#78 6/25/73

Memorandum 73-54

Subject: Study 78 - Property Left on Leased Premises When Lease Terminates

Attached are two copies of a staff draft of a tentative recommendation on property left on leased premises when lease terminates and related problems. Please mark your editorial changes on one copy to turn in to the staff at the July meeting.

We plan to go through the draft section by section at the meeting. Please raise any policy questions at that time. The draft indicates the problems dealt with in the tentative recommendation and the solutions proposed. We do not repeat that discussion here.

If we are to submit a recommendation on this subject to the 1974 session, it is essential that a tentative recommendation be approved for distribution at the July meeting.

Respectfully submitted,

John H. DeMoully
Executive Secretary

C A L I F O R N I A L A W

R E V I S I O N C O M M I S S I O N

TENTATIVE

RECOMMENDATION AND STUDY

relating to

DISPOSITION OF PROPERTY LEFT ON PREMISES WHEN LEASE TERMINATES AND RELATED PROBLEMS

STAFF DRAFT

July 1973

CALIFORNIA LAW REVISION COMMISSION
School of Law
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STATE OF CALIFORNIA RONALD REAGAN, Governor

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LETTER OF TRANSMITTAL

The California Law Revision Commission was directed by Resolution Chapter 130 of the Statutes of 1965 to make a study to determine whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised. Legislation on this subject was enacted in 1970 upon recommendation of the Commission. See Cal. Stats. 1970, Ch. 89.

The Commission has given further study to this area of the law, and this new recommendation is concerned with several important matters not dealt with in the 1970 statute and with a minor problem of application of that statute to leases executed prior to its effective date.

The attached background study is a portion of a study prepared for the Commission by Professor Jack H. Friedenthal, Stanford Law School, who served as the Commission's consultant in preparing this recommendation. Only the recommendation (as distinguished from the background study) expreses the views of the Commission.

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TENTATIVE RECOMMENDATION

relating to

DISPOSITION OF PROPERTY LEFT BY TENANT AFTER TERMINATION OF TENANCY AND RELATED PROBLEMS

INTRODUCTION

Upon recommendation of the Law Revision Commission,[1] the Legislature in 1970 enacted Civil Code Sections 1951-1952.6 to deal with certain rights and duties of landlords and tenants upon termination or abandonment of a lease of real property. The Commission has considered various aspects of this topic not covered by the 1970 statute and has reviewed the experience under that statute.

Two important practical problems which existed under prior law are not dealt with in the 1970 statute: (1) what constitutes an "abandonment of property" and (2) what procedure the landlord should follow in disposing of personal property left on the leased premises after the premises have been vacated by the tenant. This recommendation is concerned with these problems as well as the related matter of innkeepers' and landlords' liens and the problem of the extent to which the 1970 statute applies when a lease executed prior to July 1, 1971, is amended after that date.

"ABANDONMENT" OF LEASED REAL PROPERTY

Section 1951.2 of the Civil Code provides that a lease of real property terminates if the lessee breaches the lease and "abandons the prop-

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1. See Recommendation Relating to Real Property Leases, 9 Cal. L. Revision Comm'n Reports 153 (1969); Cal. Stats. 1970, Ch. 89.

erty" before the end of the term.[2] Upon such termination, the lessee's right to possession ends and the lessor has the right to recover damages for the breach and the obligation to mitigate those damages.[3] However, the statute provides no method for determining what constitutes abandonment of the property. Apparently, "abandonment" occurs only when the lessee manifests an intention to abandon his leasehold interest; appearances of abandonment are not sufficient.[4] Thus, whether the lessee has abandoned the property and the lease has terminated depends upon a subjective standard--the lessee's intent.

Consequently, absent a clear indication from the lessee expressing an intent to abandon his leasehold interest, the lessor can never be certain that a lessee who has defaulted on the rent and left the leased property actually intends to abandon his leasehold interest.[5] Accordingly, by reletting the property, the lessor runs a risk that it will later be determined that the leasehold has not in fact been abandoned, thereby subjecting the lessor to potential liability for the reletting. The

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2. Unless the lessor terminates the lease, it continues in effect if it contains a provision that it will continue in effect despite a breach of the lease and abandonment of the property by the lessee; such a prosion is legally enforceable, however, only if the lease gives the lessee the right to sublet or assign his interest in the lease and does not impose unreasonable limitations on the exercise of that right. Civil Code § 1951.4.

3. For a general discussion, see Recommendation Relating to Real Property Leases, 9 Cal. L. Revision Comm'n Reports 153 (1969).

4. The common law concepts are deceptively simple and unsatisfactory from a practical perspective. However, they indicate that intention to abandon is essential to "abandonment." See Martin v. Cassidy, 149 Cal. App.2d 106, 111, 307 P.2d 981, 984 (1957); 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).

5. At common law, mere nonuse of the premises, no matter how long, was not alone sufficient evidence of the intent to abandon. Gerhard v. Stephens, 68 Cal.2d 864, 442 P.2d 692, 69 Cal. Rptr. 612 (1968).

situation is aggravated by the fact that the lessor apparently has the burden of proof on the issue of abandonment.[6]

The Commission has concluded that both the lessee and the lessor need some means to easily establish whether the property had been abandoned within the meaning of Section 1951.2[7] and to this end makes the following recommendations:

(1) The lessee of real property should be permitted to terminate the lease[8] by giving the lessor written notice that he has abandoned the property and that the lease is terminated.[9] The notice should not be effective against the lessor unless and until the lessee vacates the property. When the lease is so terminated, the lessor will have the duty to mitigate his damages and a right to recover damages for breach of the lease by the lessee.[10]

(2) The lessor of real property should be authorized to give the lessee written notice[11] of belief of abandonment if the lessor (1) reason-

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6. See Moon v. Rollins, 36 Cal. 333, 340 (1868); Pidgeon v. Lamb, 133 Cal. App. 342, 348, 24 P.2d 206, 208 (1933); Weideman v. Staheli, 88 Cal. App.2d 613, 616, P.2d (1948); Group Property, Inc. v. Bruce, 113 Cal. App.2d 549, 559, 248 P.2d 761, 767 (1952); Pepperdine v. Keys, 198 Cal. App.2d 25, 31, 17 Cal. Rptr. 709, 712 (1961).

7. Enactment of the procedures recommended for establishing that the property has been abandoned would not preclude either party from otherwise proving that the property has been abandoned within the meaning of Section 1951.2.

8. The proposed legislation would not affect a provision in the lease limiting the lessee's right to terminate the lease. See note 2 supra.

9. The notice should be effective upon delivery to the lessor personally or, if mailed, 15 days after it is deposited in the mail.

10. Civil Code § 1951.2.

11. Notice should be given by delivery to the lessee personally or by mail addressed to the lessee at his last known residence or place of business. Where mail notice is given and the lessor has substantial reason to believe that the lessee is temporarily located at a place other than his last known residence or business address, an additional copy of the notice should be sent by mail to the lessee at the place where he is temporarily located.

ably believes that the property has been unoccupied for at least 20 consecutive days during which the lessee is in default on the rent and (2) has no substantial reason to believe that the lessee has not abandoned the property. The leased property should be deemed abandoned and the lease terminated if the lessee fails to contact the lessor and manifest his intent not to abandon the property within 15 days after such notice. The 20-day period during which the lessee is in default on rent, combined with the additional 15-day period during which the lessee may contact the lessor and manifest his intent not to abandon the property, assures that, for the normal tenancy calling for monthly payments, at least two rent due dates will pass before termination of the lease can occur. If the lessor wishes faster action, he may use the unlawful detainer remedy under Section 1174 of the Code of Civil Procedure.

DISPOSITION OF PROPERTY LEFT BY TENANT AFTER TERMINATION OF TENANCY

Background

After termination of a tenancy, the landlord or his agent enters the premises to prepare them for a new tenant and frequently finds that the prior tenant has left behind some items of personal property. More often than not, the items left on the premises seem to be little more than junk although on occasion they may appear to have some resale value on the open market. In some situations, the property appears valuable only to the departed tenant as, for example, where the property consists of personal papers, prescription medicines, or family photographs.

In the large majority of situations, the landlord--after futile attempts to find the departed tenant and have him remove the property--only wishes to dispose of the property in a speedy, inexpensive manner that will not result in any risk of future liability for conversion. In a few cases, where the

property has commercial value and the tenant left owing money to the landlord, the latter may seek to appropriate the goods to his own use in payment of the tenant's obligations. However, unless a landlord is covered by one of the specific statutes governing disposition of property in particular situations, he will find no statutory guidance as to how he should dispose of the apparently abandoned personal property.

California has a number of statutes governing lost or abandoned property in specific situations. The statutes are arbitrary in their coverage and inconsistent in their requirements. As a whole, they do not provide an overall solution to the problem of disposition in a majority of cases.

The statute with the broadest coverage is Civil Code Section 1862 which provides a procedure for disposition of unclaimed personal property held by "the keeper of any hotel, inn, or any boarding or lodging house, furnished apartment house or bungalow court." There are three basic requirements for the disposition of unclaimed personal property under Section 1862:

(1) The property must be unclaimed for six months.

(2) The landlord may then advertise the property for sale by publication once a week for four consecutive weeks. The notice must contain a detailed description of each item and must give the name of the owner, if known.

(3) The items, if unclaimed by the owner, must then be sold at public auction.

The landlord may deduct the costs of storage, advertising, and sale from the proceeds of the sale. He must pay the balance into the county treasury within one week from the date of the sale. The county holds the money for one year and, if not claimed by the owner, the money is paid into the general fund of the county.

There are a number of deficiencies in Section 1862. A major deficiency is the limited scope of the section; it does not cover personal property left in an unfurnished apartment or personal property left on property leased for commercial purposes, and there is no other statute that provides a nonjudicial procedure for the disposition of such property.[12] Also, the section does not require that the landlord inform the tenant that the tenant has left property on the premises nor provide the tenant with any notice of the sale even where the landlord knows the tenant's new address. Finally, the section requires that the property be held for six months, an unreasonably long period.

Another statute with wide coverage--Code of Civil Procedure Section 1174--is applicable where property is left on the premises when the landlord regains possession of the premises in an unlawful detainer proceeding. This procedure requires storage of the property for only 30 days after which it may sold at public sale after one publication of notice. Although the Section 1174 procedure applies to all leased premises--whether furnished or unfurnished, residential or commercial--there are several serious deficiencies in this portion of the unlawful detainer law. Like Civil Code Section 1862, Code of Civil Procedure Section 1174 makes no provision for notice to the tenant of what will happen to property left on the premises. Also, the section contains no provision to deal with the case where a third person has an interest in the property. In Gray v. Whitmore,[13] the court of appeal held that Section 1174 was unconstitutional insofar as it allows the landlord to apply the proceeds of the sale of the property to his judgment and requires the tenant to satisfy the landlord's judgment before property left on the premises may be recovered.

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12. Compare Code Civ. Proc. § 1174 (unlawful detainer proceedings).

13. 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971).

Other statutes of limited application which deal peripherally with the problem under consideration are the innkeepers' lien law,[14] the landlords' lien law,[15] and the lost property laws.[16]

Recommendations

The Commission recommends the enactment of a uniform procedure to govern the disposition of personal property left on leased or rented premises, whether furnished or unfurnished, residential or commercial. The uniform procedure should include the features described below.

Right of tenant to remove his personal property. It should be made clear by express statutory statement that, notwithstanding any provision to the contrary in a rental agreement between a landlord and tenant, the tenant has the right during the tenancy and upon termination thereof to remove his personal property from the premises whether or not he is indebted to the landlord.[17] This rule appears to be a codification of existing California law.[18] Nevertheless, making it clear that a lease provision

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14. Civil Code § 1861. See discussion, p. 12 infra.

15. Civil Code § 1861a. See discussion, p. 12 infra.

16. Civil Code § 2080 et seq. See also People v. Stay, 19 Cal. App.3d 166, 96 Cal. Rptr. 651 (1971).

17. The recommended rule would not, however, preclude including in the lease a provision for an otherwise valid security agreement in favor of the landlord (such as a security agreement authorized by the Commercial Code) or a provision that all or a portion of the leasehold improvements and alterations and personal property affixed to the leased premises shall be nonremovable. Likewise, the recommended rule would not affect a valid statutory lien. See Civil Code § 1861a.

18. See Jordan v. Talbot, 55 Cal.2d 597, 361 P.2d 20, 12 Cal. Rptr. 488 (1961). See also Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971); Klim v. Jones, 315 F. Supp. 109, 118-124 (N.D. Cal. 1970); Quebec v. Bud's Auto Service, 32 Cal. App.3d 257, Cal. Rptr. (1973).

contrary to the rule is invalid should deter landlords from including or relying on such provisions in their rental agreements.

"Lost" property. If personal property found on the premises after the tenant has left reasonably appears to be lost rather than abandoned --such as a valuable ring found under a rug--the landlord should be required to comply with the general statutory provisions governing the disposition of lost property.[19] However, if the lost property is not within the purview of those provisions or if the police or sheriff's department refuses to accept the property as "lost" property, its disposition would be governed by the provisions recommended below for disposition of abandoned property.

Direct notice to tenant or other known owner. Civil Code Section 1862, which would be superseded by the recommended legislation, merely requires notice by publication and contains no requirement that notice be given directly to the tenant or other owner of abandoned property (personal property left on the leased or rented premises after the premises have been vacated by the tenant). However, direct notification is essential to protect the interests of the tenant or other owner and should be required to the extent that the landlord knows where such person can be reached. Accordingly, at least 15 days before disposing of any item of abandoned personal property, the landlord should be required to give notice to the tenant and any other known owner of the property either personally or by mail addressed to such person at his last known address.

The recommended 15-day period would allow time for the owner to claim his property if he wants it. At the same time, it would minimize the bur-

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19. Civil Code §§ 2080.1-2080.9.

den to the landlord of storing property that in the great majority of cases is merely junk that the tenant does not want.[20]

The required notice should include a general description of each item of abandoned personal property, a statement of the nature of the disposition permitted under the statutory procedure being employed by the landlord, and a statement of the right of the tenant or other owner to claim the property and the time within which such claim must be made.

Disposition procedure generally. If the tenant or other owner fails to pay the landlord the reasonable cost of storage and take possession of the property within 15 days from the notice, the item should be sold at public sale by competitive bidding. At least five days' notice of the time and place of the sale should be given by publication once in a newspaper of general circulation published in the county where the sale is to be held. The balance of the money received from the sale--after deducting the reasonable costs of storing, advertising, and selling--should be paid over to the county within 30 days from the date of the sale. The owner should have one year within which to claim the balance. If not claimed within this time, the money should belong to the county. The provisions requiring public

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20. The six-month storage period under Civil Code Section 1862 is unreasonably long. Perhaps a six-month period was justified in 1876 when the statute was first enacted, but modern communication facilities eliminate the need for such a long period, particularly when the cost to the landlord of storage is unlikely to be recovered. Other provisions permitting disposition of unclaimed property all have lesser waiting periods. See Code Civ. Proc. § 1174 (goods left by a tenant ousted after successful prosecution of an unlawful detainer action need be held only for 30 days). See also Civil Code §§ 2081.1 (goods committed to a warehouseman, common carrier, or innkeeper for transportation or safekeeping need only be held 60 days before they can be sold), 2080.3 (lost property turned over to local police agency may be disposed of after 90 days). It should be noted that the property referred to in Civil Code Sections 2081.1 and 2080.3 will almost always be property of value whereas the abandoned property with which this recommendation is concerned will in the great majority of cases be property of no significant value which the vacating tenant did not want.

sale and governing the disposition of the proceeds of the sale are substantially the same in substance as those now found in Section 1862 of the Civil Code.

Optional procedure for disposition where property of little value. Where the property abandoned by the tenant is of little value, it would impose an unreasonable burden on the landlord if he were required to advertise and sell the property at a public sale. In fact, in the great majority of cases, the property is valueless and the tenant does not want it. Accordingly, there is a need for a simple, inexpensive procedure to deal with these cases.

Where the landlord reasonably believes that the total resale value of the aggregate of all items of personal property does not exceed $100, he should be permitted, after giving the required 15-day notice, to dispose of the unclaimed items in any manner he desires. If the landlord is in doubt whether the property is worth $100, he can proceed under the public sale procedure. The arbitrary $100 line is recommended because the line must be drawn high enough to permit the landlord to dispose of what ordinarily will be junk and trash without any fear that the tenant will later claim that the property should have been sold at an advertised public sale because it had resale value.[21]

Protection of landlord from liability. Where a tenant or other owner is given notice in accordance with the recommended procedure, the landlord should be protected against liability with respect to any item of abandoned property disposed of in an authorized manner. With respect to persons who

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21. It should be noted that, prior to 1972, abandoned vehicles appraised at a value not exceeding $100 could be disposed of under a simple procedure provided by Vehicle Code Section 22705, but additional requirements were imposed for abandoned vehicles of greater value. See Veh. Code § 22704. A 1971 enactment raised the limit to $200. See Cal. Stats. 1971, Ch. 510, § 1.

are owners of abandoned property but are not given notice, the landlord should not be liable unless the owner proves that, prior to disposing of the item of personal property, the landlord know or reasonably should have known that the owner had an interest in the item and also that the landlord knew or should have known upon reasonable investigation the address of such owner's residence or place of business. Also, if the procedure authorized for property not exceeding $100 is used, the landlord should not be immune from liability if an owner who was not given notice proves that the landlord was unreasonable in declaring the value of the property not to exceed $100.

Unlawful detainer procedure. Section 1174 of the Code of Civil Procedure which governs the disposition of property where the tenant is ousted in an unlawful detainer action should be revised to conform to the procedure recommended above for abandoned property left on the premises after a tenant has vacated the property. Notice concerning the disposition of property should be given to the tenant in the writ of restitution. The storage period of the property should be reduced from 30 to 15 days to conform to the general procedure recommended above. The provisions of Section 1174 that property is redeemable only upon payment of the judgment and that the proceeds from the sale of the property may be applied to the landlord's judgment should be deleted since they are unconstitutional.[22] The rights of third persons having an interest in the property should also be protected by requiring that they be given adequate notice and an opportunity to claim the property or the proceeds of sale.

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22. Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971). See also Quebec v. Bud's Auto Service, 32 Cal. App.3d 257 (1973).

INNKEEPERS' AND LANDLORDS' LIENS

Section 1861 of the Civil Code, which creates a lien for an innkeeper on the baggage and other property of his guests or tenants, has been held unconstitutional by a three-judge federal district court.[23] It should be repealed, and Section 1861a (discussed below) should be broadened to provide a lien for those landlords now covered under the unconstitutional innkeepers' lien.

Section 1861a, which now provides a lien for keepers of furnished and unfurnished apartments, cottages, or bungalow courts, should be amended to expand its scope to cover keepers of hotels, motels, inns, boardinghouses, and lodginghouses. The section should be further amended to require the court to make a finding of the probable validity of the landlord's claim against the tenant before an order is issued allowing the landlord to enter the premises and seize the tenant's property.[24] Other less important revisions also should be made in Section 1861a.[25]

LEASES EXECUTED PRIOR TO JULY 1, 1971

Civil Code Sections 1951 to 1952, inclusive, govern the rights of the parties when a lessee breaches a lease of real property and abandons the property. Section 1951.2 provides the types and measure of damages a lessor may recover from the lessee and requires the lessor to mitigate his damages,

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23. Section 1861 was held unconstitutional in Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970)(three-judge court). See also Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971).

24. This provision is needed to satisfy constitutional requirements. See Randone v. Appellate Dep't, 5 Cal.3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971); Blair v. Pitchess, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971). Section 1861a currently provides only for a hearing and finding on the basis of the landlord's affidavit that the property is about to be destroyed, substantially devalued, or removed.

25. These revisions are indicated in the Comment to Section 1861a in the proposed legislation infra.

which generally means that he must make a reasonable effort to relet the property. Section 1951.4 permits the lessor to continue the lease in effect, despite the lessee's breach and abandonment of the property, if the lease gives the lessee the right to sublet or assign and does not impose unreasonable limitations on the exercise of that right. Other provisions of less importance deal with such matters as liquidated damages, right to equitable relief, and notice of reletting where advance payments have been required.

Section 1952.2 of the Civil Code[26] limits the application of Sections 1951-1952 to leases executed on or after July 1, 1971. This section was included because the contents of the leases executed before the operative date of Sections 1951-1952 (July 1, 1971) may have been determined without reference to the effect of those sections. Often, however, the parties to a lease will agree, for example, to extend the term of an existing lease for a specified number of years at an increased rent. In all other respects, they consider their existing lease as satisfactory. In other cases, the lessee may require additional space and the parties agree that the additional space will be added to the lease and the rent provided in the lease will be increased to reflect the addition. Or, the lessee may move from one floor in a building to another, and the parties merely want to amend the lease to change the description of the property leased and the amount of rent; in all other respects, they want the existing lease to remain in effect.

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26. Section 1952.2 provides:

> 1952.2. Sections 1951 to 1952, inclusive, do not apply to:
>
> (a) Any lease executed before July 1, 1971.
>
> (b) 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.

Section 1952.2 apparently does not permit the parties to avoid the application of Sections 1951-1952 if they amend their existing lease even where the existing lease was executed before the operative date of Sections 1951-1952. Thus, even though the parties desire to be bound by the existing lease as amended, they apparently are required to draft a new lease that will take into account the enactment of Sections 1951-1952. Although the Commission believes that Sections 1951-1952 reflect sound public policy and should generally govern the lessor-lessee relationship, the Commission also recognizes the burden that the application of these sections may impose on parties who wish merely to amend a lease executed prior to the operative date of those sections in a few respects and otherwise continue the provisions of the existing lease in effect. To avoid this burden, the Commission recommends that Section 1952.2 of the Civil Code be amended to add a provision that Sections 1951-1952 do not apply to an agreement executed after July 1, 1971, which amends a lease executed before July 1, 1971, if the agreement states that Sections 1951-1952 do not apply to the lease as amended.

#78

I. ABANDONMENT OF LEASED REAL PROPERTY

An act to add Chapter 2.5 (commencing with Section 1953.10) to Title 5 of Part 4 of Division 3 of the Civil Code, relating to abandonment of leased real property.

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

Section 1. Chapter 2.5 (commencing with Section 1953.10) is added to Title 5 of Part 4 of Division 3 of the Civil Code, to read:

Chapter 2.5. Abandonment of Leased Real Property

§ 1953.10. Methods of declaring abandonment

1953.10. This chapter provides procedures whereby real property subject to a lease may be deemed to be abandoned within the meaning of Section 1951.2. Nothing in this chapter precludes the lessor or the lessee from otherwise proving that the property has been abandoned within the meaning of Section 1951.2.

Comment. Chapter 2.5 provides methods to establish that leased real property has been "abandoned" within the meaning of Section 1951.2. Under Section 1951.2, if the lessee breaches the lease and "abandons" the property, the tenancy is terminated and the lessor has a duty to mitigate the damages by making reasonable efforts to rerent the premises. Compare Section 1951.4 (lease provision relieving lessor of duty to mitigate damages). The time when the tenancy terminates under Section 1951.2 also is important under Chapter 5 (commencing with Section 1963.10) which sets forth the lessor's rights and duties as to personal property remaining on the premises after termination of the tenancy.

"Abandonment" within the meaning of Section 1951.2 occurs only where the lessee in fact intends to abandon his leasehold interest; appearances of abandonment are not sufficient. Thus, absent the procedures provided by this chapter, whether the lessee has abandoned the property and the lease has terminated under Section 1951.2 depends upon a subjective standard--the lessee's intent--which is insufficient in most cases to guide the parties. See Recommendation Relating to Property Abandoned on Leased Premises and Related Matters, 11 Cal. L. Revision Comm'n Reports 000 (1973). Although this chapter provides means by which either the lessor or the lessee may easily establish whether the property has been abandoned, it does not preclude either party from otherwise proving that fact.

§ 1953.20. Notice of belief of abandonment by the lessor

1953.20. (a) If a lessor of real property reasonably believes that the property has been unoccupied for at least 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 property, the lessor may give written notice to the lessee stating all of the following:

(1) The notice is given pursuant to Section 1953.20 of the Civil Code.

(2) The lessor believes that the property has been abandoned.

(3) The property will be deemed abandoned and the lease will terminate on the 17th day after the effective date of the notice unless the lessee, within 15 days from the effective date of the notice, contacts the lessor and manifests his intent not to abandon the property.

(4) The substance of rules set out in subdivision (b) of this section as to effective date of the notice.

(b) Except as otherwise provided in this subdivision, the effective date of the notice is the date when it is delivered to the lessee personally or when it is deposited in the mail addressed to the lessee at his last known residence or place of business. Where notice is given by mail and the lessor has substantial reason to believe the lessee is temporarily located at a place other than his last known residence or business address, the effective date of the notice is no earlier than the date when an additional copy of the notice is deposited in the mail, addressed to the lessee at the place where he is temporarily located. The effective date of a notice mailed to an address not in this state is the date of mailing if sent by airmail or five days after the date of mailing if not sent by airmail.

(c) If the notice contains the information required by subdivision (a) and is given in compliance with subdivision (b) and the lessee fails to contact the lessor within 15 days from the effective date of the notice and manifest his intent not to abandon the property, the property shall be deemed abandoned within the meaning of Section 1951.2 and the lease shall terminate on the 17th day after the effective date of the notice. After the lease so terminates, the lessor is not liable to the lessee for treating the lease as terminated.

(d) Subdivision (c) does not apply where the lessee proves either of the following:

(1) At the time the notice was given, the lessor did not reasonably believe that the property had been unoccupied for a period of not less than 20 consecutive days during when rent was due and unpaid.

(2) At the time the notice as given, the lessor had substantial reason to believe that the lessee did not intend to abandon the property.

(e) The fact that the lessor knew that the lessee left items of personal property on the leased real property does not, of itself, justify a finding that the lessor did not reasonably believe that the property was unoccupied or a finding that the lessor had substantial reason to believe that the lessee did not intend to abandon the property.

Comment. Section 1953.20 provides a procedure by which the lessor can be assured that a lease has been terminated when the lessee is in default on the rent and it appears that he has abandoned the property. When the lease has been so terminated, the lessor can dispose of any personal property remaining on the premises under Chapter 5 (commencing with Section 1963.10), prepare the property for a new tenant, and relet the property.

A number of safeguards are provided to insure that a determination of abandonment is not prematurely made. Not only must the lessor have no substantial reason to believe that the lessee has not abandoned the property but must reasonably believe that the premises have been unoccupied for at least 20 consecutive days during which the lessee is in default on the rent. Reasonable belief as to lack of occupancy may require some minimal investigation. These requirements, together with the provisions for notice, provide assurance that a lessee will not be deprived of a leasehold interest which he did not intend to abandon.

The 20-day period during which the lessee is in default on the rent, combined with the additional period (ordinarily 15 days) during which the lessee may contact the lessor and manifest his intent not to abandon the property, assures that, for the normal tenancy calling for monthly payments, at least two rent due dates must pass before abandonment and termination of the lease can occur. If the lessor wishes faster action, he may use the unlawful detainer remedy under Section 1174 of the Code of Civil Procedure.

The lessee must contact the lessor within 15 days after the effective date of the notice or the property will be deemed abandoned and the lease will terminate. The lessee need merely make known to the lessor his intent not to abandon the leased property; even though the lessee fails to pay the rent due, the lease does not terminate if he contacts the lessor within the 15-day period.

If the lessee later challenges the termination of the lease, the lessor has the burden of proof that the notice contained the information required by subdivision (a) and was given in compliance with subdivision (b). If the lessor establishes these matters, the lessee can establish his rights under the lease only if he can prove either (1) that the lessor did not reasonably believe that the property had been unoccupied for at least 20 consecutive

days during which rent was due and unpaid or (2) that the lessor had no substantial reason to believe that the lessee had not abandoned the property. The burden of proof on these two matters is placed on the lessee so that the lessor will be able to proceed to relet the property with confidence that the "abandonment" and termination will not later be set aside.

Subdivision (e) is designed to eliminate a possible problem with regard to the facts that may overcome a lessor's reasonable belief that the property has been abandoned. Since many lessees who abandon the leased property leave behind personal property, the mere fact that the lessor knows that the lessee has done so should not, by itself, be held to establish that the lessor acted unreasonably. Where the personal property left by the lessee reasonably appears to be of no great value, it ordinarily will be reasonable for the lessor to assume that the personal property was abandoned by the lessee. On the other hand, where the personal property is of substantial value and it appears that the lessee is the owner, this fact is of significance in determining whether the lessee has abandoned the leased property. While subdivision (e) precludes a finding of lack of abandonment based on the mere fact that personal property remains on the leased property, the subdivision does not preclude this fact from being taken into account with other facts in determining whether the leased property was abandoned.

§ 1953.30. Notice of abandonment and termination of lease by lessee

1953.30. (a) Except as otherwise provided by Section 1951.4, real property shall be deemed abandoned within the meaning of Section 1951.2 and the lease shall be terminated:

(1) Upon delivery by the lessee to the lessor personally of a written notice stating that the lessee has abandoned the property and that the lease is terminated; or

(2) Fifteen days after the lessee has deposited in the mail a written notice addressed to the lessor at his last known place of business, stating that the lessee has abandoned the property and that the lease is terminated.

(b) The notice is not effective against the lessor unless and until the lessee vacates the property.

(c) Nothing in this section limits the right of the lessor to recover under Chapter 2 (commencing with Section 1941) for breach of the lease by the lessee.

Comment. Section 1953.30 provides a method by which the lessee can declare his leasehold abandoned in order to terminate the lease and require the lessor under Section 1951.2 to take steps to mitigate the lessee's obligations. The subdivision is, of course, subject to the lessor's rights under Section 1951.4 (continuation of lease despite breach and abandonment).

Upon receipt of the lessee's notice, the lessor may regard the lease as terminated even though the lessee has not vacated the property and may recover damages under Section 1951.2 for breach of the lease. However, the lessor is not required to regard the lease as terminated and to mitigate the damages under Section 1951.2 merely because the lessee has given the notice under Section 1953.30; subdivision (b) provides the notice is effective against the lessor only when the lessee vacates the property.

There is no requirement under Section 1953.30 that the lessee be in default at the time he gives the notice under the section. Accordingly, the lessee may give the notice and cause the lease to terminate even though he is not, for example, in default on the payment of rent. Section 1953.30 thus provides a means whereby lessee who wishes to terminate a lease may do so and establish the date of termination for the purposes of Section 1951.2; and, except as otherwise provided in Section 1951.4, if the lessee has vacated the property, he can thereby impose on the lessor the duty to mitigate the damages. Section 1953.30 does not, of course, affect the lessor's right to recover damages under Section 1951.2.

II. DISPOSITION OF ABANDONED PERSONAL PROPERTY

An act to add Chapter 5 (commencing with Section 1963.10) to Title 5 of Part 4 of Division 3 of, and to repeal Section 1862 of, the Civil Code, and to amend Section 1174 of the Code of Civil Procedure, relating to abandoned property.

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

Civil Code § 1862 (repealed)

Section 1. Section 1862 of the Civil Code is repealed.

~~1862. Whenever any trunk, carpetbag, valise, box, bundle,~~ baggage or other personal property has heretofore come, or shall hereafter come into the possession of the keeper of any hotel, inn, or any boarding or lodging house, furnished apartment house or bungalow court and has remained or shall remain unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of such sale may retain the charges for storage, if any, and the expenses of advertising and sale thereof;

But no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, village, or place in which said hotel, inn, boarding or lodging house, furnished apartment house or bungalow court is situated. Said notice shall be published once a week, for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpetbag, valise, box, bundle, baggage, or other personal property as near as may be; the name of the owner, if known; the name and address of such keeper; the address of the place where such trunk, carpetbag, valise, box, bundle, baggage, or other personal property is stored; and the time and place of sale;

And the expenses incurred for advertising shall be a lien upon such property in a ratable proportion, according to the value of such piece of property, or thing, or article sold;

And in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one ~~year thereafter, the same shall be paid into the general fund of said county.~~

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Comment. Section 1862 is superseded by Civil Code Section 1963.10 et seq.

Civil Code §§ 1963.10-1963.70 (added)

Sec. 2. Chapter 5 (commencing with Section 1963.10) is added to Title 5 of Part 4 of Division 3 of the Civil Code, to read:

Chapter 5. Personal Property Abandoned on Leased Premises

§ 1963.10. Definitions

1963.10. As used in this chapter:

(a) "Item of personal property" means any piece of personal property, including any trunk, valise, box, or other container which, because it is locked, fastened, or tied, deters immediate access to the contents thereof, but does not include a motor vehicle disposed of pursuant to Article 2 (commencing with Section 22700) or Article 3 (commencing with Section 22850) of Chapter 10 of Division 11 of the Vehicle Code.

(b) "Landlord" means any operator, keeper, lessor, or sublessor of any furnished or unfurnished hotel, motel, inn, boardinghouse, lodginghouse, apartment house, apartment, cottage, bungalow court, or commercial facility, or his agent or successor in interest.

(c) "Owner" means any person having any right, title, or interest in an item of personal property.

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

(e) "Reasonably knowledge" or "reasonable belief" means that actual knowledge or belief a prudent person would have without making any investigation (including any investigation of public records) except that, where the landlord has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the item of personal property involved, "reasonable knowledge" or "reasonable belief" includes that actual knowledge or belief a prudent person would have if such an investigation were made.

(f) "Tenant" means any paying guest, lessee, or sublessee of any facility operated by a landlord.

Comment. Section 1963.10 defines various terms used in this chapter.

Subdivision (a) defines "item of personal property" to provide in effect that a locked, fastened, 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. Former Civil Code Section 1862 permitted disposition of a container without opening it even if the container was not secured. The obligation under this chapter to look into unlocked, unfastened, or untied containers is not onerous and will permit the landlord to make a realistic evaluation of the property which is helpful in protecting interests of the owner as well as of the landlord.

Subdivisions (b) and (f) define "landlord" and "tenant" broadly so as to extend coverage of this chapter to all types of rental property whether commercial or residential, furnished or unfurnished. This chapter provides

a means for all landlords, regardless of the nature of the facilities, to dispose of personal property left on the premises after termination of the tenancy. Former Civil Code Section 1862 provided relief only for those landlords who owned or managed furnished residential facilities. Other landlords had no statutory coverage except in unlawful detainer cases under Code of Civil Procedure Section 1174.

Subdivision (c) defines "owner" to include not only a tenant but also other persons, including those having a leasehold, possessory, or security interest. This broad definition permits a landlord to use the procedures provided in this chapter to dispose of property left behind even though, as is often the case, he does not know for certain whether the property actually belonged to the former tenant or to someone else.

Subdivision (d) makes clear that "premises" includes common areas--such as storage rooms or garages--where personal property may be left when the tenant leaves.

Subdivision (e) establishes a general standard for the landlord's "reasonable knowledge" or "reasonable belief" as used in Section 1963.30 concerning whether an item of personal property is lost and in Sections 1963.40 and 1963.50 regarding ownership of the item of personal property. This definition has the effect under Sections 1963.40(d) and 1963.50(d) of requiring an investigation into the ownership of an item of personal property only where the landlord has specific information which would lead him to believe an investigation would probably reveal another or a different owner and the cost of the investigation would be reasonable. See Sections 1963.40(d) and 1963.50(d) and Comments. Hence, for example, if a valuable item of furniture or a typewriter is left on an office premises, the landlord is not required

to consult public records to find out if there is a security interest in the property or to call local rental or leasing companies unless, for example, he has specific information indicating the tenant may not be the owner, such as a prior statement of the tenant that the property is rented or a label on the property indicating a person other than the tenant may be the owner. The mere fact that the property left on the premises is of some value is not sufficient to put a burden of investigation on the landlord.

§ 1963.20. Right of tenant to remove his personal property

1963.20. (a) Notwithstanding any provision in a rental agreement between a landlord and tenant, the tenant has the right during the tenancy and upon termination thereof to remove his personal property from the premises whether or not he is indebted to the landlord.

(b) Nothing in this section precludes the landlord and the tenant from providing in a rental agreement any of the following:

(1) A provision for an otherwise valid security agreement in favor of the landlord.

(2) A provision that all or a portion of the leasehold improvements and alterations and personal property affixed to the premises shall be nonremovable.

Comment. Section 1963.20 is designed to protect tenants from onerous contract provisions designed to deprive them of their property 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). However, few tenants have the time, money, and will to engage in a court contest. By making clear that such provisions are invalid, Section 1963.20 should deter landlords from including or relying on such provisions in their rental agreements.

Subdivision (b) makes clear that Section 1963.20 does not limit the right of the landlord to enforce a valid statutory lien or a security interest such as one created pursuant to the Commercial Code. See Civil Code § 1861a. The right of the tenant to remove personal property does not excuse any violation of, or preclude enforcement of, other provisions of the lease, such as, for example, that the tenant keep a business open and operating on the leased property.

§ 1963.30. General requirements for preservation of property

1963.30. If, after the tenancy has terminated and the premises have been vacated by the tenant, the landlord finds that there remain on the premises items of personal property of which the landlord is not an owner, the landlord shall dispose of such property as follows:

(a) If the landlord reasonably believes an item of personal property to have been lost, it shall be disposed of pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code. For the purposes of this chapter, if the appropriate police or sheriff's department refuses to accept an item of personal property, it shall be deemed not to be an item of personal property subject to this subdivision.

(b) Except for items of personal property disposed of under subdivision (a), all items of personal property remaining on the premises shall be stored by the landlord in a place of safekeeping until either of the following occurs:

(1) The tenant or the owner pays the landlord the reasonable cost of storage and takes possession of the items of personal property. If the landlord stores the items of personal property on the premises, the cost of storage shall be the fair rental value of the storage premises for the term of the storage.

(2) The property is disposed of pursuant to Section 1963.40 or 1963.50.

Comment. Section 1963.30 limits the scope of this chapter to the situation where (1) the tenancy has been terminated, (2) the tenant has left the premises, and (3) the landlord makes no claim on the personal property. 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.

See Civil Code § 1953.10 et seq. (methods of declaring abandonment). The requirement that the tenant has left the premises is intended to avoid conflict with the statutory provision dealing with unlawful detainer. See Code Civ. Proc. § 1174. The requirement that the landlord not have an ownership interest in the property is necessary to avoid any conflict with the landlord's claim that the property is his or that he has a valid statutory lien (including a security interest) on the item. See Civil Code § 1861a. If the landlord proceeds under this chapter, he necessarily gives up any lien or other claim of ownership of the items of personal property involved.

Subdivision (a) provides that items of personal property lost on the premises shall be treated like any other lost items pursuant to the provisions concerning lost property. Civil Code § 2080 et seq. See also Section 1963.10(e) (defining "reasonable belief"). All owners who lose property should be able to rely on the lost property laws which maximize chances for retrieval. The last sentence of subdivision (a) eliminates any uncertainty which would otherwise arise if the police or sheriff's department disagreed with a landlord as to whether an item of personal property was lost or was knowingly left behind.

Subdivision (b) sets forth a general obligation of the landlord concerning disposition of property which is not lost. Paragraph (1) provides that the landlord is to release the property when the tenant or the owner pays costs of storage. This provision has the effect of avoiding any necessity on the part of the landlord to determine whether the tenant is in fact the owner. The landlord is protected if he gives possession of the property to either the tenant or the "owner." See Sections 1963.40(c) and 1963.50(c).

§ 1963.40. Disposition of property valued at less than $100

1963.40. If the landlord reasonably believes that the total resale value of the aggregate of all the items of personal property (excluding items of personal property disposed of under subdivision (a) of Section 1963.30) does not exceed $100, such property may be disposed of as follows:

(a) The landlord shall give notice to the tenant and any other person the landlord reasonably believes is the owner of an item of personal property. The notice shall be in writing and contain all of the following:

(1) The name of the tenant and the address of the premises.

(2) A general description of each item of personal property and the address where each item of personal property currently is stored.

(3) A statement of the landlord's belief that the total resale value of the aggregate of all items of personal property does not exceed $100.

(4) The name of each person, if any, other than the tenant, who the landlord reasonably believes is an owner of any item of personal property, specifying the item.

(5) A statement that, if the tenant or owner fails to pay the landlord the reasonable cost of storage of an item of personal property and takes possession of the same within 15 days from the effective date of the notice, such person will lose all right, title, and interest in such item.

(6) A statement of the substance of the rules set out in Section 1963.60 as to the effective date of the notice.

(7) The address at which the tenant may pay the reasonable cost of storage.

(8) The name of the landlord and his address.

(b) If the tenant or the owner fails to pay the landlord the reasonable cost of storage and take possession of an item of personal property within 15 days from the effective date of the notice, the landlord may dispose of such item of personal property in any manner.

(c) The landlord is not liable to a tenant or an owner to whom notice was given pursuant to subdivision (a) with regard to the disposition under this section of an item of personal property.

(d) If an item of personal property is disposed of in accordance with subdivision (b) but no notice was given to the owner pursuant to subdivision (a), the landlord is not liable unless the owner proves either of the following:

(1) The landlord was unreasonable in declaring the total resale value of the aggregate of all items of personal property (excluding items of personal property disposed of under subdivision (a) of Section 1963.30) not to exceed $100.

(2) Prior to disposing of the item of personal property, the landlord knew or reasonably should have known that such owner had an interest in the item of personal 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. Section 1963.40 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 as provided in Section 1963.50. The $100 amount applies to the total value of all property subject to Section 1963.30(b). If the total exceeds $100, the landlord may proceed only under Section 1963.50.

Subdivision (a) sets forth the contents of the notice to be given to the tenant and, if known, to any other person who owns any item of personal property. See Section 1963.10(e)(defining "reasonable belief").

Subdivision (b) provides that, unless the tenant or the owner appears within 15 days from the effective date of the notice, the landlord may dispose of the property in any manner. See Section 1963.60 (effective date of notice). The 15-day period is deliberately short to protect the landlord's interest in removing and disposing of property of little or no value. In the vast majority of cases, the owner does not care about the property and will never claim it.

Subdivision (d) covers the situation where the landlord is unaware that a person other than the tenant owns the goods. In such a case, the landlord is not liable if he acted reasonably. Therefore, the burden is placed on the owner to prove unreasonableness 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 reasonable 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 1963.50 which protects the owner's economic interests.

It should be noted that, under the definition of "reasonable knowledge" or "reasonable belief" in Section 1963.10(e), the landlord is not required to make any investigation concerning the existence of additional owners unless he has specific information which indicates that such an investigation would probably be fruitful and the cost of the investigation is reasonable in relation to the probable value of the property. However, under subdivision (d) of Section 1963.40, the landlord is required to make a reasonable investigation concerning the address of a known owner.

§ 1963.50. General provisions for disposition

1963.50. The landlord may dispose of any item of personal property not subject to subdivision (a) of Section 1963.30 as follows:

(a) The landlord shall give notice to the tenant and any other person the landlord reasonably believes is the owner of an item of personal property. The notice shall be in writing and contain all of the following:

(1) The name of the tenant and the address of the premises.

(2) A general description of each item of personal property and the address where each item of personal property currently is stored.

(3) The name of each person, if any, other than the tenant who the landlord reasonably believes is an owner of any item of personal property, specifying the item.

(4) A statement that, if the tenant or owner fails to pay the landlord the reasonable cost of storage of an item of personal property and take possession of the same within 15 days from the effective date of the notice, such item will be sold at public sale and the proceeds, less the landlord's reasonable costs for sale, advertising, and storage, will be turned over to the county treasurer in the county where the sale took place and the tenant or owner has one year from the date it was paid over within which to claim the same from the county.

(5) A statement of the substance of the rules set out in Section 1963.60 as to the effective date of the notice.

(7) The address at which the tenant may pay the reasonable cost of storage.

(8) The name of the landlord and his address.

(b) If the tenant or the owner fails to pay the landlord the reasonable cost of storage and take possession of an item of property within 15 days from

the effective date of the notice, the item shall be sold at public sale by competitive bidding. The sale shall be held at the place where the property is stored after at least five days' notice of the time and place has been given by publication once in a newspaper of general circulation published in the county where the sale is to be held. Notice of the public sale shall not be given more than five days before the expiration of the 15-day period after the effective date of the notice. Money realized from the sale of an item of personal property shall be used to pay the reasonable costs of the landlord in storing, advertising, and selling such item. If the landlord stores the items of personal property on the premises, the cost of storage shall be the fair rental value of the storage premises for the term of the storage. If a number of items of personal property are stored, advertised, or sold together, the costs shall be apportioned according to the reasonable resale value of each item. After deduction of the costs of storing, advertising, and sale, any balance of the sale price which has not been claimed by the tenant or owner of the property shall be paid into the treasury of the county in which the sale took place within 30 days from the date of sale. The owner has one year from the date of payment to the county within which to claim the balance. In case of multiple claims as to the ownership of the balance or any portion thereof, the decision of the county as to which claimant is entitled thereto is final.

(c) The landlord is not liable to a tenant or an owner to whom notice was given pursuant to subdivision (a) with regard to the disposition under this section of an item of personal property.

(d) If an item of personal property is disposed of in accordance with subdivision (b) but no notice was given to the owner pursuant to subdivision (a), the landlord is not liable unless the owner proves that, prior to

disposing of the item of personal property, the landlord knew or reasonably should have known that the owner had an interest in the item of personal 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. Section 1963.50 is the basic provision governing disposition of property and is an alternative to Section 1963.40 even in situations where the items of personal property do not appear to exceed $100 in resale value.

Subdivision (a) sets forth the contents of the notice to be given to the tenant and, if known, to any other person who owns any item of personal property. See Section 1963.10(e)(defining "reasonable belief").

Subdivision (b) provides for sale of the property if it remains unclaimed for 15 days from the effective date of the notice. See Section 1963.60 (effective date of notice). The underlying assumption is that a person who leaves behind property (other than that which is lost as determined by the appropriate police or sheriff's office) which he does not claim after due notice is property which he does not want. Therefore, his interests can adequately be protected, without undue burden on the landlord, by allowing the property to be sold after a short 15-day storage period. The balance of the proceeds of the sale, after deducting the costs of storage, advertising, and sale, are then turned over to the county. The owner has one year to claim the balance. Insofar as Section 1963.50 requires payment to the county subject to the claim of the owner, it retains the substance of former Civil Code Section 1862. The last sentence of subdivision (b) is designed to protect the county in the event there are conflicting claims to the money.

Subdivisions (c) and (d) protect a landlord who reasonably follows the provisions of subdivisions (a) and (b) from liability. Under subdivision (d),

the burden of showing unreasonableness is placed on the owner. It should be noted that, under the definition of "reasonable knowledge" or "reasonable belief" in Section 1963.10(e), the landlord is not required to make any investigation concerning the existence of additional owners unless he has specific information which indicates that such an investigation would probably be fruitful and the cost of the investigation would be reasonable in relation to the probable value of the property. However, under subdivision (d) of Section 1963.50, the landlord is required to make a reasonable investigation concerning the address of a known owner.

§ 1963.60. Effective date of notice

1963.60. Except as otherwise provided in this section, the effective date of a notice given under Section 1963.40 or 1963.50 is the date when it is delivered to the person to be notified personally or when it is deposited in the mail addressed to the person to be notified at his last known address. Where notice is given by mail and the landlord has substantial reason to believe that the tenant is temporarily located at a place other than his last known address, the effective date of the notice is no earlier than the date when an additional copy of the notice is deposited in the mail, addressed to the tenant at the place where he is temporarily located. The effective date of a notice mailed to an address not in this state is the date of mailing if sent by airmail or five days after the date of mailing if not sent by airmail.

Comment. Section 1963.60 is similar to subdivision (b) of Section 1953.20.

§ 1963.70. Combining notice concerning abandoned personal property with notice concerning abandonment of leased real property

1963.70. A notice given under Section 1963.40 or 1963.50 may, but need not, be given at the same time as a notice under Section 1953.20; and, if the notices are so given, the notices may, but need not, be combined in one notice that contains all the information required by the sections under which notice is given.

Comment. Section 1963.70 makes clear that the notice concerning the disposition of abandoned personal property under this chapter may be given at the same time as the notice provided for in Section 1953.20 concerning the abandonment of the leased real property by a lessee. Cf. Code Civ. Proc. § 1174.

Code of Civil Procedure § 1174 (amended). Unlawful detainer proceedings

Sec. 3. Section 1174 of the Code of Civil Procedure is amended to read:

1174. (a)

If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for an unlawful detainer after neglect, or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement if the notice required by Section 1161 of the code states the election of the landlord to declare the forfeiture thereof, but if such notice does not so state such election, the lease or agreement shall not be forfeited.

(b)

The jury or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent. If the defendant is found guilty of forcible entry, or forcible or unlawful detainer, and malice is shown, the plaintiff may be awarded either damages and rent found due or punitive damages in an amount which does not exceed three times the amount of damages and rent found due. The trier of fact shall determine whether damages and rent found due or punitive damages shall be awarded, and judgment shall be entered accordingly.

(c)

When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, and the notice required by Section 1161 has not stated the election of the landlord to declare the forfeiture thereof, the court may, and, if the lease or agreement is in writing, is for a term of more than one year, and does not contain a forfeiture clause, shall order that execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or any other party interested in its continuance, may pay into the court, for the landlord, the amount found due as rent, with interest thereon, and the amount of the damages found by the jury or the court for the unlawful detainer, and the costs of the proceedings, and thereupon the judgment shall be satisfied and the tenant be restored to his estate.

But if payment as here provided be not made within five days, the judgment may be enforced for its full amount, and for the possession of the premises. In all other cases the judgment may be enforced immediately.

(d) A plaintiff, having obtained a writ of restitution of the premises pursuant to an action for unlawful detainer, shall be entitled to have the premises restored to him by officers charged with the enforcement of such writs. Promptly upon payment of reasonable costs of service, the enforcing officer shall serve or post of copy of the writ in the same manner as upon levy of writ of attachment pursuant to subdivision 1 of Section 542 of this code. In addition, where the copy is posted on the property, another copy of the writ shall thereafter be mailed to the defendant at his business or residence address last known to the plaintiff or his attorney or, if no such address is known, at the premises. The writ of restitution of the premises shall include a statement that personal property remaining on the premises at the time of its restitution to the plaintiff will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the defendant or the owner pays the plaintiff the reasonable cost of storage and takes possession of the personal property within 15 days from the time the premises are restored to the plaintiff. If the tenant does not vacate the premises within five days from the date of service, or, if the copy of the writ is posted, within five days from the date of mailing of the additional notice, the enforcing officer shall remove the tenant from the premises and place the plaintiff in possession thereof. It shall be the duty of the party delivering the writ to the officer for execution to furnish the information required by the officer to comply with this section.

(e) All goods, chattels or personal property ~~of the tenant~~ of which the plaintiff is not an owner remaining on the premises at the time of its restitution to the plaintiff shall be stored by the plaintiff in a place of

safekeeping for a period of ~~30~~ 15 days and may be redeemed by the tenant or the owner upon payment of reasonable costs incurred by the plaintiff in providing such storage ~~and the judgment rendered in favor of plaintiff, including costs~~ . Plaintiff may, if he so elects, store such goods, chattels or personal property of the tenant on the premises, and the costs of storage in such case shall be the fair rental value of the premises for the term of storage. ~~An inventory shall be made of all goods, chattels or personal property left on the premises prior to its removal and storage or storage on the premises. Such inventory shall either be made by the enforcing officer or shall be verified in writing by him. The enforcing officer shall be entitled to his costs in preparing or verifying such inventory.~~

~~In the event the property so held is not removed within 30 days, such property shall be deemed abandoned and may be sold at a public sale by competitive bidding, to~~

(f) After the property has been held for 15 days as required by subdivision (e), it shall be disposed of as follows:

(1) If the plaintiff reasonably believes an item of property to have been lost, it shall be disposed of pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3 of the Civil Code. If the appropriate police or sheriff's department refuses to accept the property, it shall be deemed not to have been lost.

(2) If the plaintiff reasonably believes that the total resale value of the aggregate of all such property not disposed of under paragraph (1) does not exceed $100, such property may be disposed of in any manner.

(3) Any such property not disposed of under paragraph (1) may be sold at public sale by competitive bidding. The sale shall be held at the place

where 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 a newspaper of general circulation published in the county in which the sale is to be held. Notice of the public sale may not be given more than five days prior to the expiration of the ~~30~~ 15 days during which the property is to be held in storage. All money realized from the sale of such ~~personal~~ property shall be used to pay the costs of the plaintiff in storing , advertising, and selling such property . ~~, and any balance thereof shall be applied in payment of plaintiff's judgment, including costs.~~ Any remaining balance which has not been claimed by the defendant or owner of the property sold shall be ~~returned to the defendant.~~ paid into the treasury of the county in which the sale took place within 30 days from the date of sale. The owner has one year from the date of payment to the county within which to claim the balance. In case of multiple claims as to the ownership of the balance, or any portion thereof, the decision of the county as to which claimant is entitled thereto is final.

(4) If the plaintiff reasonably believes that a person other than the tenant is an owner of the property, notice shall be given such owner and such property shall be disposed of pursuant to Section 1963.40 or 1963.50 of the Civil Code.

(g) For the purposes of subdivision (f), "reasonable belief" means that belief a prudent person would have without making any investigation (including any investigation of public records) except that, where the plaintiff has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation

would be reasonable in relation to the probable value of the property involved, "reasonable belief" includes that belief a prudent person would have if such an investigation were made.

Comment. Section 1174 is amended to conform generally to the provisions of Civil Code Section 1963.10 et seq. relating to disposition of property abandoned on leased premises. See Civil Code § 1963.10 et seq. and Comments. The provision that permitted the plaintiff to apply the balance of the proceeds of sale to his judgment has been deleted because it was unconstitutional. See Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971); cf. Love v. Keays, 6 Cal.3d 339, 491 P.2d 395, 98 Cal. Rptr. 811 (1971). Where the defendant disputes the plaintiff's estimation of the reasonable costs of storage, he may bring an action against the plaintiff for conversion.

III. LEASES EXECUTED BEFORE JULY 1, 1971, WHICH ARE LATER AMENDED

An act to amend Section 1952.2 of the Civil Code, relating to leases.

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

Civil Code § 1952.2 (amended)

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

1952.2. Sections 1951 to 1952, inclusive, do not apply to:

(a) Any lease executed before July 1, 1971.

(b) 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.

(c) An agreement executed on or after July 1, 1971, which amends a lease executed before July 1, 1971, if the agreement states that Sections 1951 to 1952, inclusive, of the Civil Code do not apply to the lease as amended. For the purposes of this subdivision, an agreement whereby a lease is "amended" includes, but is not limited to, a modification of a preexisting lease to change the term, rent, size or location of the property leased or to require or change the amount of an advance payment as defined in Section 1951.7.

Comment. Subdivision (c) is added to Section 1952.2 so that the parties to a lease executed before July 1, 1971, can amend the lease to change the term, amount of rent, add or subtract from the amount of property leased, and the like without drafting an entire new lease which takes into account the enactment of Sections 1951 to 1952.6. Thus, an existing lease could be extended for an additional five years at a different rent without requiring that an entire new lease be drafted. Subdivision (c) recognizes that the parties to

the lease may desire that Sections 1951 to 1952, inclusive, apply to the amended lease. The lessee may desire this because he wants the provisions of Section 1951.2 relating to mitigation of damages to apply to the amended lease. The lessor may desire that Sections 1951-1952 apply to the amended lease because he, for example, wants the measure of damages provided in Section 1951.2 to apply to the amended lease. Accordingly, subdivision (c) permits the parties to the lease to agree that Sections 1951-1952 will not apply to the amended lease and, in such case, to so state in the agreement amending the lease. Absent such a statement in the amendatory agreement, Sections 1951-1952 will apply to the amended lease if the amendment is made on or after July 1, 1971.

IV. INNKEEPERS' AND LANDLORDS' LIENS

An Act to amend Section 1861a of, and to repeal Section 1861 of, the Civil Code, relating to liens.

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

Civil Code § 1861 (repealed)

Section 1. Section 1861 of the Civil Code is repealed.

~~1861. Hotel, motel, inn, boardinghouse, and lodginghouse~~ keepers shall have a lien upon the baggage and other property belonging to or legally under the control of their guests, boarders, tenants, or lodgers which may be in such hotel, motel, inn, or boarding or lodging house for the proper charges due from such guests, boarders, tenants, or lodgers, for their accommodation, board and lodging and room rent, and such extras as are furnished at their request, and for all money paid for or advanced to such guests, boarders, tenants, or lodgers, and for the costs of enforcing such lien, with the right to the possession of such baggage and other property until such charges and moneys are paid; and unless such charges and moneys shall be paid within 60 days from the time when the same become due, said hotel, motel, inn, boardinghouse or lodginghouse keeper may sell said baggage and property at public auction to the highest bidder, after giving notice of such sale by publication of a notice containing the name of the debtor, the amount due, a brief description of the property to be sold, and the time and place of such sale, pursuant to Section 6064 of the Government Code in the county in which said hotel, motel, inn, boardinghouse or lodginghouse is situated and also by mailing, at least fifteen (15) days before such sale, a copy of such notice addressed to such guest, boarder, tenant, or lodger at his post office address, if known, and if not known, such notice shall be addressed to such guest, boarder, tenant, or lodger at the place where such hotel, motel, inn, boardinghouse or lodginghouse is situated; and after satisfying such lien out of the proceeds of such sale together with any reasonable costs that may have been incurred in enforcing said lien, the residue of said proceeds of sale, if any, shall upon demand made within six months after such sale, be paid by said hotel, motel, inn, boardinghouse or lodginghouse keeper to such guest, border, tenant, or lodger; and if not demanded within six months from the date of such sale, such residue shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county; and such sale shall be a perpetual bar to any action against said hotel, motel, inn, boardinghouse or lodginghouse keeper for the recovery of such baggage or property or of the value thereof, or for any damages growing out of the failure of such guest, boarder, tenant, or lodger to receive such baggage or property; provided, however, that if any baggage or property becoming subject to the lien herein provided for does not belong to the guest, lodger, ~~tenant, or boarder who incurred the charges or indebtedness~~

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~~secured thereby, at the time when such charges or indebtedness~~ was incurred, and if the hotel, motel, inn, boarding or lodging house keeper entitled to such lien receives notice of such fact at any time before the sale of such baggage or property hereunder, then, and in that event, such baggage and property which is subject to said lien and did not belong to said guest, boarder, tenant, or lodger at the time when such charges or indebtedness was incurred shall not be subject to sale in the manner hereinbefore provided, but such baggage and property may be sold in the manner provided by the Code of Civil Procedure for the sale of property under a writ of execution, to satisfy a judgment obtained in any action brought to recover the said charges or indebtedness.

In order to enforce the lien provided for in this section, a motel, hotel, inn, boardinghouse, and lodginghouse keeper shall have the right to enter peaceably the premises used by his guest, boarder, lodger, or tenant in such hotel, motel, inn, boardinghouse, or lodginghouse without liability to such guest, tenant, boarder, or lodger for conversion, trespass, or forcible entry. An entry shall be considered peaceable when accomplished with a key or passkey or through an unlocked door during the hours between sunrise and sunset.

This section does not apply to:

1. Any musical instrument of any kind or description which is used by the owner thereof to earn all or a part of his living.

~~2. Any prosthetic or orthopedic appliance personally used by a guest, boarder, tenant, or lodger.~~

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Comment. Section 1861 is superseded by Section 1861a as amended. See Section 1861a and Comment. Section 1861 has not been retained because it was unconstitutional. See Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970)(three-judge court); see also Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971).

Civil Code § 1861a (amended)

Sec. 2. Section 1861a of the Civil Code is amended to read:

1861a. (a) Keepers of furnished and unfurnished apartment houses, apartments, cottages, ~~or~~ bungalow courts , hotels, motels, inns, boardinghouses, and lodginghouses shall have a lien upon the baggage and other property of value belonging to their tenants or guests, and upon all the right, title and interest of their tenants or guests in and to all property in the possession of such tenants or guests which may be ~~in such apartment house, apartment, cottage, or bungalow court~~ on such premises., for the proper charges due from such tenants or guests, for their accommodation, rent, services, meals, and such extras as are furnished at their request, and for all moneys expended for them, at their request, and for the costs of enforcing such lien.

(b) Such lien may be enforced only after final judgment in an action brought to recover such charges or moneys. During the pendency of the proceeding, the plaintiff may take possession of such baggage and property upon an order issued by the court, where it appears to the satisfaction of the court from an affidavit filed by or on behalf of the plaintiff that the plaintiff's claim is probably valid and that the baggage or property is about to be destroyed, substantially devalued, or removed from the premises. Ten days written notice of the hearing on the motion for such order shall be served on the defendant and shall inform the defendant that he may file affidavits on his behalf and present testimony in his behalf and that if he fails to appear the plaintiff will apply to the court for such order. The plaintiff shall file an undertaking with good and sufficient sureties, to be approved by the court, in such sum as may be fixed by the court. Upon such order, the plaintiff

shall have the right to enter peaceably the ~~unfurnished-apartment-house,-apartment,-cottage,-or-bungalow-court~~ premises used by his guest or tenant without liability to such guest or tenant, including any possible claim of liability for conversion, trespass, or forcible entry. The plaintiff shall have the same duties and liabilities as a depository for hire as to property which he takes into his possession. An entry shall be considered peaceable when accomplished with a key or passkey or through an unlocked door during the hours between sunrise and sunset.

(c) Unless the judgment shall be paid within 30 days from the date when it becomes final, the plaintiff may sell the baggage and property, at public auction to the highest bidder, after giving notice of such sale by publication of a notice containing the name of the debtor, the amount due, a brief description of the property to be sold, and the time and place of such sale, pursuant to Section ~~6064~~ 6061 of the Government Code in the county in which ~~said apartment-house,-apartment,-cottage,-or-bungalow-court~~ the premises is situated, and after by mailing, at least 15 days prior to the date of sale, a copy of such notice addressed to such tenant or guest at his residence or other known address, and if not known, such notice shall be addressed to such tenant or guest at the place where ~~such-apartment-house,-apartment,-cottage,-or-bungalow court~~ the premises is situated; and, after satisfying such lien out of the proceeds of such sale, together with any reasonable costs, that may have been incurred in enforcing said lien, the residue of ~~said~~ the proceeds of sale, if any, which has not been claimed by such tenant or guest shall, ~~upon-demand-made within-six-months-after-such-sale,-be-paid-to-such-tenant-or-guest;-and-if-not demanded~~ within ~~six-months~~ 30 days from the date of such sale, ~~said-residue,~~

~~if any, shall~~ be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representative within one year thereafter, it shall be paid into the general fund of the county; and such sale shall be a perpetual bar to any action against said keeper for the recovery of such baggage or property, or of the value thereof, or for any damages, growing out of the failure of such tenant or guest to receive such baggage or property.

(d) When the baggage and property are not in the possession of the keeper as provided herein, ~~such~~ the lien provided for in this section shall be enforced only by writ of execution.

~~This section does not apply to:~~

~~(a) Any musical instrument of any kind or description which is used by the owner thereof to earn all or a part of his living.~~

~~(b) Any prosthetic or orthopedic appliance, or any medicine, drug, or medical equipment or health apparatus, personally used by a tenant or guest, or a member of his family who is residing with him.~~

~~(c) Table and kitchen furniture, including one refrigerator, washing machine, sewing machine, stove; bedroom furniture, one overstuffed chair, one davenport, one dining table and chairs, and also all tools, instruments, clothing and books used by the tenant or guest in gaining a livelihood; beds, bedding and bedsteads, all paintings and drawings drawn or painted by any member of the family of the tenant or guest, and any family portraits and their necessary frames.~~

~~(d) All other household, table or kitchen furniture not expressly mentioned in paragraph (c), including but not limited to radios, television sets, phonographs, records, motor vehicles that may be stored on the premises except~~

~~so much of any such articles as may be reasonably sufficient to satisfy the lien provided for by this section; and provided further, that such lien~~

(e) The lien provided by this section shall be secondary to the claim of any prior bona fide holder of a chattel mortgage on and the rights of a conditional seller of such articles, other than the tenant or guest.

(f) Any property which is exempt from attachment or execution under the provisions of the Code of Civil Procedure shall not be subject to the lien provided for in this section.

Comment. Section 1861a has been amended to extend its provisions to keepers of hotels, motels, inns, boardinghouses, and lodginghouses. Former Section 1861 provided a lien for such keepers, but this lien was unconstitutional since there were no provisions for a hearing prior to imposition of the lien or for exemption of property exempt from attachment. See Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970)(three-judge court). See also Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971). The amendment of Section 1861a standardizes the provisions for all keepers whether they are innkeepers, motel keepers, or apartment keepers. A provision requiring the court to determine the probable validity of the plaintiff's claim has been added to satisfy constitutional objections. Cf. Randone v. Appellate Dep't, 5 Cal.3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971); Blair v. Pitchess, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971). The duplicative listing of exemptions from execution has been eliminated as unnecessary since the last sentence of Section 1861a incorporates all exemptions from attachment and execution. See Code Civ. Proc. §§ 537.3 and 690.1 et seq. The former requirement that the plaintiff publish notice four times has been reduced to one publication;

the former requirement that the plaintiff hold the residue of the proceeds from sale for six months has been changed to require the plaintiff to turn over the remaining proceeds to the county within 30 days. These changes conform Section 1861a to the provisions of Civil Code Section 1963.50(b).