

M e m o r a n d u m**170.0009.300**

To : Mr. Jessie Hood
Headquarters - Collection Section

Date January 3, 1996

From: Thomas J. Cooke
Staff Counsel

Subject: H--- M. S---
Account No. SR -- XX-XXXXXX

Gary Jugum has requested that I respond to your memorandum to him dated December 28, 1995 concerning the above taxpayer.

In your memorandum, you state that the Board recorded a Notice of State Tax Lien against the above taxpayer in --- County on April 30, 1993. The Board's lien attached to real property owned by the taxpayer. A mortgagee obtained a judicial foreclosure of the property that was encumbered by the Board's lien. A Writ of Sale obtained from the --- County Superior Court was forwarded to the --- County Sheriff's Department. The Sheriff then sold the property to the mortgagee at a sheriff's sale. The property was subsequently sold to another party by the mortgagee. [The] Title Company has requested that the Board issue partial releases for the liens filed by the Board. The Board's lien was junior to the mortgagee's interest foreclosed.

There are two reasons why real property may be sold at a sheriff's sale. If there is a judicial foreclosure, the court will issue a Writ of Sale, which is a court order that the property subject to foreclosure may be sold. The property will then be sold at a sheriff's sale pursuant to the Writ. Also, a judgment creditor may request that a sheriff seize and sell real property to satisfy the judgment. In either case, Code of Civil Procedure section 701.630 is applicable. (See C.C.P. § 729.080(e).)

Code of Civil Procedure section 701.630 provides:

“If property is sold pursuant to this article, the lien under which it is sold, any liens subordinate thereto, and any state tax lien (as defined in Section 7162 of the Government Code) on the property sold are extinguished.”

It is our opinion that if real property is sold at a sheriff's sale to anyone other than the taxpayer, subordinate Board liens on the property are extinguished. The Board should issue the partial releases as requested by the title company.

TJC/cmm

cc: Mr. Rick Slater (MIC:55)