

#78

3/21/74

Memorandum 74-12

Subject: Study 78 - Landlord-Tenant Relations (AB 1532)

Assembly Bills 2830 and 2831 were introduced to effectuate the Commission's recommendations relating to landlord-tenant relations.

Attached are three exhibits containing amendments and revisions that have been suggested by various groups. (Exhibit III sets out amendments suggested by the California Real Estate Association.)

Following the three exhibits are amendments that Assemblyman McAlister has made to the bill; the bill is now being printed to include these amendments. We will go through the suggestions and amendments at the March meeting. The bill is scheduled for hearing on March 26 in the Assembly Judiciary Committee.

Respectfully submitted,

John H. DeMouly
Executive Secretary

memo 74-12

EXHIBIT I

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Assembly California Legislature

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CORPORATIONS CODE
CALIFORNIA LAW REVISION
COMMISSION
COMMISSION ON
SPECIAL EDUCATION

ALISTER MCALISTER
ASSEMBLYMAN, TWENTY-FIFTH DISTRICT

March 18, 1974

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California 94305

Dear John:

Fred Feiten of the California Apartment Association has indicated to me that they are generally favorable to AB 2830 and AB 2831, but they have some small problems with regard to which they would like for us to consider amendments.

As to both AB 2830 and AB 2831, they would like to restrict the requirement to mail notice to simply the tenant's last known address and his place of employment. They think that any broader requirement will be difficult to administer and productive of confusion.

With regard to AB 2831 only, they believe that either the 20-day notice should be reduced to 10 days; or that the 20-day notice should be reduced to 15 days and the written statement of intent by the leasee be required to be given not less than 10 days (instead of 15 days) after a personal notification, etc.

Also, as to AB 2831, they believe that the leasee should be required to pay rent due when he gives the written statement of intent not to abandon, etc.

Please let me know what you think of these proposals.

Sincerely yours,


ALISTER MCALISTER

AM:egb

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IAN PADDOCK
Directing Attorney

ANDREA GEISLER THRONE
Staff Associate

March 15, 1974

Honorable Alister McAlister
Member of the Assembly
State Capitol
Sacramento, California 95814

Re: AB 2830 - Abandoned Personal Property

Dear Mr. McAlister:

I have circulated the original version of your AB 2830 to legal services attorneys concerned with landlord-tenant law throughout the state. They generally support this bill which we understand was prepared by the California Law Revision Commission. We do have a few suggestions which we think would improve the bill.

First, we suggest that a summary statement of the provisions of Civil Code §1988 be added to the "notice of right to reclaim abandoned property" set out on pages 4 and 5 of the bill as amended February 27, 1974. This might be done by allowing the landlord to put in the notice one of two alternative paragraphs at the end of the notice. The first might be something to the effect that: "Because this property is believed to be worth less than \$100, it may be kept, sold, or destroyed without further notice if you fail to reclaim it." Alternatively, the statement would read: "If you fail to reclaim the property, notice of a public sale will be made at least once in a newspaper. You have the right to bid at this sale. After the property is sold and the cost of storage, advertising, and sale deducted, the rest of the money will be given to the county and you may claim remaining money at any time within one year after the county receives the money."

We recognize that this lengthens the notice, but we feel it will avoid unnecessary disputes by making it clear to tenants that the landlord has the legal right to keep or destroy the property of little worth. Similarly, with respect to property of greater value, it advises tenants that any balance after the cost of storage and disposition may be available from the county clerk. Unless such a notice is provided, the mere reference to Civil Code §1988 is not informative to a tenant unless he goes to a lawyer.

Honorable Alister McAlister
March 15, 1974
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We also suggest that proposed §1988 be amended to include an additional subdivision or sentence making it clear that the tenant has a right to bid at the public sale.

Finally, it is unclear to us why AB 2830 and AB 2831 are joined so that neither is operative unless both achieve passage. While the bills are clearly complimentary, they can also operate independently. Each would simplify and clarify an area of law and each is worthy of passage without being dependent on the other. We urge that the bills not be joined although they should be kept consistent in language so that they will function appropriately if either one is passed or both are passed.

Sincerely,



BRIAN PADDOCK
Directing Attorney

BP/maa

cc: John DeMouly - California Law Revision Commission

P.S. After this letter was typed I met with John DeMouly. He is preparing author's amendments to respond to our suggestions. We agreed that AB 2830 and AB 2831 should be joined or severed depending on whether this will assist their passage.

--B.P.

EXHIBIT III

AMENDMENTS TO ASSEMBLY BILL NO. 2831

AMENDMENT NO. 1

On page 2, line 14, of the printed bill, strike out "20"
and insert:

14

AMENDMENT NO. 2

On page 3, line 4, strike out "20" and insert:

14

AMENDMENT NO. 3

On page 3, line 14, after "property" insert:

, and payment of the periodic rent due and unpaid to the date
of your notice

AMENDMENT NO. 4

On page 3, line 27, strike out "20" and insert:

14

AMENDMENT NO. 5

On page 3, line 38, after "property" insert:

, and paid the periodic rent and unpaid to the date of the
leesee's notice

AMENDMENTS TO ASSEMBLY BILL 2831

AMENDMENT 1

In line 1 of the title of the printed bill, after "Code", insert:
and to add Section 415.47 to the Code of Civil Procedure

AMENDMENT 2

On page 2, line 9, after the comma, insert:
stating

AMENDMENT 3

On page 2, line 10, after "property", insert:
and stating an address at which the lessee may be served by certified mail
in any action for unlawful detainer of the real property

AMENDMENT 4

On page 3, line 2, strike out "State", and insert:
state

AMENDMENT 5

On page 3, line 3, strike out "description.)", and insert:
description).

AMENDMENT 6

On page 3, strike out lines 13 and 14, and insert:
written notice from you stating both of the following:

- (1) Your intent not to abandon the real property.
- (2) An address at which you may be served by certified mail in any
action for unlawful detainer of the real property.

AMENDMENT 7

On page 3, line 37, strike out "of", and insert:
stating

AMENDMENT 8

On page 3, line 38, after "property", insert:
and stating an address at which he may be served by certified mail in any
action for unlawful detainer of the real property

AMENDMENT 9

On page 4, following line 2, insert:

Sec. 2. Section 415.47 is added to the Code of Civil Procedure, to
read:

415.47. (a) Where the lessee has given the lessor written notice
of the lessee's intent not to abandon leased real property as provided
in Section 1951.3 of the Civil Code, the summons in an action for unlawful
detainer of the real property may be served on the lessee by certified mail,
postage prepaid, addressed to the lessee at the address stated in the
lessee's notice of intent not to abandon if such summons is deposited in
the mail within 60 days from the date the lessee's notice of intent not to
abandon is received by the lessor. Service in this manner is deemed com-
pleted on the 10th day after such mailing.

(b) This section provides an alternative method of service on the
lessee and does not preclude service in any other manner authorized by
this chapter.

AMENDMENTS TO AB 2830 AS AMENDED IN
ASSEMBLY FEB. 27, 1974

AMENDMENT 1

On page 4, line 14, of the printed bill as amended in Assembly on February 27, 1974, after "1984." insert:

(a)

AMENDMENT 2

On page 5, between lines 1 and 2, insert:

(Here insert statement required by subdivision (b) of this section)

AMENDMENT 3

On page 5, between lines 10 and 11, insert:

(b) The notice set out in subdivision (a) shall also contain one of the statements:

(1) "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the cost of storage, advertising, and sale deducted, the rest of the money will be paid over to the county, and you may claim the remaining money at any time within one year after the county receives the money."

(2) "Because this property is believed to be worth less than \$100, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above."

AMENDMENT 4

On page 6, line 14, after the period, insert:

The landlord shall exercise reasonable care in storing the property, but the landlord is not liable to the tenant or other owner for any loss not caused by the landlord's deliberate or negligent act.

AMENDMENT 5

On page 6, line 29, after the period, insert:

Nothing in this section precludes the landlord or the tenant from bidding on the property at the public sale.

AMENDMENT 6

On page 6, line 31, of the printed bill as amended in Assembly February 27, 1974, strike out "at least once" and insert:
pursuant to Section 6066 of the Government Code

AMENDMENT 7

On page 6, line 33, after "held" insert:

The last publication shall be

REPORT OF ASSEMBLY COMMITTEE ON JUDICIARY
ON ASSEMBLY BILL 2830

In order to indicate more fully its intent with respect to Assembly Bill 2830, the Assembly Committee on Judiciary makes the following report:

Except for the revised comment set out below, the comments contained under the various sections of Assembly Bill 2830 as set out in Recommendation of the California Law Revision Commission Relating to Landlord-Tenant Relations--Personal Property Left on Premises Vacated by Tenant (December 1973), 11 Cal. L. Revision Comm'n Reports 951, 963 (1973), reflect the intent of the Assembly Committee on Judiciary in approving the various provisions of Assembly Bill 2830.

The following revised comment also reflects the intent of the Assembly Committee on Judiciary in approving Assembly Bill 2830.

Civil Code § 1983. Notice

Comment. Section 1983 generally requires that written notice concerning personal property left on the premises must be given to the former tenant and to any other person the landlord reasonably believes to be the owner of such property. Notice may be given at any time after the premises are vacated and the tenancy has terminated, but sale or other disposition of the property may not occur until a specified period has passed after notice is given. See Sections 1987 and 1988. The requirement that the tenancy be terminated is obvious; a landlord has no need or right to dispose of the tenant's property while the tenancy continues. For an exception to this requirement, see Section 1991. See also CIVIL CODE § 1951.3 (method of declaring abandonment of real property). The requirement that the premises be vacated by the tenant is intended to avoid conflict with the statutory provisions dealing with unlawful detainer. See CODE CIV. PROC. §§ 1161-1179a.

Subdivision (b) prescribes the contents of the notice. The notice must include four items of information: (1) a description of the property; (2) the address of the place where the property may be claimed; (3) the date before which the claim must be made; and (4) a statement that payment of storage costs may be required before the property is returned. (See Sections 1984 and 1985 for forms.) The property description must be reasonably adequate to permit the owner to identify the property. The landlord determines where the property may be claimed. The landlord is free to specify any date in the notice as long as the period allowed for taking possession meets the minimum requirements of the last sentence of subdivision (b).

Reasonable costs of storage may, but need not, be charged by the landlord as a condition of releasing the property. See Section 1990.

Subdivision (c) provides for the manner of service of the notice. If notice is sent by mail, the landlord must send a copy of the notice to the address where he knows the person to be notified may reasonably be expected to receive the notice.

Thus, for example, if the landlord knows the former tenant's place of employment, the landlord should send a copy of the notice to the tenant at his place of employment. As a matter of course, when serving notice by mail, the landlord should always send a copy addressed to the tenant at the vacated premises. Subdivision (c) merely requires the landlord to make an appropriate effort to notify the former tenant in view of the actual knowledge the landlord has at the time notice is given; the subdivision does not require that the landlord make an investigation in an effort to discover an address where the former tenant can be reached.