if the judgment is reversed, vacated, or otherwise set aside. 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, the judgment debtor, or the judgment debtor's successor in interest, may commence an action within 90 days after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor.

This bill would declare that these provisions do not affect, limit, or eliminate a judgment debtor's equitable right of redemption.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. Section 701.680 of the Code of Civil Procedure
- 2 is amended to read:

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

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

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

12 (1) The judgment debtor, or the judgment debtor’s successor in
13 interest, may commence an action within 90 days after the date of
14 sale to set aside the sale if the purchaser at the sale is the judgment
15 creditor. Subject to paragraph (2), if the sale is set aside, the
16 judgment of the judgment creditor is revived to reflect the amount
17 that was satisfied from the proceeds of the sale and the judgment
18 creditor is entitled to interest on the amount of the judgment as so
19 revived as if the sale had not been made. Any liens extinguished
20 by the sale of the property are revived and reattach to the property
21 with the same priority and effect as if the sale had not been made.

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

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

31 (e) *This section does not affect, limit, or eliminate a judgment*
32 *debtor’s equitable right of redemption.*