

April 25, 1973

<u>Time</u>	<u>Place</u>
May 4 - 10:00 a.m. - 5:00 p.m.	State Bar Building
May 5 - 9:00 a.m. - 1:00 p.m.	601 McAllister Street San Francisco 94102

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

May 4 and 5, 1973

May 4

1. Minutes of April 12-14, 1973, Meeting (sent 4/25/73)
2. Administrative Matters

Research Contracts

Memorandum 73-40 (enclosed)

Nonresident Aliens Recommendation

Memorandum 73-45 (enclosed)

3. Study 36 - Condemnation

Schedule on Condemnation Study

Memorandum 73-44 (enclosed)

Approval for Sending to Printer

Study 36.470 - Comprehensive Statute--Chapter 7 (Deposit and Possession Prior to Final Judgment)

Memorandum 73-19 (sent 3/16/73)

Revised Chapter 7 (attached to Memorandum)

First Supplement to Memorandum 73-19 (sent 4/25/73)

Study 36.150 - Compensation for Divided Interests

Memorandum 73-31 (sent 4/3/73)

Study 36.50 - Compensation and Measure of Damages

Memorandum 73-41 (enclosed)

Draft Statute (attached to Memorandum)

April 25, 1973

36.80 - Procedure (Defendant's Responsive Pleadings)

Memorandum 73-46 (enclosed)
Uniform Act--Preliminary Draft of Article V (attached to
Memorandum)

4. Study 39.100 - Enforcement of Foreign Judgments

Memorandum 73-29 (to be sent)
Tentative Recommendation (attached to Memorandum)

5. Study 63 - Evidence (Physician-Patient Privilege)

Memorandum 73-43 (to be sent)
Tentative Recommendation (attached to Memorandum)

May 5

6. Study 78 - Property Left on Leased Premises When Lease Terminated

Memorandum 73-42 (to be sent)
Consultant's Report (attached to Memorandum)

Completion of work on agenda items 4 and 5 if not completed on May 4.

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

MAY 4 AND 5, 1973

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on May 4 and 5, 1973.

Present: John D. Miller, Chairman
Marc W. Sandstrom, Vice Chairman
John N. McLaurin
Thomas E. Stanton, Jr.
Howard R. Williams

Absent: Alister McAlister, Member of Assembly
John J. Balluff
Noble K. Gregory
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, Nathaniel Sterling, and Stan G. Ulrich, members of the Commission's staff, also were present. Gideon Kanner, Commission consultant on condemnation law and procedure, was present on Friday. Professor Stefan A. Riesenfeld, Commission consultant on creditors' remedies, was present on Friday. Professor Jack Friedenthal, Commission consultant on tenant's abandoned property, was present on Saturday.

The following persons were present as observers on days indicated:

Friday, May 4

Norval Fairman, State Dept. of Public Works, San Francisco
Maurice A. Garbell, Maurice A. Garbell, Inc., San Francisco
Michael Remy, State Dept. of Water Resources, Sacramento
Charles E. Spencer, State Dept. of Public Works, Los Angeles

Saturday, May 5

Ronald P. Denitz, Tishman Realty & Const. Co., Los Angeles
Norval Fairman, State Dept. of Public Works, San Francisco
Sally Willson, Member, Special Libraries Association, San Jose

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ADMINISTRATIVE MATTERS

Approval of Minutes of April 12-14, 1973, Meeting

The Minutes of the April 12-14, 1973, meeting of the Law Revision Commission were approved as submitted by the staff.

Research Contracts

The Commission discussed Memorandum 73-40.

Contract with Thomas M. Dankert. The Commission approved a staff suggestion that Mr. Thomas M. Dankert, Ventura attorney, be appointed as a consultant on condemnation law and procedure. He would replace Paul Overton who has been appointed a judge. The contract would be for one dollar a fiscal year compensation plus travel expenses at the same rate as members of the Law Revision Commission. The maximum amount of travel expenses under the contract would be \$500 for the period of the contract (May 5, 1973 - June 30, 1975).

The contract will provide for the consultant's attendance at Commission meetings and legislative hearings to provide expert advice. The Executive Secretary was directed to execute the contract on behalf of the Commission.

Contract with Professor Van Alstyne. The Executive Secretary reported that the authority to pay for the study to be made by Professor Arvo Van Alstyne on procedural aspects of inverse condemnation--Agreement No. 1970-71(5)--expires on June 30, 1973, and that such study is needed but because of other work Professor Van Alstyne has been unable to prepare the study. The Commission approved the making of a new contract for this study at the same compensation as the prior contract--\$3,000 plus not to exceed \$200 in travel expenses. The Executive Secretary was directed to execute the contract on behalf of the Commission.

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Request of Dr. Maurice A. Garbell

Dr. Maurice A. Garbell requested that the Commission assist him in obtaining information concerning developments in the aircraft noise and safety field. The Commission indicated that it does not plan to give further study to the aircraft noise problem unless and until the California Supreme Court renders a decision that demonstrates the need for further study. The Commission indicated a desire to receive reports from Dr. Garbell when and if it decides to give further study to aircraft noise.

The Commission was reluctant to get involved in the aircraft noise field at the present time. After considerable discussion, the consensus was that the most that would be appropriate would be a letter of introduction indicating that Dr. Garbell had served as a consultant to the Commission on the technical aspects of aircraft noise and that the Commission had found his assistance to be of value. Before such a letter is provided by the Chairman, the Executive Secretary should discuss the matter with Assemblyman McAlister. After the results of that discussion are reported to the Chairman, he is to determine whether the letter of introduction would be appropriate. Any letter of introduction should make clear that the Commission is not presently studying aircraft noise and that the Commission's interest is limited to preserving facts that might be useful if this study is again taken up in the future.

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STUDY 36 - CONDEMNATION (SCHEDULE ON CONDEMNATION STUDY)

The Commission considered Memorandum 73-44 which advised the Commission that Assemblyman Warren, Chairman of the Assembly Judiciary Committee, has asked that the Chairman give him a report on the progress the Commission is making on the condemnation study, the scope of the study, and when the Commission's recommendation will be submitted to the Legislature.

After some discussion, the Commission approved the following as the substance of a letter to be sent by the Chairman to Assemblyman Warren:

Dear Assemblyman Warren:

You requested information concerning the progress the Law Revision Commission is making in its study of condemnation law and procedure. Specifically, you want to know the scope of the study and when the Commission will submit its recommendation to the Legislature.

Over the years since 1961, the Commission has submitted to the Legislature a number of recommendations relating to condemnation law and procedure. These recommendations dealt with particular aspects of the subject, often were controversial, and accomplished significant improvements in California law. They are discussed on pages 287-288 of the enclosed article written for The Appraisal Journal.

The resolution directing the Commission to study this topic was revised by the Senate Judiciary Committee a few years ago to direct that the study be made "with a view to recommending a comprehensive statute that will safeguard the rights of all parties to such proceedings." Pursuant to this direction, the Commission has been engaged in drafting a statute that will cover the entire field of law. Accordingly, all aspects of condemnation law and procedure have been considered in the course of this study. The broad scope of the study is discussed in further detail in the enclosed article.

The Commission reported in its 1971 and 1972 Annual Reports that it plans to submit its recommendation for enactment of a comprehensive eminent domain statute to the 1975 legislative session. The Commission plans to publish a tentative recommendation during the first half of 1974 which will include a draft of

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a comprehensive eminent domain statute. The Commission's policy is to carefully consider the comments and criticisms received from interested persons and organizations on the tentative statute before the statute to be recommended to the Legislature is drafted. Legislative committees several years ago requested the Commission to give priority to the subject of creditors' remedies. This subject, as a result, has occupied most of the Commission's time and resources during 1971-73. Nevertheless, the Commission still plans to meet its eminent domain schedule. This assumes, of course, that the Commission is not directed by the Legislature to give top priority to some other topic.

The major portion of the comprehensive eminent domain statute has been drafted, but significant segments are still in the process of study and drafting. It is estimated that the comprehensive eminent domain statute itself will consist of approximately 200-250 sections. About 100 of these sections have already been drafted and tentatively approved; about 50-60 have been discussed by the Commission but not yet tentatively approved; the remaining sections are under staff study but have not yet been presented for Commission consideration. A major task will be to adjust the various codes to conform them to the comprehensive statute and to eliminate conflicting, overlapping, or duplicating provisions. Some new sections will also be needed in other codes. The entire existing eminent domain title (consisting of 94 sections) will be repealed. In addition, the Commission has identified approximately 1,050 sections that will require attention; approximately 50 sections will need to be added, approximately 200 sections amended, and approximately 800 sections repealed. Comments are being drafted to each section of the comprehensive eminent domain statute to indicate the source of the section and how it changes existing law. With respect to conforming revisions in other codes, a Comment has been or will be written for each section that is to be added, amended, or repealed. About 50 percent of the work on the conforming revisions has been completed.

A special State Bar Committee has been appointed and is working with the Commission on this project. In addition, the Commission has been working in cooperation with a special committee of the National Conference of Commissioners on Uniform State Laws which is engaged in the drafting of a Uniform Eminent Domain Code. Other groups also are cooperating in the study, and almost 800 persons have indicated a desire and willingness to review and comment on the Commission's tentative drafts.

I will be most willing to provide you with any additional information you desire concerning this study.

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STUDY 36.80 - CONDEMNATION (PROCEDURE)

The Commission considered Memorandum 73-46 and the materials attached thereto presenting the provisions of the Uniform Eminent Domain Law relating to a defendant-condemnee's responsive pleadings. The Commission decided that it should avoid a multiplicity of pleadings and that the defendant's answer should include the substance of both the statement of appearance and the answer provided by the Uniform Act. Otherwise, the staff was directed to include whatever provisions it believes are appropriate in its comprehensive draft and the Commission will consider such provisions at that time.

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STUDY 36.150 - CONDEMNATION (COMPENSATION FOR
DIVIDED INTERESTS)

The Commission considered Memorandum 73-31 and the attached draft statute relating to compensation for divided interests. The Commission made the following determinations with regard to the draft statute:

Accrual of right to compensation. The draft statute should include a provision based on Code of Civil Procedure Section 1249 that provides:

Except as otherwise provided by law, the right to compensation accrues as of the date summons is served.

The Comment should illustrate some of the exceptions that have been developed in the cases and in other statutes. In this connection, reference should be made to Civil Code Section 1662 (Uniform Vendor and Purchase Risk Act).

§ 1250.150. Remedies of parties not affected. Subdivision (a) of this section should be moved to the beginning of Article 2 (Leases) and the lead line adjusted to refer to the "rights" of the parties.

§ 1250.210. Acquisition of property subject to encumbrance. The staff should prepare for the July meeting a memorandum that presents in some detail the relation between condemnation and acceleration clauses in deeds of trust with the view to proposing optional methods of assuring adequate compensation to both property owner and lender. The memorandum should discuss the right of a lender to accelerate in a partial taking situation, perhaps with some closer analysis of the facts in Milstein v. Security Pac. Nat'l Bank, 27 Cal. App.3d 482 (1973), and should explore the valuation problems that arise in compensating property subject to a mortgage. Consideration should be given to whether awarding damages for loss of favorable financing should be extended to commercial property and whether the rule of People v. Lynbar, Inc., 253 Cal. App.2d

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870 (1967), applies by implication to this situation. The memorandum should also treat situations where the contract rate of interest exceeds the market rate as well as situations where the contract rate of interest is below market rate. Chairman Miller will investigate the percentage of trust deeds containing acceleration clauses applicable in condemnation, and Commissioner Sandstrom will supply some sample clauses.

§ 1250.220. Allocation of award among encumbrancers in partial taking.

The staff should make an effort to simplify the language of this section; consideration should be given to expressing the section in formulary terms. The Comment might contain an excerpt from the CEB description of the section for explanatory purposes. The Comment should be expanded to include a more thorough analysis of the rule that an encumbrancer receives no compensation if its security is unimpaired, and the reference to Milstein v. Security Pac. Nat'l Bank, 27 Cal. App.3d 482 (1973) should be deleted.

§ 1250.230. Prepayment penalty. This section should be revised so that no prepayment penalty is payable in the event of condemnation for mortgages created after the enactment of Code of Civil Procedure Section 1246.2.

§ 1250.310. Unexercised options. This section should be revised to provide that the right to exercise an option terminates on service of summons and that the option holder is compensated at the fair market value of the option as of that date. Existing law as to the compensability of options should be more fully developed in the Comment.

§ 1250.410. Contingent future interests. This section should be revised to provide in substance as follows:

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(1) If the purposes sought to be served by the land use restriction are governmental or charitable in nature, the general principle should be that the money awarded should be restricted for use for the same or a similar purpose and the holder of the reversionary interest should be entitled to nothing but to have the substituted corpus used subject to that restriction.

(2) In all other cases, the owner of the dominant tenement should be compensated for losses actually suffered and, possibly, some restriction might be imposed on the length of time such restriction will be compensable in an eminent domain proceeding.

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STUDY 36.470 - CONDEMNATION (COMPREHENSIVE STATUTE--CHAPTER 7--
DEPOSITS AND POSSESSION PRIOR TO FINAL JUDGMENT)

The Commission considered Memorandum 73-19 and the First Supplement there-
to, along with the attached drafts of the recommendation and statute relating
to possession prior to final judgment. The Commission took the following
action with regard to this subject:

Preliminary part of recommendation. The recommendation should include
extension of the right of immediate possession to all persons authorized to
condemn and should discuss the reasons for so extending the right of immediate
possession. Consideration will be given at a later time to initiating the
necessary constitutional amendment for this recommendation, including making
the statute dependent upon the passage of such an amendment.

Article 1. Deposit of probable compensation. The Comment to this article
should list as one of the consequences of making a deposit the fact that the
defendant may draw down the deposit.

§ 1255.010. Deposit of amount of appraised value of property. The
Comment to this section should refer to the section and Comment describing
the nature of compensable damages and benefits in the compensation chapter.
The effect of goodwill on the deposit and appraisal should also be examined.

§ 1255.020. Service of notice of deposit. The first sentence of sub-
division (a) was revised to read:

(a) On making a deposit pursuant to Section 1255.010, the plaintiff
shall serve a notice that the deposit has been made and the date of and
amount of the deposit on all of the other parties to the proceeding who
have an interest in the property for which the deposit was made.

The first sentence of subdivision (b) was revised to read:

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(b) The notice shall either (1) be accompanied by a copy of the statement of valuation data referred to in subdivision (c) of Section 1255.010 or (2) state the place where and the normal business hours during which such statement may be inspected and copied and also state that, upon written request, the plaintiff will send the party a copy of the statement.

§ 1255.040. Deposit for relocation purposes. The second sentence of subdivision (b) was revised to read:

Notwithstanding Section 1245.520, if the plaintiff deposits the amount stated in the order: (1) interest upon that amount shall cease to accrue, or if made on or before the date specified by the moving party, shall not accrue and (2) the plaintiff may, after making the deposit and upon ex parte application to the court, obtain an order for possession that authorizes the plaintiff to take possession of the property 30 days after the date for the deposit specified by the moving party.

The last sentence of subdivision (c) was made the last sentence of subdivision (b).

§ 1255.041. Deposit on motion of owner of income property. Subdivision (b) was revised to read:

(b) If the plaintiff fails to make any deposit ordered pursuant to subdivision (a), the court shall include in the compensation awarded in the eminent domain proceeding or the damages on abandonment the lessor's net rental losses occurring after the date specified in the order to the extent that the losses are directly attributable to actions of the plaintiff or the pendency of the eminent domain proceeding.

The Comment should explain that compensation for rental loss rather than accrual of interest is the sanction for failure to make the required deposit under this section. The phrase "prior to service of summons" should be deleted from the description of Klopping v. City of Whittier, 8 Cal.3d 39 (1972).

§ 1255.080. Withdrawal of deposit after entry of judgment. This section should be revised along the following lines: Interest should accrue on the amount of a judgment, regardless of prejudgment deposits, until the full amount of the judgment has been deposited. After that time, the deposit may

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be invested in interest-bearing accounts for the benefit of those defendants entitled to the interest upon motion of any one defendant if the parties are unable to agree as to the withdrawal of all or a portion of the deposit. Commissioner Sandstrom will supply the staff with appropriate language for describing accounts eligible for investment.

The staff should also attempt to devise an adequate description of the "judgment" and "apportionment" orders in the condemnation proceeding. and should revise the section so that probable compensation and apportionment are not based on a judgment or order that has been vacated or set aside.

Conforming changes should be made in other sections.

§ 1255.100. Repayment of amount of excess withdrawal. Subdivision (b)(1) was revised to read, "(1) Any amount that is to be paid to a defendant shall include legal interest from the date of its withdrawal by another defendant." The Comment should indicate that no repayment of excess amounts withdrawn may be required until after final judgment.

§ 1255.240. Vacating order for possession. The phrase "Notwithstanding subdivision (a)" was deleted from subdivision (b).

§ 1255.320. Order for possession. This section should be revised so that, if a judgment is vacated or set aside, the procedure for possession is the same as that for possession prior to judgment.

§ 1255.420. Police power not affected. This section was revised to read:

1255.420. Nothing in this chapter limits the right of a public entity to exercise its police power in emergency situations.

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§ 1230.038. Judgment; final judgment. This section, attached as Exhibit I to the First Supplement to Memorandum 73-19, was divided into two subdivisions. A note should be added that the definition of "final judgment" will be reviewed when that phrase is used in the eminent domain statute.

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STUDY 39.100 - ENFORCEMENT OF SISTER STATE MONEY JUDGMENTS

The Commission considered Professor Riesenfeld's comments--presented orally at the meeting--concerning the draft of the tentative recommendation relating to enforcement of sister state money judgments attached to Memorandum 73-29. The Commission made the following decisions:

Section 1710.20(b)(1). The statement that the sister state judgment is not barred by the statute of limitations should be retained as an affirmative allegation under oath required of the judgment creditor rather than a defense to be raised by the debtor. However, subdivision (b)(1) should read in substance "a statement that an action in this state on the sister state judgment is not barred by the applicable statute of limitations." The Comment to this section will explain the applicable California provisions.

Section 1710.20(b)(4). "Of this state" should be changed to "in this state" to make it clear that a sister state judgment may not be filed where an action has been brought in either a state or a federal court in California.

Section 1710.50(b). Subdivision (b) should be reworded to make clear that the same defenses which could be raised in an action in this state to enforce a sister state judgment may be raised by a motion to vacate the judgment entered under the procedures of this chapter. The word "enforcement" is not needed in subdivision (b) since subdivision (a) has the effect of incorporating defenses to enforcement. The Commission concluded that a time limit should be placed on the debtor's right to raise defenses under subdivision (b) but postponed final decision on what that limit should be. A 30-day limit seemed to meet with the most approval. although longer periods, including six months, were discussed.

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Section 1710.80. "Of this state" should be changed to "in this state"
as in Section 1710.20(b)(4).

A revised tentative recommendation is to be prepared for the next
meeting.

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STUDY 75 - RIGHT OF NONRESIDENT ALIENS TO INHERIT

The Commission considered Memorandum 73-45. After discussion, the Commission decided to defer the printing of the previously approved recommendation until the September meeting. At that time, Professor Eabette B. Barton's study will be available and the Commission can determine whether it wishes to reconsider its previously approved recommendation.

The staff was requested to seek information concerning the amount of money that would be likely to be obtained by the State of California under Probate Code Section 259 and related sections if those sections were constitutional. Also, revenue estimates should be sought on any escheat scheme developed by Professor Barton.

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STUDY 78 - PROPERTY LEFT ON LEASED PREMISES
WHEN LEASE TERMINATED

The Commission considered a "Proposed Article Governing Disposition of Unclaimed Goods After Termination of Tenancy" prepared by Professor Friedenthal which is attached to Memorandum 73-42. The Commission heard an oral presentation from Professor Friedenthal and also considered comments and proposed changes presented by Mr. Ronald Denitz, Assistant General Counsel, Tishman Realty & Construction Co., Inc. (See the letter and comments attached as Appendix I.)

The Commission discussed several areas of concern with the proposal and arrived at the following tentative conclusions: The Commission declined to substitute market value for the landlord's reasonable belief of the value of the property (Section 1862.3). The Commission declined to require the landlord to make a formal record of sending notice to the tenant. The Commission declined to substitute the concept of good faith for reasonableness (Sections 1862.3, 1862.4, and 1951.3) since, in practical terms, it did not seem to make much difference, but the staff was instructed to further define what is "reasonable investigation" of the address of the owner of property left on the premises. (See Section 1862.4(d).) The problem of such reasonable investigation arises particularly where valuable property which is rented or is subject to a security interest is left behind. It should be stated that the mere fact that valuable property was left should not make it unreasonable for the landlord to fail to search for a third-party owner. The term "landlord" defined in Section 1862(a) should include his successor in interest. The staff should further consider the provision for declaring abandonment. (See Section 1951.3,

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and compare Mr. Denitz's Section 1953 in "proposal A" in Appendix I.) The amendment to Section 1952.2, suggested by Mr. Denitz, should also be further considered.

The staff was directed to work with Professor Friedenthal in preparing a memorandum and a draft of a tentative recommendation taking into account the concerns expressed by the Commission and the comments of Mr. Denitz.

APPROVED

_____ Date

_____ Chairman

_____ Executive Secretary



APPENDIX I

Fishman Realty & Construction Co., Inc.

WEST COAST HEADQUARTERS
3460 WILSHIRE BOULEVARD, LOS ANGELES, CALIFORNIA 90010

May 1, 1973

John H. DeMouilly, Esq.
California Law Revision Commission
Stanford University
Stanford, California 94305

Re: Tenant's Abandoned Property and
Definition of "Abandonment"

Dear John:

Thank you for your kind invitation that I be present at the Commission's deliberations this weekend regarding the captioned matter. It will be a pleasure to assist the Commission in any way possible as well as presenting the point of view of my company, which as you know is the largest private enterprise commercial landlord in the State of California.

As was our custom when originally working jointly on the Civil Code Section 1951.2 project several years ago, returned herewith is a copy of the proposed legislation which accompanied Memorandum 73-42 received by me yesterday. On it I have marked both matters of substance and form which preliminarily would seem to be appropriate modifications thereof. Perhaps the same could be photocopied and furnished to the Commission in time for this weekend.

However, five critical areas deserve highlighting in this letter:

1. Concept of Good Faith. The Comment to proposed Section 1862.4 (see last paragraph on page 29) perfectly expresses the main thrust of the entire legislative package, namely, that reduction of both court congestion and commercial frustration can be achieved only by permitting a good faith lessor ". . . to dispose of goods in a realistic manner without fear of future litigation" (emphasis supplied). Unfortunately, the typed draft of Section 1862.3 (see pages 24-25), Section 1862.4 (see pages 27-28), and Section 1951.3 protects lessor only if he "reasonably believes", in several instances, and imposes liability on him if

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he fails to notify an owner whom lessor should have discovered upon "reasonable investigation". It is submitted that no careful lessor will use the proposed remedies, or any of them, if an owner can later use a "rule of reason" foothold to fasten liability on lessor: thus substitution of the "good faith" test is respectfully proposed by me.

2. Definition of "Owner": For sake of clarity, as well as to preclude future litigation, I propose that "owner" include persons having any leasehold, possessory, or security interest; in the same sense, persons having any claim of ownership (even though doubtful) should be included in order to further insulate lessor.

3. "Chattel Mortgages" should not be nullified: Proposed Section 1862.1 (see page 21) surprisingly seems to preclude the good faith security-device often found in leases of restaurants, bars, and barber shops. In these and even in other types of leases, lessor may well spend much of his own money in performing extensive pre-occupancy alterations and improvements in reliance on continuity of the same type of tenancy: in the absence of a security-interest to guarantee payment of rent (which rent always includes amortization of lessors said expenditures), lessors of stores will be disinclined to risk making valuable such improvements. As a separate critique of Section 1862.1, it seems unfair to prevent lessor and lessee from agreeing in the lease that personal property annexed to the real property becomes part of the realty: I propose that the Section be appropriately limited in this regard.

4. Redemption rights of lessee: Perhaps it is mere inadvertence, but Section 1862.3(b) and (c) and also Section 1862.4-A-(3) and 1862.4(b) seem to fail to give lessee the right to reclaim an item of personal property. Also through probable inadvertence, both Sections fail to insulate lessor from claims by the lessee himself. Corrective proposals are marked on the enclosed copy of the legislation.

5. Definition of "Abandonment":

- (a) Basically, my company would prefer that abandonment be defined as provided in Proposal "A" annexed hereto;
- (b) However, if Professor Friedenthal's proposal is felt to be more appropriate, then:

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- (i) again only a "good faith" approach provides certainty; and
- (ii) under Section 1951.3(b), at page 32, lessee should not be able to unilaterally work an abandonment while retaining possession of the premises.

In addition to the foregoing, we would appreciate the Commission considering the following related matter:

Effective Date of Sections 1951.2 et seq.: Ever since July 1, 1971, lessors have been in doubt as to whether Civil Code Section 1951.2 applies to post-July 1971 amendments of pre-July 1971 leases. We, in fact, have felt constrained in all such cases to propose appropriate amendatory Section 1951.2 provisions into each such amendment: in more than a few cases, lessees have refused to accept such provisions, thus possibly depriving us of any "expectancy damages" remedy. Proposal "B" annexed hereto would remedy such ambiguity and is properly within the jurisdiction of the Commission.

With many thanks in advance for the opportunity to aid the Commission, I am

Cordially,

RONALD P. DENITZ
Assistant General Counsel

RPD:svh
encl.

COMMENTS OF RON DENITZ
OF TISHMAN REALTY & CONSTRUCTION CO,
INC, CONCERNING
A PROPOSED ARTICLE GOVERNING DISPOSITION

OF UNCLAIMED GOODS AFTER

TERMINATION OF TENANCY

§ 1862. Definitions as used in this article

1862. (a) "Landlord"^{*} means any operator, keeper, lessor, or sublessor of any furnished or unfurnished hotel, motel, inn, boarding house, lodging house, apartment house, apartment, cottage, bungalow court, or commercial facility **(INCLUDING BUT NOT LIMITED TO STORES AND OFFICES PREMISES)**.

(b) "Tenant"^{*} means any paying guest, lessee, or sublessee of any facility operated by a landlord.

(c) "Owner" means any person having^{*} any right, title, or interest in an item of personal property. **OR CLAIMING TO HAVE**

(d) "Premises" means the real property rented or leased by landlord to tenant, including any common areas.

(e) "Item of personal property" means any individual piece of personal property **(AS AN INTEGRATED UNIT)** or any trunk, valise, box, or other container which because it is locked or tied deters immediate access to the contents thereof.

Comment. Subdivisions (a) and (b) define "landlord" and "tenant" broadly so as to extend coverage of the article to all types of rental property, whether commercial or residential, furnished or unfurnished. All landlords, regardless of the nature of the facilities, need a procedure by which they can dispose of goods left behind after termination of tenancy. At present, Civil Code Section 1862, which would be replaced, provides relief only for those who own or manage furnished, residential facilities. Other landlords have no statutory coverage except in unlawful detainer cases under Code of Civil Procedure Section 1174.

NOTE * **SHOULDN'T THIS BE "LESSOR" & "LESSEE" TO CORRESPOND TO CIVIL CODE §§ 1951.2 ET SEQ. ?**

This article does not apply to unlawful detainer situations. See proposed Section 1862.2.

Subdivision (c) defines "owner" to include not only a tenant, but other persons as well. A landlord should be permitted to dispose of goods left behind even though, as is often the case, he does not know for certain whether the goods belonged to the former tenant or to someone else. The unlawful detainer statute, Code of Civil Procedure Section 1174, provides for disposition of goods owned by a tenant only. A landlord who follows the provisions of that section still risks an action for conversion by a third person who claims ownership.

Subdivision (d) defines premises to include common areas such as storage rooms or garages where personal property may be left when the tenant leaves.

Subdivision (e) provides that a locked or tied container need not be opened by a landlord who wishes to dispose of it. The privacy of the owner is thus preserved until disposition. Section 1862 of the Civil Code currently permits disposition of a container without opening it even if the container is not secured. The obligation to look into unlocked or untied containers is not onerous and will permit the landlord to make a realistic evaluation of the goods, which is helpful in protecting interests of the owner as well as of the landlord.

INCLUDING BUT NOT LIMITED TO PERSONS HAVING ANY LEASEHOLD, POSS-
ESSARY, OR SECURITY INTEREST.

§ 1862.1. Lease provisions nullified

1862.1. Notwithstanding any provision in a rental agreement between landlord and tenant, ~~the~~ tenant shall have the right during the tenancy and upon termination thereof to remove tenant's personal property from the premises, whether or not tenant is indebted to ~~the~~ landlord.]

Comment. This provision is specifically designed to protect tenants from onerous contract provisions which can be used to deprive them of their goods without a court determination, often in contradiction to statutes which exempt certain personal property from levy and execution. It is unlikely, in most situations, that such self-help clauses would be enforced by California courts (see Jordan v. Talbot, 55 Cal.2d 597, 361 P.2d 20, 12 Cal. Rptr. 488 (1961)), but few tenants have the time, money, and will to engage in a court contest. The proposed Section 1862.1 will deter landlords from including or relying on such provisions in their rental agreements. Landlords will be further deterred from abusing tenant's rights in their personal property by the fact that deliberate violations of the proposed section could lead to punitive as well as compensatory damages.

Note that the proposed section does not prohibit the landlord from enforcing valid liens granted by statute. See Civil Code § 1861a; Study, p. __.

→ NOTHING CONTAINED HEREIN SHALL PRECLUDE LANDLORD AND TENANT FROM PROVIDING IN SUCH RENTAL AGREEMENT (a) FOR OTHERWISE VALID SECURITY AGREEMENTS PURSUANT TO THE CALIFORNIA COMMERCIAL CODE, AND (b) THAT LEASEHOLD IMPROVEMENTS, BETTERMENTS, ALTERATIONS, AND PERSONAL PROPERTY AFFIXED TO THE PREMISES SHALL BE NON-REMOVABLE.

§ 1862.2. General requirements for preservation of property

1862.2. (a) If, after termination of tenancy and surrender or abandonment of the premises by tenant, ~~the~~ landlord finds that there remains on the premises items of personal property of which landlord is not an owner, landlord shall dispose of such property as follows:

(1) If an item of property reasonably appears to have been lost, it shall be disposed of pursuant to Article 1 (commencing with Section) of Chapter 4, Title 6 of the Civil Code.

(2) If the appropriate police or sheriff's department refuses to accept property under paragraph (1), it shall be deemed not to have been lost.

(b) All items of personal property ^{REMAINING ON THE PREMISES,} other than those subject to paragraph (1) or subdivision (a), shall be stored by ~~the~~ landlord in a place of safe-keeping until ^{TENANT OR AN} owner pays landlord the reasonable costs of storage and takes possession of such items of property or ^{AT THE OPTION OF LANDLORD,} until such property is disposed of pursuant to Section 1862.3 or 1862.4.

Comment. Subdivision (a) of the section limits the scope of this article to situations where (1) the tenancy has been terminated; (2) ~~the~~ tenant has voluntarily left the premises; and (3) ~~the~~ landlord makes no claim on the goods. The requirement that the tenancy be terminated seems obvious; a landlord has no need nor right to dispose of tenant's goods while the tenancy continues. A problem does arise in deciding when a tenancy has been terminated by abandonment since the present law gives inadequate guidelines. See Study . Proposed Section 1951.3 is designed to remedy this situation. The requirement that ~~the~~ tenant have voluntarily left the premises is simply to avoid conflict with the statutory provision dealing with ^{UNLAWFUL} wrongful detainer; see

Code of Civil Procedure Section 1174, which provides a detailed method for disposing of goods left by an ousted tenant. The requirement that ~~the~~ landlord does not have an ownership interest in the goods is necessary to avoid any conflict with landlord's claim that the property was his in the first place or that it was a gift from ~~the~~ tenant or that he has a valid statutory lien on the item. If ~~the~~ landlord proceeds under this article with regard to any items, he necessarily gives up any claim of ownership of such items.

Subdivision (a)(1) provides that items of property lost on the premises shall be treated like any other lost items pursuant to the Lost Property Laws (Civil Code §§ 208-) which have specific provisions for notification and disposition. See Study, p. __. All owners who lose property should be able to rely on the Lost Property Laws, thus maximizing chances for retrieval.

Subdivision (a)(2) eliminates any uncertainty which would arise if the police or sheriff's department disagreed with a landlord as to whether an item of property was lost or was knowingly left behind.

Subdivision (b) sets forth a general obligation of ~~the~~ landlord, thus leaving no situation uncovered.

COVERS ALL ITEMS OTHER THAN
LOST PROPERTY AND

§ 1862.3. Disposition of goods valued at less than \$100

1862.3. If landlord reasonably believes that the total resale value of ^{AGGREGATE OF ALL} the items of personal property subject to subdivision (b) of Section 1862.3 ² does not exceed \$100, such property may be disposed of as follows:

(a) Landlord shall ^{GIVE NOTICE TO} ~~notify the~~ tenant and any other person landlord [^] ~~reasonably~~ believes is the owner of any item of such personal property. Such notice shall contain:

(1) A general description of each item of the personal property, the name of ~~the~~ tenant, the address of the premises, and the address where each item is currently stored.

(2) A statement of ~~the~~ landlord's belief that the total resale value of ^{THE AGGREGATE OF} all such items does not exceed \$100.

(3) The name of each person, ^{IF ANY,} other than ~~the~~ tenant, who landlord ~~reason-~~ ^{OR CLAIMS TO BE} ~~ably~~ believes is an owner of any item of the property, specifying such items.

(4) A statement that, unless ~~the owner~~ ^{SUCH PERSON} pays landlord the reasonable costs of storage of an item and takes possession thereof within 15 days from the date notice was delivered or mailed, such ~~owner~~ ^{PERSON SHALL} may lose all right, title, and interest in such item.

(b) If ^{TENANT OR SUCH AN} owner does not pay landlord the reasonable costs of storage and take possession of an item of property within 15 days from the date notice pursuant to subdivision (a) was delivered or deposited in the mails, ~~the~~ landlord may dispose of such item of property in any manner.

(c) ~~The~~ ^{TENANT OR} Landlord shall not be held liable in any action with regard to the disposition of an item of property brought by [^] an owner to whom notice was sent pursuant to subdivision (a).

(d) In any action with regard to the disposition of an item of property brought by an owner to whom notice was not sent pursuant to subdivision (a), landlord shall not be held liable unless ^{SUCH} owner proves either (1) that landlord ^{DID NOT ACT IN GOOD FAITH} ~~was unreasonable~~ in declaring the value of the total property not to exceed \$100 or (2) that, prior to disposing of the goods, landlord knew ~~or should have known~~ that such owner had an interest in the item of property and also that ~~the~~ landlord knew ~~or should have known upon reasonable investigation~~ the address of such owner's residence or place of business.

Comment. This section permits summary disposition of property appearing to be worth less than \$100. The costs of storage and sale of goods worth less than \$100 are too high to require a formal disposition. The \$100 figure is arbitrary as any figure would be. Any such amount must be high enough to be useful in the many situations where goods of little value are left behind; the landlord must not fear his evaluation will be held unreasonable. At the same time, the figure must not be so high as to provide a windfall. Given the costs of storage and of sale, plus the inconvenience to ~~the~~ landlord, the \$100 figure seems justifiable. Note that the \$100 amount applies to the total value of all property subject to proposed Section 1862.2(b). If the total exceeds \$100, justification for a summary procedure disappears and ~~the~~ landlord may only proceed under proposed Section 1862.4.

Subdivision (a) sets forth the requirements of notice to be given to ~~the~~ tenant and, if known, to any other person who owns any item of property.

Subdivision (b) provides that, unless ^{TENANT OR AN} ~~the~~ owner appears within 15 days, ~~the~~ landlord may dispose of the property in any manner. The 15-day period is deliberately short to protect ~~the~~ landlord's interests in removing property of little or no value. It is unfair to require ~~the~~ landlord to endure any

greater costs and inconvenience particularly since, in the vast majority of cases, ^{TENANT OR} ~~the~~ owner does not care about the property and will never claim it.

Subdivision (c) provides that a person to whom proper notice was sent may not later make a claim against ~~the~~ landlord regarding his disposition of the property. The requirements of notice under proposed Section 1862.5 give maximum protection to ~~the~~ ^{+ ANY OWNER} tenant without unduly burdening ~~the~~ landlord.

Subdivision (d) covers the situation where ~~the~~ landlord is unaware of who owns the goods. In such case, ~~the~~ landlord should not be liable if he has acted in good faith, and the burden is placed on the owner to prove bad faith in order to assure landlords that they will not be subject to the risks of litigation by following the procedures set out in the statute. The requirement that ~~the~~ landlord have made a good faith determination as to the value of the goods is to protect unknown owners from being deprived unfairly of substantial sums. Any landlord who is in doubt as to value may follow the procedure set forth in Section 1862.4 which protects the owner's economic interests.

§ 1862.4. General provisions for disposition

1862.4. Landlord may dispose of any item of personal property subject to subdivision (b) of Section 1862.2 as follows:

GIVE NOTICE TO
(a) Landlord shall ~~notify~~ the tenant and any other person landlord **IN GOOD FAITH** [^] reasonably believes is the owner of such item. Such notice shall contain:

(1) A general description of the item of personal property, the name of ~~the~~ tenant, the address of the premises, and the address where such item is currently stored.

(2) The name of each person, **IF ANY,** other than ~~the~~ tenant, who landlord **IN GOOD FAITH** [^] reasonably believes is ~~an~~ owner of the item. **OR CLAIMS TO BE**

(3) A statement that, unless **SUCH PERSON** [^] ~~the owner~~ pays landlord the reasonable cost of storage of such item and takes possession thereof within 15 days from the date notice was delivered or mailed, such item may be sold at public sale, and the proceeds, less ~~the~~ landlord's reasonable costs for sale, advertising, and storage, turned over to the county treasurer in the county where the sale took place and that **TENANT OR** [^] the owner shall have one year from the date of sale in which to claim such proceeds from the county.

(b) If **TENANT OR SUCH AN** [^] owner does not pay landlord the reasonable costs of storage and take possession of an item of property within 15 days from the date notice pursuant to subdivision (a) was delivered or deposited in the mails, the item **SHALL** [^] ~~may~~ be sold at public sale by competitive bidding to be held at the place the property is stored after notice of the time and place of such sale has been given at least five days before the date of such sale by publication once in newspaper of general circulation published in the county where the sale is to be held. Notice of the public sale cannot be given **EARLIER** [^] ~~more~~ than five days prior to the expiration of the 15 days after the service or mailing of notice under

subdivision (a). Money realized from the sale of an item of property shall be used to pay the reasonable costs of ~~the~~ landlord in storing and selling such item. If a number of items are stored, advertised, or sold together, the costs shall be apportioned according to the reasonable resale value of each item. Any balance of the sale price shall be ~~held by landlord for seven days and, if not claimed by the owner,~~ shall be paid into the treasury of the county in which such sale took place. The owner of any item ^{OR TENANT} shall have one year from the date of sale to claim such balance. In case of multiple claims, the decision of the county as to the ownership of any such proceeds shall be final.

(c) If an item of property is disposed of in accordance with the provisions of subdivision (b) and ^{NOTICE GIVEN} ~~the owner was notified~~ pursuant to subdivision (a), ~~the landlord is not liable,~~ ^{SHALL BE} ~~the owner~~ with respect to such property ^{OR THE PROCEEDS FROM THE SALE THEREOF, TO ANY PERSON TO WHOM NOTICE WAS GIVEN.}

(d) If an item of property is disposed of in accordance with the provisions of subdivision (b) but no notice was sent to the owner pursuant to subdivision (a), ~~the landlord is not~~ ^{SHALL BE} ~~liable~~ unless the owner proves that, prior to disposing of the goods, landlord knew ~~or should have known~~ that such owner had an interest in the item of property and also that landlord knew ~~or should have known upon reasonable investigation~~ the address of such owner's residence or place of business.

Comment. Section 1862.4 is the basic provision governing disposition of property and is an alternative to Section 1862.3 even in situations where the items do not appear to exceed \$100 in resale value.

Subdivision (a) provides for a notice containing full particulars regarding the disposition allowed.

Subdivision (b) provides for sale of the property if it remains unclaimed for 15 days after notification, which is the crucial provision of the entire proposed law. The underlying assumption is that a person who leaves behind goods (other than those which are lost) which he does not claim after due notice are goods which he does not want, at least in specie. Therefore, his interests can adequately be protected, without undue burden on ~~the~~ landlord, by allowing the goods to be sold immediately. The proceeds, in excess of ~~the~~ landlord's costs for storage and sale, are then turned over to the county from which the owner has one year to claim them. Although one might prefer a system whereby the landlord could use such excess proceeds to offset debts owed him by the owner, such disposition would appear to constitute a violation of the owner's rights to due process and equal protection. Cray v. Whitmore, 17 Cal. App.3d 1, Cal. Rptr. (19); see Study, p. . The last sentence of the section is designed to protect the county in the event of multiple, conflicting claims as to the ownership of the proceeds.

Subdivisions (c) and (d) provide that a landlord who in good faith follows the provisions of subdivisions (a) and (b) shall not be held liable to the owner. Under subdivision (d), the burden of showing bad faith is placed on the owner. One of the major purposes of the entire legislation is to permit landlords to dispose of goods in a realistic manner without fear of future litigation. See Study, p. __. Whatever provisions are adopted, they must have this safeguard.

§ 1862.5. Notice; methods

1862.5. Notice under Sections 1862.3(a) and 1862.4(a) shall be in writing and shall be effective:

(a) Upon delivery of a copy thereof to the person to be notified, or

(b) ^{UPON} ~~By~~ depositing a copy of the notice in the mail, addressed to the person to be notified at such person's last known ^{RESIDENCE OR BUSINESS} address. If ~~the~~ landlord has substantial reason to believe that ~~the~~ tenant is temporarily located at another address, notice by mail shall be effective only upon deposit in the mail of an additional copy of the notice addressed to ~~the~~ tenant at such temporary location. Whenever mailed notice is sent, ^{IN WHOLE OR IN PART} to an address out of the ^{OF CALIFORNIA,} State, notice shall be effective only ^{IF} ~~when~~ sent by airmail; ^{IF SENT} ~~IF SENT~~ ^{UPON MAILING}

Comment. Section 1862.5 is designed to maximize the chance that the person to be notified will in fact receive such notification.

OTHER THAN BY AIRMAIL
TO
AN ADDRESS OUT OF
THE STATE OF
CALIFORNIA, SAID NOTICE
SHALL BE EFFECTIVE
UPON RECEIPT BY THE CENTRAL
POST-OFFICE IN THE
CITY OR TOWN TO WHICH
IT IS ADDRESSED.

§ 1951.3. Methods of declaring abandonment

1951.3. (a)(1) If a lessor of real property ^{IN GOOD FAITH} ~~reasonably~~ believes that the property has not been occupied for a period of 20 consecutive days during which rent is due and unpaid, ~~and the lessor has no substantial reason to believe that the lessee has not abandoned the premises,~~ then the lessor may notify the lessee in writing, stating as follows:

(i) that ~~the~~ lessor believes the property to have been abandoned

(ii) that, unless the lessee contacts ^{LESSOR} ~~the landlord~~ within 15 days from the date notice was personally delivered to lessee or deposited in the mail, the property will be deemed abandoned, ~~and the lease terminated.~~

(2) If, by the end of 15 days from the date notice was delivered or mailed, ~~the~~ lessee has not contacted ^{LESSOR} ~~the landlord~~ and manifested his intention not to abandon the property, the property shall be deemed abandoned within the meaning of Section 1951.2.

(3) Thereafter, in any action brought by lessee, lessor shall not be held liable for treating the property as abandoned and the lease as terminated unless lessee proves that ~~the~~ lessor ^{DID NOT IN GOOD FAITH} ~~had substantial reason to~~ believe that lessee ~~did not~~ ^{ED} intend to abandon the property or that lessor willfully failed to notify ~~the~~ lessee as required in subdivision (a)(5).

(4) The fact that lessor knew that lessee left items of personal property on the leasehold premises shall not, of itself, justify a finding that lessor ^{LACKED GOOD FAITH} ~~was unreasonable~~ in believing the real property to have been abandoned.

(5) Notification under subdivision (a)(1) above shall be effective when the notice is delivered in person to ~~the~~ lessee or when deposited in the mail addressed to lessee at his last known residence or place of business. If notification is by mail, it shall be effective only when an additional copy

of the notice is deposited in the mail, addressed to lessee at the place, if any, where lessor has substantial reason to believe the lessee is temporarily located.

IF A LESSEE OF REAL PROPERTY WISHES TO ESTABLISH THE DATE UPON WHICH SAID
(b) ^{AP} Property shall be deemed abandoned within the meaning of Section 1951.2, **THEN THE SAME SHALL BE:**

(1) Upon delivery by ~~the~~ ^{AFTER COMPLETE CESSATION OF OCCUPANCY,} lessee to the lessor of a written statement that lessee has abandoned the ~~premises~~ ^{PROPERTY}, or

(2) Fifteen days after lessee ^{AFTER COMPLETE CESSATION OF OCCUPANCY,} has deposited in the mail a written notice addressed to lessor at his last known place of business, stating the lessee has abandoned the ~~premises~~ ^{PROPERTY}.

(c) Nothing in subdivision (a) or (b) above shall preclude lessor or lessee from otherwise proving that the property had been abandoned within the meaning of Section 1951.2.

Comment. Section 1951.3 is designed to eliminate the uncertainty as to when a tenancy is to be held abandoned within the meaning of Civil Code Section 1951.2. Under the latter provision, once an abandonment occurs, the tenancy is terminated ^{AND IS COUPLED WITH LESSEE'S BREACH OF THE LEASE,} and ^(EXCEPT IN CASES GOVERNED BY SECTION 1951.4) the lessor has a duty to minimize the lessee's damages by making reasonable efforts to re-rent the premises. The time of abandonment is also important under proposed Sections 1862.2-1862.4 which set forth ~~the~~ lessor's rights and duties as to ^{ITEMS OF PERSONAL} property remaining on the premises after termination.

Unfortunately, however, Section 1951.2 does not specify when an abandonment occurs. Under common law rules, abandonment occurs when ~~the~~ lessor accepts ~~the~~ lessee's offer to end the tenancy. ~~The~~ Lessee must in fact have intended to abandon the property. Appearances of abandonment are not sufficient, and ~~the~~ lessor must accept the premises or the abandonment is not effective.

See Wiese v. Steinauer, 201 Cal. App.2d 651, 20 Cal. Rptr. 295 (1962);
Anheuser-Busch Brewing Ass'n v. American Products Co., 59 Cal. App. 718,
211 P. 817 (1922). See also Gerhard v. Stephens, 68 Cal.2d 864, 442 P.2d
692, 69 Cal. Rptr. 612 (1968). These rules are insufficient in most cases
to guide the parties although, if they do have a clear understanding about
the matter, the common law rule should apply and hence is preserved in
subdivision (c).

Subdivision (a) generally provides a means by which ~~the landlord~~ ^{LESSOR} can
safely decide the abandonment has taken place so that he may dispose of any
goods remaining on the premises and otherwise prepare for a new ~~tenant~~ ^{LESSEE}.

Subdivision (a)(1) provides for notification to a ~~tenant~~ ^{LESSEE} who appears to
have abandoned the property. A number of safeguards are provided to insure
that a determination of abandonment is not prematurely made. Not only must
^{LESSOR IN GOOD FAITH} ~~landlord~~ reasonably believe that abandonment has taken place but the premises
must have appeared to be unoccupied for 20 consecutive days for which no
rent has been paid.

These requirements, together with the provisions for notice in subdivision
(a)(5), reasonably assure that a ~~tenant~~ ^{LESSEE} will not be deprived of a leasehold
interest which he did not intend to abandon. The 20-day period is deliberately
chosen to assure that, for the normal tenancy calling for monthly payments,
at least two due dates must pass before abandonment can be declared since the
~~tenant~~ ^{LESSEE} has an additional 15 days under subdivision (a)(2) during which to contact
the ~~landlord~~ ^{LESSOR} and demonstrate his intention to retain the leasehold. If ~~the~~
^{LESSOR} ~~landlord~~ wishes faster action, he may, of course, resort to an action in
unlawful detainer under Code of Civil Procedure Section 1174.

Subdivision (a)(2) provides that ~~the~~ ^{LESSEE} tenant must claim his leasehold within 15 days of notification or the leasehold is decreed abandoned. Given the safeguards set forth in subdivision (a)(1), the 15-day period is reasonable. A ~~landlord~~ ^{LESSOR} should not be required to wait any longer before abandoned property is restored to ~~his~~ possession.

Subdivision (a)(3) provides that ~~the~~ ^{LESSOR} landlord who in good faith follows the procedures in subdivisions (a)(1) and (a)(5) cannot be held liable to a ~~tenant~~ ^{LESSEE} who later appears to challenge the abandonment. The burden of proving bad faith falls upon ~~the~~ ^{LESSEE} tenant, thus safeguarding ~~landlords~~ ^{LESSORS} from substantial fear of litigation. Under common law rules, abandonment depends upon the manifested intentions of the parties to the lease. Even though from all appearances a leasehold seems abandoned, a lessor, who has not had contact with ~~the~~ lessee, can never be certain that ~~the~~ lessee will not suddenly appear and claim that he was on vacation or in the hospital and had never intended to, or manifested an intention to, abandon his interests. This section eliminates this uncertainty.

Subdivision (a)(4) is designed to eliminate a possible problem with regard to what facts may overcome a lessor's reasonable belief that a tenancy is abandoned. Obviously, since many lessees who abandon their leasehold interests leave personal property behind, the mere fact that the lessor knows that ~~the~~ lessee has done so should not, by itself, be held to establish that ~~the~~ lessor has not acted in good faith. ~~The~~ ^{LESSEE'S} lessor cannot refuse to accept ~~the~~ ^{LESSEE'S} tenant's "offer to abandon" as apparently he can do under the common law. Subdivision (a)(5) specifies how notification is to be made. The requirements are designed to insure that ~~the~~ lessee will in fact get notice if his whereabouts are known.

SINCE UNDER NORMAL CIRCUMSTANCES
 IF THE LEASE SO PROVIDES, LESSOR
 IS ENTITLED TO SO-CALLED "EXPECTANCY
 DAMAGES" UNDER SECTION 1951.2.

Subdivision (b) provides a method by which ~~the~~ lessee can declare his leasehold abandoned in order ^{IN MOST CASES,} to terminate the lease and require ~~the~~ lessor under Section 1951.2 to take steps to mitigate ~~the~~ lessee's obligations.

AN ACT TO AMEND CHAPTER 2 OF TITLE 5 OF
PART 4 OF DIVISION 3 OF THE CIVIL CODE,
RELATING TO ABANDONMENT OF HIRED REAL
PROPERTY

Sec. 1. Section 1953 is added to the Civil Code as follows:

1953. (a) If a lessee of real property is in default and for a period of 15 days the lessee or his agent, representative, or member of his family has neither:

- (1) bodily occupied the real property, nor
- (2) paid rent, nor
- (3) actually communicated to the lessor his intent to continue the tenancy,

then the lessee shall be deemed to have abandoned the real property.

(b) The provisions of paragraph "(a)" shall not preclude the lessor from otherwise proving that the lessee has abandoned the real property.

PROPOSAL
"A"

AN ACT TO AMEND SECTION 1952.2 OF THE
CIVIL CODE, RELATING TO LANDLORD-TENANT

Sec. 1. Section 1952.2 of the Civil Code is amended to read:

1952.2. (a) Except as provided in subdivision (b), Sections 1951 to 1952, inclusive, do not apply to:

~~(a)~~ (1) Any lease executed before July 1, 1971, whether or not amended subsequent to July 1, 1971.

~~(b)~~ (2) Any lease executed on or after July 1, 1971, if the terms of the lease were fixed by a lease, option, or other agreement executed before July 1, 1971.

(b) For the purposes of this section, an agreement whereby a lease is "amended" includes, but is not limited to, a modification of a pre-existing lease to change the term, rent, size, or location of the property demised or to require or change the amount of an advance payment as defined in Section 1951.7.

PROPOSAL

"B"