

## Senate Bill No. 69

### CHAPTER 446

An act to amend Section 798.61 of the Civil Code, to amend Sections 700.080 and 715.010 of the Code of Civil Procedure, and to amend Section 18005.8 of, and to add Section 18080.9 to, the Health and Safety Code, relating to mobilehomes, and making an appropriation therefor.

[Approved by Governor September 2, 1995. Filed with Secretary of State September 5, 1995.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 69, Kelley. Mobilehomes: final money judgment.

(1) Existing law, known as the Mobilehome Residency Law, governs the rights and obligations of residents and managers of mobilehome parks. Existing law authorizes a court to enter a judgment of abandonment of a mobilehome when specified criteria are met and no party establishes an interest in the mobilehome.

This bill would provide that an interest in the mobilehome is established by evidence of a right to possession of the mobilehome or a security or ownership interest in the mobilehome.

(2) Existing law specifies the procedure for imposing a levy upon personal property.

This bill would authorize the imposition of a levy upon a mobilehome, as specified.

(3) Existing law, known as the Mobilehomes-Manufactured Housing Act of 1980, requires manufactured homes and mobilehomes, as defined, to be registered annually with the Department of Housing and Community Development, unless these manufactured homes or mobilehomes meet specified conditions. The act also requires each person acquiring or retaining a security interest in a manufactured home subject to registration under the act to file specified information with the department with respect to the security interest. Willful violations of the act are punishable as misdemeanors.

This bill would provide that an owner of a mobilehome park who obtains a final money judgment for unpaid rent against the registered owner, as defined, of a manufactured home or mobilehome registered with the department may perfect a lien against that manufactured home or mobilehome in accordance with specified provisions of the Mobilehomes-Manufactured Housing Act of 1980, by filing a form prescribed by the department. The bill would provide that a lien created pursuant to the bill would not be a security interest for the purpose of the definition of "legal owner" in the act. It would



further provide that a lien created pursuant to the bill would not be subject to execution. It would require the amount of a lien created pursuant to the bill to be reduced by the amount that a legal owner or junior lienholder is required to pay pursuant to specified provisions of the Mobilehome Residency Law.

The bill would require that, upon satisfaction of a money judgment, a lien perfected pursuant to this bill be released according to a specified provision. It would make the judgment creditor liable for all damages, impose a specified penalty of \$100 on the judgment creditor, and would authorize a court to award reasonable attorney's fees to a prevailing party. It would require an owner of a mobilehome park filing a lien created pursuant to the bill to be treated as a junior lienholder for purposes of a sale pursuant to a provision of the act relating to the disposal of a repossessed or surrendered manufactured home, mobilehome, truck camper, or floating home.

The bill would provide that the surrender of ownership interest by a registered owner of a mobilehome or manufactured home shall divest the registered owner of any claim to possession or title to the mobilehome or manufactured home and shall be effective upon acceptance of that surrender by the legal owner. In addition, the bill would provide that the completion of a foreclosure would divest the registered owner of title to the mobilehome or manufactured home, as specified. The bill would also specify the manner in which a judgment lien filed pursuant to this provision may be extinguished.

The bill would make an appropriation because these specified provisions of the act authorize the department to collect fees for deposit into the continuously appropriated Mobilehome-Manufactured Home Revolving Fund, such as filing fees for documents filed to perfect a lien pursuant to this bill. The bill would also provide, as specified, for the release of liens perfected pursuant to the bill. Because violation of these provisions of the bill would be a misdemeanor, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

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

SECTION 1. Section 798.61 of the Civil Code is amended to read:

798.61. (a) (1) As used in this section, "abandoned mobilehome" means a mobilehome about which all of the following are true:



(A) It is located in a mobilehome park on a site for which no rent has been paid to the management for the preceding 60 days.

(B) It is unoccupied.

(C) A reasonable person would believe it to be abandoned.

(2) For purposes of this section:

(A) "Mobilehome" shall include a trailer coach, as defined in Section 635 of the Vehicle Code, or a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, if the trailer coach or recreational vehicle also satisfies the requirements of paragraph (1), including being located on any site within a mobilehome park, even if the site is in a separate designated section pursuant to Section 18215 of the Health and Safety Code.

(B) "Abandoned mobilehome" shall include a mobilehome which is uninhabitable because of its total or partial destruction which cannot be rehabilitated, if the mobilehome also satisfies the requirements of paragraph (1).

(b) After determining a mobilehome in a mobilehome park to be an abandoned mobilehome, the management shall post a notice of belief of abandonment on the mobilehome for not less than 30 days, and shall deposit copies of the notice in the United States mail, postage prepaid, addressed to the homeowner at the last known address and to any known registered owner, if different from the homeowner, and to any known holder of a security interest in the abandoned mobilehome. This notice shall be mailed by registered or certified mail with a return receipt requested.

(c) Thirty or more days following posting pursuant to subdivision (b), the management may file a petition in the municipal or justice court for the judicial district in which the mobilehome park is located for a judicial declaration of abandonment of the mobilehome. Copies of the petition shall be served upon the homeowner, any known registered owner, and any known person having a lien or security interest of record in the mobilehome by posting a copy on the mobilehome and mailing copies to those persons at their last known addresses by registered or certified mail with a return receipt requested in the United States mail, postage prepaid.

(d) (1) Hearing on the petition shall be given precedence over other matters on the court's calendar.

(2) If, at the hearing, the petitioner shows by a preponderance of the evidence that the criteria for an abandoned mobilehome has been satisfied and no party establishes an interest therein at the hearing, the court shall enter a judgment of abandonment, determine the amount of charges to which the petitioner is entitled, and award attorney's fees and costs to the petitioner. For purposes of this subdivision an interest in the mobilehome shall be established by evidence of a right to possession of the mobilehome or a security or ownership interest in the mobilehome.



(3) A default may be entered by the court clerk upon request of the petitioner, and a default judgment shall be thereupon entered, if no responsive pleading is filed within 15 days after service of the petition by mail.

(e) (1) Within 10 days following a judgment of abandonment, the management shall enter the abandoned mobilehome and complete an inventory of the contents and submit the inventory to the court.

(2) During this period the management shall post and mail notice of intent to sell the abandoned mobilehome and its contents under this section, and announcing the date of sale, in the same manner as provided for the notice of determination of abandonment under subdivision (b).

(3) At any time prior to sale of a mobilehome under this section, any person having a right to possession of the mobilehome may recover and remove it from the premises upon payment to the management of all rent or other charges due, including reasonable costs of storage and other costs awarded by the court. Upon receipt of this payment and removal of the mobilehome from the premises pursuant to this paragraph, the management shall immediately file an acknowledgment of satisfaction of judgment pursuant to Section 724.030 of the Code of Civil Procedure.

(f) Following the judgment of abandonment, but not less than 10 days following the notice of sale specified in subdivision (e), the management may conduct a public sale of the abandoned mobilehome and its contents. The management may bid at the sale and shall have the right to offset its bids to the extent of the total amount due it under this section. The proceeds of the sale shall be retained by the management, but any unclaimed amount thus retained over and above the amount to which the management is entitled under this section shall be deemed abandoned property and shall be paid into the treasury of the county in which the sale took place within 30 days of the date of the sale. The former homeowner or any other owner may claim any or all of that unclaimed amount within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county. If the county pays any or all of that unclaimed amount to a claimant, neither the county nor any officer or employee of the county is liable to any other claimant as to the amount paid.

(g) Within 30 days of the date of the sale, the management shall submit to the court an accounting of the moneys received from the sale and the disposition of the money and the items contained in the inventory submitted to the court pursuant to subdivision (e).

(h) The management shall provide the purchaser at the sale with a copy of the judgment of abandonment and evidence of the sale, as shall be specified by the State Department of Housing and Community Development or the Department of Motor Vehicles, which shall register title in the abandoned mobilehome to the



purchaser upon presentation thereof. The sale shall pass title to the purchaser free of any prior interest, including any security interest or lien, except the lien provided for in Section 18116.1 of the Health and Safety Code, in the abandoned mobilehome.

SEC. 2. Section 700.080 of the Code of Civil Procedure is amended to read:

700.080. (a) To levy upon personal property used as a dwelling, the levying officer shall serve a copy of the writ of execution and a notice of levy on one occupant of the property. Service on the occupant shall be made by leaving the copy of the writ and the notice of levy with the occupant personally or, in the occupant's absence, with a person of suitable age and discretion found at the property when service is attempted who is a member of the occupant's family or household. If unable to serve the occupant at the time service is attempted, the levying officer shall make the levy by posting the copy of the writ and the notice of levy in a conspicuous place on the property.

(b) If the judgment creditor so instructs, the levying officer shall place a keeper in charge of the property for a period requested by the judgment creditor.

(c) The judgment creditor may apply to the court on noticed motion for an order directing the levying officer to remove the occupants. The notice of motion shall be served on any legal owner and any junior lienholder who was served pursuant to Section 700.090, on the occupant, and, if the judgment debtor is not the occupant, on the judgment debtor. Service shall be made personally or by mail. At the hearing on the motion the court shall determine the occupant's right to possession and shall make an order including terms and conditions that are appropriate under the circumstances of the case.

(d) Personal property used as a dwelling shall include a mobilehome, whether the mobilehome is occupied or unoccupied at the time of the levy.

SEC. 3. Section 715.010 of the Code of Civil Procedure is amended to read:

715.010. (a) A judgment for possession of real property may be enforced by a writ of possession of real property issued pursuant to Section 712.010. The application for the writ shall provide a place to indicate that the writ applies to all tenants, subtenants, if any, name claimants, if any, and any other occupants of the premises.

(b) In addition to the information required by Section 712.020, the writ of possession of real property shall contain the following:

(1) A description of the real property, possession of which is to be delivered to the judgment creditor in satisfaction of the judgment.

(2) A statement that if the real property is not vacated within five days from the date of service of a copy of the writ on the occupant or, if the copy of the writ is posted, within five days from the date a



copy of the writ is served on the judgment debtor, the levying officer will remove the occupants from the real property and place the judgment creditor in possession.

(3) A statement that any personal property, except a mobilehome, remaining on the real property after the judgment creditor has been placed in possession will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the judgment debtor or other owner pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the real property.

(4) The date the complaint was filed in the action which resulted in the judgment of possession.

(5) The date or dates on which the court will hear objections to enforcement of a judgment of possession that are filed pursuant to Section 1174.3, unless a summons, complaint, and prejudgment claim of right to possession were served upon the occupants in accordance with Section 415.46.

(6) The daily rental value of the property as of the date the complaint for unlawful detainer was filed unless a summons, complaint, and prejudgment claim of right of possession were served upon the occupants in accordance with Section 415.46.

(7) If a summons, complaint, and prejudgment claim of right to possession were served upon the occupants in accordance with Section 415.46, a statement that the writ applies to all tenants, subtenants, if any, named claimants, if any, and any other occupants of the premises.

(c) At the time the writ of possession is served or posted, the levying officer shall also serve or post a copy of the form for a claim of right to possession, unless a summons, complaint, and prejudgment claim of right to possession were served upon the occupants in accordance with Section 415.46.

SEC. 4. Section 18005.8 of the Health and Safety Code is amended to read:

18005.8. "Legal owner" means a person holding a security interest in a manufactured home, mobilehome, commercial coach, floating home, or truck camper perfected by filing the appropriate documents with the department pursuant to Section 18080.7 if the person is entitled to the designation, as provided in Article 3 (commencing with Section 18085) or 4 (commencing with Section 18098) of Chapter 8. A lien created pursuant to Section 18080.9 is not a security interest for purposes of this definition.

SEC. 5. Section 18080.9 is added to the Health and Safety Code, to read:

18080.9. (a) An owner of a mobilehome park who obtains a final money judgment for unpaid rent against the registered owner of a manufactured home or mobilehome registered with the department



may, subject to subdivision (b), perfect a lien against the manufactured home or mobilehome pursuant to Section 18080.7 by filing a form prescribed by the department. The priority of the lien shall be determined in accordance with Article 3 (commencing with Section 18085) and Article 4 (commencing with Section 18098). For purposes of a sale conducted pursuant to Section 18037.5, an owner of a mobilehome park filing a lien pursuant to this section shall be treated as a junior lienholder.

(b) Notwithstanding any other provision of law, the department shall accept, for the purposes of the perfection of a lien pursuant to this section, a certified copy of either the final money judgment or an abstract of the final money judgment in lieu of the certificate of title, registration card, or signatures otherwise required by subdivision (a) of Section 18080.7.

(c) Upon satisfaction of the final money judgment, a lien perfected pursuant to this section shall be released in accordance with Section 18100.5.

(d) A lien created pursuant to this section shall not be subject to execution, pursuant to Chapter 3 (commencing with Section 699.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure or in any other manner.

(e) If the final money judgment for unpaid rent against a registered owner covers any portion of the period for which a legal owner or junior lienholder is required to pay past due obligations of the registered owner pursuant to Section 798.56a of the Civil Code, the amount of the lien created by this section shall be reduced by the amount required to be paid by the legal owner or junior lienholder pursuant to Section 798.56a of the Civil Code.

(f) A surrender of ownership interest by the registered owner of a mobilehome or manufactured home to the legal owner shall operate as a matter of law to divest the registered owner of any claim to possession or title to the mobilehome or manufactured home and shall be effective upon acceptance of that surrender by the legal owner. Any judgment lien filed pursuant to this section on a mobilehome or manufactured home which is thereafter surrendered to the legal owner shall be extinguished by any of the following:

(1) If the proceeds of the sale of the surrendered mobilehome or manufactured home by the legal owner to a third party after the surrender is effective are not sufficient to satisfy the amount due to the legal owner by the registered owner under a security agreement, promissory note, or other debt instrument secured by the mobilehome or manufactured home.

(2) If the proceeds of the sale of the surrendered mobilehome or manufactured home by the legal owner to a third party after the surrender is effective are sufficient to satisfy the amount due the legal owner by the registered owner under a security agreement, promissory note, or other debt instrument secured by the



mobilehome or manufactured home, but there are no surplus funds available for payment to the junior lienholder.

(3) Upon payment of any surplus proceeds owed to the junior lienholder if the proceeds of the sale of the surrendered mobilehome or manufactured home by the legal owner to a third party after the surrender is effective exceed the amount due to the legal owner from the registered owner under the security agreement, promissory note, or other debt instrument secured by the mobilehome or manufactured home.

(g) The completion of a foreclosure on a mobilehome or manufactured home pursuant to the provisions of Section 18037.5 shall divest the registered owner of title to the mobilehome or manufactured home by operation of law. The foreclosure shall (A) make of any judgment lien created pursuant to this section invalid and unenforceable, and (B) extinguish and bar any levy upon a judgment lien perfected pursuant to this section. Except to the extent that surplus proceeds from the foreclosure sale were paid to the judgment creditor under the judgment lien perfected pursuant to this section, nothing in this subdivision shall be deemed to extinguish, satisfy, or reduce in any way the final money judgment owed by the former registered owner for unpaid rent.

(h) If the money judgment has been satisfied and the judgment creditor fails without just cause to comply with Section 18100.5 within 20 days from the date the judgment creditor's lien is satisfied, the judgment creditor is liable for all damages sustained by reason of that failure and shall also forfeit \$100 to the person who sustained those damages. In any action to enforce this provision, the court shall award reasonable attorney's fees to the prevailing party. Where the prevailing party is someone other than the judgment creditor, the court shall order the department to remove the lien from the manufactured home or mobilehome record. A copy of the court order may be submitted to the department as evidence that the judgment creditor's lien has been satisfied.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

