

Superior Court of California, County of Orange

Instructions for Undertaking pursuant to Penal Code, §§1279, 1298
(Deposit of real property as bail)

1. INITIATING THE LIEN

1.1. Documents Required:

1.1.1. Undertaking and Affidavit for Undertaking

- 1.1.1.1. This form is available on www.occourts.org or at any Superior Court of California, County of Orange Justice Center forms kiosk.
- 1.1.1.2. This form must be completed and notarized.
- 1.1.1.3. Value of equity in property must be twice the amount of bail after homestead exemptions. (Note: The amount of exemption is determined by Civil Code of Procedure, §704.730. Refer to page 4)
- 1.1.1.4. The Superior Court case number must be placed on the Affidavit for Undertaking.

1.1.2. Deed of Trust

- 1.1.2.1. This form may be purchased from a stationery/legal bookstore.
- 1.1.2.2. This form must name the beneficiary as the Clerk of the Superior Court of California, County of Orange.
- 1.1.2.3. The Superior Court case number must be placed on the Deed of Trust.
- 1.1.2.4. Mailing instructions for recorded documents to be included as follows:
(Use the address of the Justice Center in which the case is being heard)

Superior Court of California, County of Orange
Central Justice Center - 700 Civic Center Dr. West, Santa Ana, CA 92701 Harbor Justice Center - Newport Beach - 4601 Jamboree Rd., Newport Beach, CA 92660 Harbor Justice Center - Laguna Hills - 23141 Moulton Parkway 2 nd Floor, Laguna Hills, CA 92653 North Justice Center - 1275 N. Berkeley Ave., P. O. Box 5000, Fullerton, CA 92838 West Justice Center - 8141 13 th Street, Westminster, CA 92683

1.1.3. Promissory Note

- 1.1.3.1. Form may be purchased from a stationery/legal bookstore or may be incorporated as part of the Deed of Trust
- 1.1.3.2. The date of the Promissory Note must be the same as the date on the Deed of Trust.
- 1.1.3.3. The note must contain the following:
 - Dollar amount of the Deed of Trust
 - Name of the City where executed
 - Name of the Trustor(s)
 - Terms of payment
 - Beneficiary of Clerk of the Superior Court of California, County of Orange.
 - Signature(s) of the trustor(s)

INSTRUCTIONS FOR UNDERTAKING PURSUANT TO PENAL CODE, SECTION 1278/1279
(Criminal)

1.1.4. Grant Deed

- 1.1.4.1. This form must verify ownership of the property.
- 1.1.4.2. This form must be a certified copy.
- 1.1.4.3. This form must be the current deed on file at the County Recorder's Office in the county where the property is located.

1.1.5. Uniform Residential Appraisal Report

- 1.1.5.1. This must be obtained from a real estate appraiser licensed by the State of California.
- 1.1.5.2. This must be dated within one week of the Affidavit for Undertaking.
- 1.1.5.3. This must establish the current property value.

1.1.6. Preliminary Title Report

- 1.1.6.1. Available for a fee from a title company.

2. FILING PROCEDURE

- 2.1. Deliver documents to the Criminal Operations Division of the Justice Center where the case is being heard.
 - 2.1.1. The Criminal Operations clerk will review the documents to determine that the packet is complete and correct.
 - 2.1.2. The documents will be forwarded to the judge for approval and signature by the clerk.
 - 2.1.3. Once approved, a certified copy of the Undertaking and the original Deed of Trust will be returned to the submitting party for recording. (NOTE: This does not release the defendant.)

3. RECORDING THE DOCUMENTS

- 3.1. The submitting party must take the certified copy of the Undertaking and the original Deed of Trust to the County Recorder's Office in the county where the property is located.
 - 3.1.1. Any fee charged by the County Recorder's Office must be paid by the submitting party.
- 3.2. Original recorded documents will be mailed by the County Recorder's Office to the Superior Court address listed on the Deed of Trust.

4. RELEASING THE DEFENDANT

- 4.1. The court will order the release of the defendant when one of the following occurs:
 - The submitting party delivers to the Justice Center the certified, recorded copy of the Undertaking *and* the certified recorded copy of the Deed of Trust (each with the County Recorder's instrument number affixed to them).OR
 - The Justice Center receives in the mail from the County Recorder's Office the certified, recorded copy of the Undertaking *and* the original Deed of Trust (each with the County Recorder's instrument number affixed to them).

5. RELEASING THE LIEN

- 5.1. The court must order exoneration of the property bond before the lien may be released.
- 5.2. Documents required:
 - 5.2.1. Order withdrawing Lien on Real Property Posted as Bail
 - 5.2.1.1. This form is available on www.occourts.org or at any Superior Court of California, County of Orange Justice Center forms kiosk.
 - 5.2.2. Deed of Full Reconveyance
 - 5.2.2.1. This form is available on www.occourts.org or at any Superior Court of California, County of Orange Justice Center forms kiosk.

6. FILING PROCEDURE FOR RELEASING THE LIEN

- 6.1. Deliver documents to the Criminal Operations Division of the Justice Center where the case is being heard.
- 6.2. The documents will be referred to a judge to sign the Order Withdrawing the Lien.
- 6.3. Once signed, a certified copy of the Order Withdrawing Lien and the original Deed of Reconveyance will be returned to the submitting party for recording.

7. RECORDING THE DOCUMENTS

- 7.1. The submitting party must take the certified copy of the Order Withdrawing the Lien and the original Deed of Reconveyance to the County Recorder's Office in the county where the property is located.
 - 7.1.1. Any fee charged by the County Recorder's Office must be paid by the submitting party.
- 7.2. Original recorded documents will be mailed by the County Recorder's Office to the submitting party.

Civil Code of Procedure, § 704.730. Amount of Homestead Exemption

- (a) The amount of the homesteads exemption is one of the following:
- (1) Fifty thousand dollars (\$50,000) 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) Seventy-five thousand dollars (\$75,000) 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 fifty thousand dollars (\$150,000) 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 and 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 fifteen thousand dollars (\$15,000) 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 twenty thousand dollars (\$20,000) 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 jointly obligated on the judgment 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.