#78 8/27/73

Memorandum 73-75

Subject: Landlord-Tenant Relations

Attached to this memorandum are two copies of a tentative recommendation relating to landlord-tenant relations. Mark your suggested editorial revisions on one copy and give it to the staff at the September meeting.

The decisions of the Commission at the July meeting have been implemented in this draft; however, several questions remain.

Miscellaneous items of personal property. At the July meeting, the Commission discussed the problem of what to do with miscellaneous papers and other articles which the landlord finds in a box or trunk which he has opened or which was not locked. It was suggested that the landlord should be allowed to list such items without describing each one generally as the notice provisions of Sections 1963.40 and 1963.50 require. The staff thinks that this same idea should be implemented for such piles of miscellaneous papers, clothes, rags, and the like, which might be found on the premises even where such property is not in a box or trunk. This has been attempted by adding a sentence to both Sections 1963.40 and 1963.50 as follows: "Miscellaneous items of personal property may be described in the aggregate." Perhaps this should be illustrated in the Comment by saying that a pile of papers may be described as such without describing each paper.

Notice provision. The staff is unclear about how far the Commission wants to go in providing for notice to be given under Sections 1951.3, 1963.40, and 1963.50 in the form of a direct address instead of by listing the elements of the notice. The notice in Section 1951.3 has been drafted completely in terms of a direct address from the lessor to the lessee. However, in Sections 1963.40 and 1963.50, only the provisions relating to when the person receiving

notice must respond and the effective date of the notice have been drafted in direct address form. The reasons for this are twofold. First, a segment of the staff thinks that the Commission wanted only this part of the notice to be in direct address form. The tape of the meeting does not settle the matter. Second, although it was fairly easy to put the Section 1951.3 notice in direct address, it is quite awkward to do so in Sections 1963.40 and 1963.50. This is because the abandoned personal property notice must be sent to both the tenant and any person reasonably believed by the landlord to be the owner. If the notice is to be spelled out in direct address, two fairly lengthy and somewhat duplicative notices will have to be written into both Sections 1963.40 and 1963.50. Examples of these notice provisions drafted in direct address form are attached to this memorandum as Exhibit I.

Effective date of notice. A minor problem is whether to provide that the effective date of notice by mail is three days after the notice is deposited in the mail or three days after it is postmarked. The federal rules provide that service by mail is complete upon mailing. Fed. R. Civ. P. 5(b). However, if it is intended that the person to be notified should know exactly when notice is effective, he will know that only by the postmark.

Property abandoned in a hospital. When writing the Comment to Section 1963.90 (resolving any conflict between Sections 1963.10-1963.90 and any other particular provisions regarding the disposition of abandoned property), the staff noticed Civil Code Section 1862.5 which provides for the disposition of property abandoned in hospitals. A copy of Section 1862.5 is attached as Exhibit II. As the Comment to Section 1963.90 stands, Section 1862.5 is mentioned along with several other provisions governing disposition of property left on certain types of premises. The problem arises from the fact that Section 1862.5 is certainly unconstitutional since it provides that, without a

prior hearing, the hospital may deduct from the proceeds of the sale of the property "all sums due the hospital from the last known owner." Should this language be amended out of Section 1862.5? This provision also requires the hospital to hold the property for 180 days after the owner has left the hospital before it may be disposed of. If the property is not claimed, disposal is by public sale at least four weeks after written notice of the sale is given to the owner. Should this procedure be conformed to the recommendation? Or should Section 1862.5 be left alone?

Respectfully submitted,

Stan G. Ulrich
Legal Counsel

EXHIBIT I

§ 1963.40. Notice

1963.40. (a) The landlord shall give written notice to the tenant and to any other person the landlord reasonably believes may be the owner of an item of personal property.

(1) The notice to the tenant shall be in substantially the following form:

"To . . . . . (state name and address of tenant):

"You were a tenant at . . . . . (state address of premises). After termination of your tenancy, personal property was found on the premises you rented. These items of personal property are as follows: . . . . . (give general description of each item of personal property; miscellaneous items may be described in the aggregate), and are located at . . . . . (give address where each item of personal property is stored).

"The undersigned believes that these items of personal property do not have a resale value exceeding $100.

"The undersigned believes that . . . . . (state name and address of person landlord reasonably believes to be the owner of an item of personal property) is an owner of . . . . . (state item believed to be owned by such person).

"If you fail to pay the undersigned the reasonable cost of storage and take possession of the personal property at the address where such property is stored not later than 15 days after the effective date of this notice, you will have waived all rights to such property and the undersigned will dispose of the property in any manner he desires.

"This notice is effective on the date it was delivered to you personally or, if mailed, three days after the date it was deposited in the mail.

(Signature of landlord or his agent))

(Typed name and address of such person;)"

(2) The notice to any other person the landlord reasonably believes may be the owner of an item of personal property shall be in substantially the following form:

"To . . . . . (state name and address of person reasonably believed by the landlord to be an owner of an item of personal property):

". . . . . (state name of tenant) was a tenant at . . . . . (state address of premises). After termination of . . . . . 's (state name of tenant) tenancy, personal property was found on the premises which the undersigned believes has a resale value not exceeding $100. These items of personal property are as follows: . . . . . (give general description of each item of personal property; miscellaneous items may be described in the aggregate) and are located at . . . . . (give address where each item of personal property is stored).

"The undersigned believes that you are an owner of the following item(s) of personal property: . . . . . (state general description of each item believed to be owned by such person).

"If you fail to pay the undersigned the reasonable cost of storage and take possession of the personal property to which you are entitled at the address where such property is stored not later than 15 days after the effective date of this notice, you will have waived all claims against the undersigned for such property, and the undersigned will dispose of the property in any manner he desires.

"This notice is effective on the date it was delivered to you personally or, if mailed, three days after the date it was deposited in the mail.

(Signature of landlord or his agent)

(Typed name and address of such person)"

§ 1963.50. Notice

1963.50. (a) The landlord shall give notice to the tenant and any other person the landlord reasonably believes may be the owner of an item of personal property.

(1) The notice to the tenant shall be in substantially the following form:

"To. . . . . (state name and address of tenant):

"You were a tenant at . . . . . (state address of premises). After termination of your tenancy, personal property was found on the premises you rented. These items of personal property are as follows: . . . . . (give general description of each item of personal property; miscellaneous items may be described in the aggregate), and are located at . . . . . (give address where each item of personal property is stored).

"The undersigned believes that . . . . . (state name and address of person landlord reasonably believes to be the owner of an item of personal property) is an owner of . . . . . (state item believed to be owned by such person).

"If you fail to pay the undersigned the reasonable cost of storage and take possession of the personal property at the address where such property is stored not later than 15 days after the effective date of this notice, such property will be sold at public sale and the proceeds, less the reasonable costs for storage, advertising, and sale, will be paid into the treasury of the county where the sale took place. Thereafter you will have one year from the date it was paid to the county within which to claim the proceeds by making

application to the county treasurer or other official designated by the county.

"This notice is effective on the date it was delivered to you personally or, if mailed, three days after the date it was deposited in the mail.

(Signature of landlord or his agent.)

(Typed name and address of such person.)"

(2) The notice to any other person the landlord reasonably believes may be the owner of an item of personal property shall be in substantially the following form:

"To . . . . . .(state name and address of person reasonably believed by the landlord to be an owner of an item of personal property):

". . . . . (state name of tenant) was a tenant at . . . . . (state address of premises). After termination of . . . . . 's (state name of tenant) tenancy, personal property was found on the premises. These items of personal property are as follows: . . . . . (give general description of each item of personal property; miscellaneous items may be described in the aggregate) and are located at . . . . . .(give address where each item of personal property is stored).

"The undersigned believes that you are an owner of the following item(s) of personal property:. . . . . (state general description of each item believed to be owned by such person).

"If you fail to pay the undersigned the reasonable cost of storage and take possession of the personal property to which you are entitled at the address where such property is stored not later than 15 days after the effective date of this notice, such property will be sold at public sale and the

proceeds, less the reasonable costs for storage, advertising, and sale, will be paid into the treasury of the county where the sale took place. Thereafter you will have one year from the date it was paid to the county within which to claim the proceeds by making application to the county treasurer or other official designated by the county.

"This notice is effective on the date it was delivered to you personally or, if mailed, three days after the date it was deposited in the mail.

(Signature of landlord or his agent.)

(Typed name and address of such person.)"

EXHIBIT II

Unclaimed Property in Hospital

§ 1862.5

Whenever any personal property has heretofore been found in or deposited with, or is hereafter found in or deposited with any licensed hospital and has remained or shall remain unclaimed for a period of 180 days following the departure of the owner from the hospital, such hospital 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, the reasonable expenses of sale thereof and all sums due the hospital from the last known owner. No such sale shall be made until the expiration of four weeks from the time written notice of such sale is given to the last known owner. Said notice shall contain a description of each item of personal property to be sold, the name of the last owner, the name of the hospital and the time and place of sale and may be sent by regular mail, postage prepaid, to the last known owner at his last known address. In case there should be any balance from such sale after the deductions herein provided for, and such balance shall not be claimed by the rightful owner or his legal representative within one week of said sale, the same shall be paid into the treasury of the county wherein said hospital is located; and if the same be not claimed by the owner thereof, or his legal representative within one year thereafter, the same shall be paid into the general fund of said county. Proceedings in substantial compliance with this section shall exonerate the hospital from any liability for property so sold. This section shall not be construed as limiting or in any way amending any other provision of law limiting the liabilities of any licensed hospital.

August 22, 1973

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

LANDLORD-TENANT RELATIONS:

Abandonment of Leased Real Property

Disposition of Personal Property Remaining on Premises At Termination of Tenancy

Innkeeper's and Landlord's Liens

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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.

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) expresses the views of the Commission.

#78 8/22/73

TENTATIVE RECOMMENDATION

relating to

LANDLORD-TENANT RELATIONS

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 landords 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 leased real 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 innkeeper's and landlord's liens.

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 property" befor the end of the term.[2] Upon such termination, the lessee's right to

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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

2. Unless the lessor terminates it, the lease continues in effect despite a breach of the lease and abandonment of the property by the lessee if the lease so provides; such a provision 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.

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. According to the decisions, "abandonment" occurs only when the lessee manifests an intention to abandon his leasehold interest.[4] Thus, whether the lessee has abandoned the property and the lease has terminated depends upon a subjective standard--the lessee's intent.

Under this rule, the lessor is placed on the horns of a dilemma. If the lessee has in fact abandoned his leasehold interest, the lessor has the duty of mitigating his damages by reletting the premises. If the lessor relets the premises, however, and it is subsequently determined that there was no abandonment, the lessor may be liable to the lessee for the reletting.[5]

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

4. There have been no decisions construing the use of "abandons" in Section 1951.2; however, there is no reason to believe the common law interpretation of abandonment would not apply. 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 Wiese v. Steinauer, 201 Cal. App.2d 651, 20 Cal. Rptr. 295 (1962); Martin v. Cassidy, 149 Cal. App.2d 106, 111, 307 P.2d 981, 984 (1957); Anheuser-Busch Brewing Ass'n v. American Products Co., 59 Cal. App. 718, 211 P. 817 (1922). Mere nonuse of the premises, no matter how long, is 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).

5. See Boswell v. Merrill, 121 Cal. App. 476, 478, 9 P.2d 281, ___ (1932); Rehlzopf v. Wirz, 31 Cal. App. 695, 696, 161 P. 285, 286 (1916). See also Alhambra Cons. Mines, Inc. v. Alhambra Shumway Mines, Inc., 239 Cal. App.2d 590, 598, 49 Cal. Rptr. 38, ___ (1966).

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

The Commission has concluded that provision of an objective standard for determining whether the leased property has been abandoned within the meaning of Section 1951.2 would benefit both the lessor and the lessee.[7] The Commission recommends the following:

The lessor of real property should be authorized to give the lessee written notice of belief of abandonment[8] if the lessee has been in default on the rent for at least 20 consecutive days and the lessor reasonably believes that the lessee has abandoned the property. The leased property should be deemed abandoned and the lease terminated if the lessee fails to communicate to the lessor his intent not to abandon the property not later than 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

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6. See Moon v. Rollins, 36 Cal. 333, 340 (1868); Pepperdine v. Keys, 198 Cal. App.2d 25, 31, 17 Cal. Rptr. 709, 712 (1961); Group Property, Inc. v. Bruce, 113 Cal. App.2d 549, 559, 248 P.2d 761, 767 (1952); Weideman v. Staheli, 88 Cal. App.2d 613, 616, 199 P.2d 351, ___ (1948); Pidgeon v. Lamb, 133 Cal. App. 342, 348, 24 P.2d 206, 208 (1933).

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. Notice should be given by delivery to the lessee personally or by mail addressed to the lessee at his last known address. The last known address should include all addresses where the landlord has knowledge the lessee might be located.

lessee may communicate to the lessor that he has not abandoned 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 PERSONAL PROPERTY REMAINING ON PREMISES AT 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 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 most 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 of abandoned property in a majority of cases arising from landlord-tenant relationships.

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 on property leased for commercial purposes, and there is no other statute that provides a nonjudicial procedure

for the disposition of such property.[9] Also, the section does not require that the landlord notify the tenant of the proposed disposition of the property 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 is Code of Civil Procedure Section 1174 which is applicable where personal property remains on the premises when the landlord regains possession of the premises in an unlawful detainer proceeding. Section 1174 requires storage of the property for only 30 days after which it may be sold at public sale after one publication of notice. Although this procedure applies to all leased premises--whether furnished or unfurnished, residential or commercial--it has several serious deficiencies. Like Civil Code Section 1862, Code of Civil Procedure Section 1174 makes no provision for notice to the tenant of the proposed disposition of the property left on the premises. Also, Section 1174 contains no provision which deals with the case where a third person has an interest in the property. Finally, the section has been held 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 reclaimed.[10]

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

10. Gray v. Whitmore, 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 inkeeper's lien law,[11] the landlord's lien law,[12] and the lost property laws.[13]

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, the tenant has the right during his tenancy and upon termination thereof to remove his personal property from the premises whether or not he is indebted to the landlord.[14] A provision to this effect would be a codification of existing California law.[15] Codification would be desirable, however, to deter landlords from including or relying on such provisions in their rental agreements.

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

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

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

14. The recommended rule would not, however, preclude including in the lease a provision for an otherwise valid security interest in favor of the landlord (such as a security interest 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 not be removed. Likewise, the recommended rule would not affect a valid statutory lien. See Civil Code § 1861a.

15. 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).

"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.[16] 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 should be governed by the provisions recommended below for disposition of abandoned personal 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 does not provide for notice by mail or other direct means to the tenant or other owner of abandoned property. 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 burden

16. Civil Code § 2080 et seq.

to the landlord of storing property that in the great majority of cases is merely junk that the tenant or the owner does not want.[17]

The required notice should include a general description of each item of 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.[18] 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 storage, advertising, and sale--should be paid to the county within 30 days from the date of the sale. The owner should have one year within which to claim the

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17. 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.

18. The tenant should be required to pay the costs for all the abandoned property before it is returned to him, but an owner who is not the tenant should have to pay for the costs of only the property he claims.

balance. If not claimed within this time, the money should belong to the county. The provisions requiring public 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 is 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 $100 limit is arbitrary but 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 some resale value.[19]

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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19. 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 knew 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 such owner's address. In addition, if the procedure authorized for property of a value 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 premises. Notice concerning the disposition of the property should be given to the tenant in the writ of restitution. The storage period for 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 have been held unconstitutional.[20] 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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20. Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971).

INNKEEPER'S AND LANDLORD'S 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 federal district court[21] and should be repealed. Section 1861a should be broadened to provide a lien for those landlords now covered under the unconstitutional innkeeper's 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.[22] Other less important revisions also should be made in Section 1861a.[23]

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

22. 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.

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

I. ABANDONMENT OF LEASED REAL PROPERTY

An act to add Section 1951.3 to the Civil Code, relating to abandonment of leased real property.

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

Section 1. Section 1951.3 is added to the Civil Code, to read:

§ 1951.3. Lessor's notice of belief of abandonment

1951.3. (a) The property shall be deemed abandoned by the lessee within the meaning of Section 1951.2, and the lease shall terminate, on the 16th day after the effective date of written notice given by the lessor to the lessee unless the lessee, not later than 15 days after the effective date of the notice, communicates to the lessor his intent not to abandon the property. Notice may be given under this section only where the rent has been due and unpaid for at least 20 consecutive days and the lessor reasonably believes that the lessee has abandoned the property.

(b) The effective date of the notice is the date when it is delivered to the lessee personally or three days after the day it is deposited in the mail addressed to the lessee at his last known address. "Last known address" means all addresses where, to the knowledge of the lessor, the lessee reasonably might be expected to be located at the time the notice is given.

(c) The notice shall be signed by the lessor or his agent and shall state the substance of the following:

"This notice is given pursuant to Section 1951.3 of the Civil Code with respect to the property leased by you at . . . . . (state location of property by address or other sufficient description).

"The undersigned believes that the rent on this property has been due and unpaid for 20 consecutive days and that the property has been abandoned by you.

"The property will be deemed abandoned and the lease will terminate on the 16th day after the effective date of this notice unless, not later than 15 days after the effective date of the notice, you communicate to . . . . . (insert name, address, and telephone number of the person signing the notice) your intent not to abandon the property.

"The effective date of this notice is the date when it is delivered to you personally or, if mailed, three days after the day it was deposited in the mail."

(d) Abandonment does not take place within the meaning of this section where the lessee proves either of the following:

(1) At the time the notice was given, the rent was not due and unpaid for 20 consecutive days.

(2) At the time the notice was given, the lessor did not reasonably believe that the lessee had abandoned the property. The fact that the lessor knew that the lessee left personal property on the leased real property does not, of itself, justify a finding that the lessor did not reasonably believe that the lessee had abandoned the property.

(e) Nothing in this section precludes the lessor or the lessee from otherwise proving that the property has been abandoned by the lessee within the meaning of Section 1951.2.

Comment. Section 1951.3 provides a method 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 relet 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 temination of the tenancy.

Subdivision (a) 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 real 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. The 20-day period during which the lessee must be in default on the rent, combined with the additional period (ordinarily 15 days) during which the lessee may communicate to the lessor 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 under this statute. If the lessor wishes faster action, or if the breach does not involve a failure to pay rent, the lessor may use the unlawful detainer remedy. See Code Civ. Proc. § 1161 et seq. Even though the lessee fails to pay the rent due, the lease does not terminate under Section 1951.3 if the lessee not later than 15 days after the effective date of the notice makes known to the lessor his intent not to abandon the leased property. The notice provided by this section may be given at the same time or in combination with

the notice provided by Sections 1963.40 and 1963.50 concerning the disposition of abaondoned personal property. See Section 1963.80.

Subdivision (b) provides for the effective date of the notice from which the 15-day period is counted, and follows the federal rule allowing three additional days where notice requiring some act is mailed. See Fed. R. Civ. P. 6(e). If notice is given by mail, it should be sent to all addresses where the lessor knows the lessee might be reached whether at a residence or a place of business.

If the lessee challenges the termination of the lease, the lessor has the burden of proving that the notice contained the information required by subdivision (c) and was given in compliance with subdivision (b). Where the lessor proves these matters, under subdivision (d) the lessee can show that he has not abandoned the property only if he can prove either (1) that rent was not due and unpaid for 20 consecutive days when notice was given or (2) that the lessor did not reasonably believe that the lessee had abandoned the real 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 (d)(2) 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 real property leave personal property on the premises, 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 appears to be of little value, it ordinarily would be reasonable for the lessor to conclude 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, these facts would be significant evidence that the lessee has not abandoned the leased property. While subdivision (d)(2) precludes a finding that there has been no abandonment based solely on the fact that personal property of the lessee remains on the leased property, the subdivision does not preclude this fact from being taken into account along with other facts in determining whether the leased real property was abandoned.

Abandonment within the meaning of Section 1951.2 occurs only where the lessee in fact intends to abandon the real property. Thus, absent the procedure provided by this section, 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 Landlord-Tenant Relations, 11 Cal. L. Revision Comm'n Reports 000 (1973). Although this section provides a means by which the lessor may easily establish whether the real property has been abandoned, it does not preclude either party from otherwise proving that fact. See subdivision (e).

II. DISPOSITION OF PERSONAL PROPERTY REMAINING ON PREMISES AT TERMINATION OF TENANCY

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 personal 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.~~

ALL IN STRIKEOUT

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

Civil Code §§ 1963.10-1963.90 (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. Disposition of Personal Property Remaining on Premises at Termination of Tenancy

§ 1963.10. Definitions

1963.10. As used in this chapter:

(a) "Item of personal property" means any article 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 premises for hire, or his agent or successor in interest.

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

(d) "Premises" includes any common areas associated therewith.

(e) "Reasonable knowledge" or "reasonable belief" means the actual knowledge or belief a prudent person would have without making an 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 the 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 premises for hire.

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. Thus, a locked trunk may be described as such without a listing of its contents in the notice given the tenant under Sections 1963.40 and 1963.50. Former Civil Code Section 1862 permitted disposition of a container without opening it even if the container was not secured.

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 premises, 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 having a right, title, or interest in the personal property 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 in relation to the probable value of the item. 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 in an office, the landlord is not required to consult public records to determine whether there is a security interest in the property or to call local rental or leasing companies unless, for example, he has specific information indicating that 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 valuable is not sufficient to put a burden of investigation on the landlord. It should be noted that the title taken at a sale of property under Section 1963.50 is a function of other law and, for example, is not affected by the failure of the landlord to discover a security interest in the personal property. Hence, a perfected security interest is good against

a purchaser of equipment, but not against a buyer of inventory in the ordinary course of business. Com. Code §§ 9201, 9301, 9307. See Warren, Priorities, in 3 California Commercial Law §§ 4.18-4.21 at 170-175 (Cal. Cont. Ed. Bar 1966).

§ 1963.20. Right of tenant to remove his personal property

1963.20. (a) Notwithstanding any provision to the contrary in a rental agreement between the landlord and the 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 interest in favor of the landlord.

(2) A provision that improvements and alterations of the leasehold and personal property affixed to the premises shall not be removed.

Comment. Subdivision (a) of Section 1963.20 is intended 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, subdivision (a) should deter landlords from including or relying on such provisions in their rental agreements.

Subdivision (b)(1) makes clear that Section 1963.20 does not limit the right of the landlord to enforce a security interest such as one created pursuant to the Commercial Code. Subdivision (b)(2) makes clear that, where there is a specific provision in the rental agreement (typically a commercial lease) that improvements, alterations, or affixed personal property are not to be

removed, the right of the tenant to remove his property from the premises is inapplicable. The right of the tenant to remove personal property does not excuse any violation of, or preclude enforcement of, other provisions of the rental agreement, such as, for example, that the tenant keep a business open and operating on the premises.

§ 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 personal property of which the landlord is not an owner remains on the premises, 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 disposed of under subdivision (b).

(b) Except for personal property disposed of under subdivision (a), each item 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 a person reasonably believed by the landlord to be the owner pays the landlord the reasonable cost of storage and takes possession of the property.

(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 § 1951.3 (method of declaring abandonment of real property). The requirement that the premises has been vacated by the tenant is intended to avoid conflict with the statutory provision dealing with unlawful detainer.

See Code Civ. Proc. § 1161 et seq. 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 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. 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 abandoned.

Subdivision (b) sets forth the 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 a person reasonably believed to be the owner pays the reasonable 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). The manner of determining reasonable costs is provided in Section 1963.70.

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

1963.40. If the landlord reasonably believes that the total resale value of all the 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 written notice to the tenant and any other person the landlord reasonably believes may be the owner of an item of personal property. The notice shall 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. Miscellaneous items of personal property may be described in the aggregate.

(3) A statement of the landlord's belief that the total resale value of all the 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 in substance as follows: "If you fail to pay the landlord the reasonable cost of storage and take possession of the personal property not later than 15 days after the effective date of the notice, you waive all rights to the property and the landlord may dispose of the property in any manner he desirs."

(6) A statement in substance as follows: "The effective date of this notice is: (1) if delivered personally, the date delivered, or (2) if delivered by mail, three days after the day the notice was deposited in the mail.

(7) The name and address of the landlord and, if different, the address where the tenant or the owner may pay the reasonable cost of storage and take possession of the personal property.

(b) If the tenant or a person reasonably believed by the landlord to be the owner fails to pay the landlord the reasonable cost of storage and take possession of the personal property not later than 15 days after the effective date of the notice, the landlord may dispose of the 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 of personal property under this section where such tenant or owner fails to pay the reasonable cost of storage and take possession of the property within the time allowed by subdivision (b).

(d) If 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 that the total resale value of all the personal property (excluding items of personal property disposed of under subdivision (a) of Section 1963.3) did not exceed $100.

(2) Prior to disposing of the personal property, the landlord knew or reasonably should have known that such owner had an interest in the personal property and also that the landlord knew or should have known upon reasonable investigation the address of such owner.

(e) If both the tenant and any other person claiming to be the owner make conflicting claims against the landlord concerning an item of personal property, the landlord is not liable to the owner if he gives such item to the tenant.

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 limit 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 to any other person, if known, who owns any item of personal property. See Section 1963.10(e)(defining "reasonable belief"). Under the definition of "item of personal property" in Section 1963.10(a), locked containers may be described as such in the notice and need not be opened for the purpose of describing their contents.

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. This includes keeping it for his own use. Except as provided in subdivisions (c) and (d), the landlord may keep or dispose of the property free of any liability. 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. The manner of determining reasonable costs is provided in Section 1963.70.

Subdivision (c) prevents persons actually receiving notice from contesting the disposition of the property. The landlord who has properly followed the procedures provided is not liable for damages, for the return of the property, or in any other manner.

Subdivision (d) covers the situation where the landlord is unaware that a person other than the tenant owns the property. In such a case, the landlord is not liable if he acts reasonably. The burden is placed on the owner

to prove unreasonableness in order to protect landlords against unfounded claims of conversion. The requirement that the landlord make a reasonable determination as to the value of the property protects owners who did not receive notice from being unfairly deprived of valuable property. Any landlord who is in doubt as to value should follow the procedure set forth in Section 1963.50 which better 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.

Subdivision (e) protects the landlord from liability arising from conflicting claims to property. The landlord may protect himself by turning the property over to the tenant, thus avoiding the necessity of deciding who is the rightful owner and suffering the consequences of an incorrect decision.

§ 1963.50. General provisions for disposition

1963.50. The landlord may dispose of personal property not described in 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 may be the owner of an item of personal property. The notice shall be in writing and shall 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 is currently stored. Miscellaneous items of personal property may be described in the aggregate.

(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 in substance as follows: "If you fail to pay the landlord the reasonable cost of storage of the personal property and take possession of the same not later than 15 days after the effective date of the notice, such property will be sold at public sale and the proceeds, less the landlord's reasonable costs for storage, advertising, and sale, will be paid into the treasury of the county where the sale took place. Thereafter you will have one year from the date it was paid to the county within which to claim the proceeds by making application to the county treasurer or other official designated by the county."

(5) A statement in substance as follows: "The effective date of this notice is (1) if delivered personally, the date delivered, or (2) if delivered by mail, three days after the day the notice was deposited in the mail."

(6) The name and address of the landlord and, if different, the address where the tenant or the owner may pay the reasonable cost of storage and take possession of the personal property.

(b) If the tenant or a person reasonably believed by the landlord to be the owner fails to pay the landlord the reasonable cost of storage and take possession of the property not later than 15 days after the effective date of the notice, the property shall be sold at public sale by competetive 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 before the expiration of the 15-day period after the effective date of the notice. After deduction of the costs of storage, advertising, and sale, any balance of the proceeds of the sale which has not been claimed by the tenant or a person reasonably believed by the landlord to be the owner shall be paid into the treasury of the county in which the sale took place not later than 30 days after the date of sale. The owner may claim the balance within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county. The treasurer or other person designated by the county shall decide conflicting claims as to the ownership of the balance or any portion thereof. The county shall not be liable to other claimants upon payment of the balance.

(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 of personal property under this section.

(d) If 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 personal property, the landlord knew or reasonably should have known that such owner had an interest in the personal property and also that the landlord knew or should have known upon reasonable investigation the address of such owner.

(c) If both the tenant and any other person claiming to be the owner make conflicting claims against the landlord for either an item of personal property or the balance of the proceeds of the sale of such item, the landlord is not liable to the owner if he gives such item or proceeds thereof to the tenant.

Comment. Section 1963.50 is the basic provision governing disposition of property and is an alternative to Section 1963.40 in situations where the personal property does not appear to exceed $100 in resale value.

Subdivision (a) sets forth the contents of the notice to be given to the tenant and to any other person, if known, who owns any item of personal property. See Section 1963.10(e)(defining "reasonable belief"). Under the definition of "item of personal property" in Section 1963.10(a), locked containers and the like may be described as such in the notice and need not be opened for the purpose of describing their contents.

Subdivision (b) provides for sale of the property if it remains unclaimed for 15 days after the effective date of the notice. See Section 1963.60 (effective date of notice). The underlying assumption is that property left on the premises by a defaulting tenant (other than lost property, as determined by the appropriate police or sheriff's office) which the tenant or the owner does not claim after due notice is property which he does not want. Therefore,

his interests can be protected adequately 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 manner of determining reasonable costs is provided in Section 1963.70. The owner, including a tenant-owner, has one year within which 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 two sentences of subdivision (b) are designed to protect the county in the event there are conflicting claims to the money.

Subdivisions (c) and (d) protect from liability a landlord who reasonably follows the provisions of subdivisions (a) and (b). Any person who receives notice is precluded from contesting the disposition of the property. The landlord who has properly followed the procedures of this section is not liable for damages, for return of the property, or in any other manner. 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.

Subdivision (e) protects the landlord from liability arising from conflicting claims to property or the proceeds of a sale of property. The landlord may protect himself by turning property or proceeds over to the tenant, thus avoiding the necessity of deciding who is the rightful owner and suffering the consequences of an incorrect decision.

§ 1963.60. Effective date of notice

1963.60. 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 three days after the day it is deposited in the mail addressed to the person to be notified at his last known address. "Last known address" shall include all addresses where to the knowledge of the landlord the person to be notified might be located.

Comment. Section 1963.60 is similar to subdivision (b) of Section 1951.3.

§ 1963.70. Reasonable costs

1963.70. (a) Reasonable costs required to be paid by Sections 1963.30, 1963.40, and 1963.50 shall be assessed in the following manner:

(1) Where a tenant claims property or the proceeds of sale from the landlord, such tenant may be required to pay the reasonable costs of storage and, where applicable, of advertising and sale, for all the personal property remaining on the premises at the termination of the tenancy which are unpaid at the time the claim is made.

(2) Where an owner other than the tenant claims property or the proceeds of sale from the landlord, such owner may be required to pay the reasonable costs of storage and, where applicable, of advertising and sale, for only the property in which he claims an interest.

(b) In determining the reasonable costs to be assessed under subdivision (a), the landlord shall not charge more than one person for the same costs of storage, advertising, and sale.

(c) If the landlord stores the 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.

Comment. Section 1963.70, providing for the manner of determining reasonable costs for storage, advertising, and sale, follows the principle that the tenant is primarily responsible and so should pay the reasonable costs incurred in the disposition of all the property which was left on the premises after the termination of his tenancy. However, the owner of personal property who is not himself a tenant should not have to pay the costs incurred in the disposition of any abandoned property other than the property he is claiming. Since the landlord cannot be sure that other owners will claim their

property, where the tenant appears first he may be required to pay the reasonable costs for all the property, even that which is known to belong to another owner. Of course, under subdivision (b), the landlord may not then charge the owner for these same costs should he later appear and make his claim.

Subdivision (c) is similar to the provision of Code of Civil Procedure Section 1174. As to the remedy of the tenant where the landlord requires an excessive amount for storage costs, see the discussion in Gray v. Whitmore, 17 Cal. App.3d 1, 24-25, 94 Cal. Rptr. 904, 917-918 (1971).

§ 1963.80. Combining notice concerning abandoned personal property with notice concerning abandonment of leased real property

1963.80. 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 1951.3. 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 1963.80 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 1951.3 concerning the abandonment of the leased real property by a lessee. Cf. Code Civ. Proc. § 1174.

§ 1963.90. Other statutes not displaced

1963.90. Nothing in this chapter affects the disposition of personal property abandoned on types of premises governed by other statutes.

Comment. Section 1963.90 makes an exception to the coverage of this chapter where there is a statute specifically governing the disposition of personal property left on particular types of premises. See, e.g., provisions governing disposition of abandoned and unclaimed personal property in safe deposit boxes (Fin. Code § 1650 et seq., Code Civ. Proc. § 1514, in hospitals (Civil Code § 1862.5), and in warehouses (Civil Code § 2081 et seq.). See also Code Civ. Proc. § 1520 (unclaimed personal property held in ordinary course of holder's business), Civil Code § 2080.8 (unclaimed property in possession of University of California), and 2080.9 (unclaimed, lost, or abandoned property in possession of any state college).

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 a 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 the 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 not later than 15 days after 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 a person reasonably believed by the plaintiff to be the owner upon payment of reasonable costs incurred by the plaintiff in providing such storage ~~and the judgment rendered in favor of the 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 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. If the appropriate police of sheriff's department refuses to accept an item of personal property, it shall be deemed not to have been lost.

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

(3) Any personal 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 and selling such property, and any balance thereof shall be applied in payment of plaintiff's judgment, including costs. Any remaining balance shall be returned to the defendant.~~ After deduction of the costs of storage, advertising, and sale, any balance of the proceeds of the sale which has not been claimed by the defendant or owner of the property sold shall be paid into the treasury of the county in which the sale took place not later than 30 days after the date of sale. The owner may claim the balance within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county. The treasurer or other person designated by the county shall decide conflicting claims as to the ownership of the balance or any portion thereof. The county shall not be liable to other claimants upon payment of the balance.

(4) If the plaintiff reasonably believes that a person other than the tenant is an owner of an item of personal 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. The notice shall be effective at the time provided in Section 1963.60 of the Civil Code.

(g) Reasonable costs required to be paid by subdivisions (e) and (f) shall be assessed in the manner provided by Section 1963.70 of the Civil Code.

(h) For the purposes of this section, the terms "item of personal property," "owner," and "premises" shall have the same meanings as provided in Section 1963.10 of the Civil Code, and the term "reasonable belief" shall have the same meaning as provided in Section 1963.70 of the Civil Code. Wherever in Sections 1963.10, 1963.40, 1963.50, and 1963.60 of the Civil Code the terms "landlord" and "tenant" appear, for the purposes of this section they are interchangeable with "plaintiff" and "defendant" respectively.

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 held unconstitutional in Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971) (cited with approval in Love. v. Keays, 6 Cal.3d 339, 491 P.2d 395, 98 Cal. Rptr. 811 (1971)). As to the remedies of the defendant where the landlord assesses an excessive amount for storage costs, see Gray v. Whitmore, 17 Cal. App.3d 1, 24-25, 94 Cal. Rptr. 904, 917-918 (1971).

III. INNKEEPER'S AND LANDLORD'S 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 held unconstitutional in Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970). 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 is~~ the premises are 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 is~~ the premises are 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, by making application to the treasurer or other official designated by the county, 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, oil 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 held unconstitutional in Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970) since there are no provisions for a hearing prior to imposition of the lien or for exemption of property exempt from attachment. 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;

and the requirement of former law 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.

DISPOSITION OF PROPERTY LEFT BY TENANT AFTER TERMINATION OF TENANCY

Jack M. Friedenthal*

I. Nature of the Problem

A. In General

After termination of a tenancy, the landlord or his agent enters the premises to prepare for a new tenant frequently to find that the prior tenant has left behind some items of personal property.[1] More often than not, the items left on the premises appear to be little more than junk although on occasion they may seem to have some resale value on the open market. In some situations, the goods appear valuable only to the departed tenant as, for example, when 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 goods, only wishes to dispose of the property in a speedy, inexpensive manner, which will not result in any risk of future liability for conversion. In a few cases, where the goods have 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. In this regard, it should be noted that under Section 1951.2 of the Civil Code a tenancy terminates when the tenant abandons his leasehold interest. It is quite common for a tenant

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* The author wishes to acknowledge the contribution of Ms. Kathy Thomas, a 1972 graduate of the Stanford Law School, who did much of the basic research upon which this study is based.

1. Throughout the study, statements are made regarding the general nature of the problem, the usual value of goods involved, and the normal attitudes and acts of landlords and tenants. Specific authorities are not cited for these assertions. Some are self-evident, others have been verified in numerous conversations with persons who have first-hand knowledge of landlord-tenant problems.

who is behind in rental payments to abandon the leasehold and leave behind furniture and other personal items.

B. Practical and Theoretical Considerations

A landlord is in business, whether he rents only the other side of the duplex apartment in which he lives or a commercial building with many thousands of square feet. Therefore, he deplores the nuisance and cost of dealing with goods left behind. Occupancy by a new tenant may be delayed, storage may be expensive, particularly if outside commercial facilities must be arranged, and there is always the danger of a lawsuit by an owner whose goods are lost, destroyed, or damaged. A public sale of the goods involves some investment of time plus the cost for publication of notice. Even if the property is thrown away, there may be some expense for removal when large items are involved. Since in most cases the goods have little or no commercial value, the landlord himself will ultimately be stuck with all of the bills.

From the point of view of a former tenant who either cannot be located or who, after being contacted, fails to remove his property, there is rarely any concern regarding the disposition of his goods. Only on the rarest of occasions will such a tenant appear on the scene to claim his property, but the fear of such a situation causes landlords considerable consternation in the absence of a law clearly delineating their rights and obligations. Unfortunately, no such law exists in California. There are a number of specific provisions covering some, but hardly all, situations where goods are left behind and, taken as a whole together with applicable rules of common law, they present a confusing, if not inconsistent, tangle of regulations which tend to exacerbate, rather than allay, the landlords' fears.

The primary question that must be answered before drafting a statute governing the disposition of property left behind after a tenancy has terminated is the extent to which the tenant or the landlord should bear the costs and any risks that may be involved. One possibility is to decide that the landlord, as a businessman, should be totally responsible. If goods are left behind, he should keep them safe for the owner, who may or may not be the tenant and, if the landlord disposes of them, he does so at his peril, at least until the statute of limitations for conversion lapses. There would be several difficulties with such a rule. First, it would subject the landlord to the whims of former tenants without sufficient economic or social justification; the landlord is not a warehouseman and should not be required to become one involuntarily and without specific compensation. Second, it would be economically wasteful. A landlord should not be required to store worthless goods; yet that would certainly be the result in most cases. The costs of such unnecessary storage would be passed off in many cases in the form of higher rent, especially since the landlord will know that in the vast number of cases these costs will never be recouped. Third, the rule could work a serious and undue hardship on a landlord who operates only one or two small rental units. Such a landlord often cannot pass off expenses in the form of higher rent since he operates in a different market structure than does a landlord with many units. If the small operator is unlucky enough to be burdened with substantial personal property left by one or two ex-tenants in a single year, he could suffer serious financial loss. Such a landlord is less likely to have space available for on-site storage; hence, he is more likely to have to buy space or to throw the goods away and take a chance on a subsequent lawsuit. Finally, the landlord is in an inferior position to the tenant in determining who actually owns the property and whether it is or is not valuable, especially with regard to an item having no value on the open

market, such as a family heirloom. The landlord would face an insurmountable obstacle in determining whether to store or discard such items.

A second possibility is to place the responsibility for the goods solely on the tenant, thus permitting the landlord to appropriate or throw away anything left on the premises without incurring any obligation to the tenant or other owner whatsoever. This rule, too, has its drawbacks. First, it may be economically wasteful if items of substantial value are junked. Second, it would provide an undeserved windfall for the landlord who keeps such items for himself. Third, tenants do leave items behind, especially lost items, in circumstances where the cost of handling to the landlord who finds them, at least for a short period, is overbalanced by the value to the owner. Surely, the landlord should have some duty to notify an owner whose whereabouts are known that he is about to lose his goods.

The third, and obviously most satisfactory, possibility is to distribute the burdens between the parties, minimizing the landlord's costs by affording only basic protection to the tenant. The regulations must be geared to the vast majority of situations where the tenant has left the goods behind because he does not care about them and not to the odd case where the tenant returns to make a claim for them.

II. The Current Law Regarding Disposition of Lost or Abandoned Property

A. In General

Unless a landlord is covered by one of the specific statutes governing disposition of property in particular situations, he will find no law governing what he can do with the property, only what he cannot do. If he throws away the tenant's property or destroys it or appropriates it to his own use, the landlord will be liable for conversion unless he can show that the tenant

actually intended to, and did, abandon the property. It is not enough that the landlord reasonably believed the property was abandoned.[2] The risk may be greater than the landlord realizes because the measure of damages is not the resale value of the goods but their value to the owner.[3] Nevertheless, in the vast majority of cases, the property will have little or no resale value and the landlord will junk it, hoping that it was in fact abandoned. The landlord will take this risk because he has no realistic alternative. He may store the goods in a warehouse, but initially he will have to bear the costs of such storage, knowing the chance for recoupment from the owner is remote.[4] He may sue the owner for trespass,[5] but, even if the owner can be found and served, the expenses of litigation are not likely to be justified by the judgment even in those cases where it is collectible. And in the meantime, the landlord still has to deal with the property.

If the rental agreement contains a specific clause permitting the landlord to dispose of the property, he may feel somewhat more secure in junking it. However, in most cases where the tenant leaves property behind, there is only a month-to-month tenancy based on an oral agreement. And even if such a written clause exists, there will be doubt as to its validity.[6] Self-help measures written into a lease prepared by the landlord, which permit him to interfere with the tenant's leasehold and personalty without a prior court order, are likely to be held ~~unconstitutional.~~ unconscionable,

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2. See Note, The Unclaimed Personal Property Problem: A Legislative Proposal, 19 Stan. L. Rev. 619-620 (1967), and cases cited therein.

3. See id. at 620.

4. See id. at 621.

5. See id. at 621-622.

6. See Jordan v. Talbot, 55 Cal.2d 597, 604-605, 361 P.2d 20, , 12 Cal. Rptr. 488, (1961)(dictum).

Even legislative remedies, such as foreclosure of a landlord's lien, attachment, and replevin, are now held invalid if allowed on an ex parte basis prior to a hearing on the merits.[7]

B. Current Statutory Provisions

At present, there are a number of statutes governing lost or abandoned property in specific situations. They are arbitrary in their coverage and inconsistent in their requirements. As a whole, they do not provide an overall solution to the problems in a majority of cases.

The statute with the widest coverage is Section 1862[8] of the Civil Code

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7. See Fuentes v. Shevin, 407 U.S. 67 (1972); Blair v. Pitchess, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971); Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970).

8. Section 1862 provides:

> 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.

which imposes three basic requirements for the disposition of unclaimed goods left in furnished lodgings (including furnished apartments):

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

(2) The landlord may then advertise the goods 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 may then be sold publicly.

The scope and details of Section 1862 raise a number of important questions. First, and most important, is whether there should exist a specific provision for furnished apartments and no comparable provision for unfurnished apartments or commercial facilities. The most plausible justification for different treatment is that items left behind in furnished apartments are likely to be limited in size, number, and value. Such a distinction is irrelevant, however, since landlords in possession of bulky items or items of value are as much, if not more, in need of a disposition procedure as are those who hold smaller or less valuable items. Moreover, one cannot generalize as to the size or value of items left on unfurnished premises. It should be noted that Code of Civil Procedure Section 1174[9]

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9. Section 1174 provides:

> 1174. 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.
>
> The jury or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff

provides a method for disposal of goods left by a tenant who has been ousted

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.

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.

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 a 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. 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.

All goods, chattels or personal property of the tenant 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 days and may be redeemed by the tenant 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

pursuant to a wrongful detainer judgment, whether the premises are furnished or unfurnished, commercial or residential.

In 1961, Section 1862 was amended to delete the word "furnished," thus making it applicable to all apartment owners. In 1965, however, the word "furnished" was restored. The original change obviously was designed to solve problems of unfurnished apartment owners which exist today. The subsequent alteration apparently resulted from the fact that the requirements of the statute put the landlord in a worse, rather than a better, position primarily because of the six-month holding period. Without the statute, the landlord was often willing to take a chance by throwing away what appeared to be worthless goods without incurring the costs of storage. Under the statute, the landlord who failed to keep or store the items for six months not only would be made to look bad in an ordinary action for conversion but might conceivably be held liable for punitive damages as a result of his willful violation of the statutory requirements.

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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 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 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 and selling such property, and any balance thereof shall be applied in payment of plaintiff's judgment, including costs. Any remaining balance shall be returned to the defendant.

The six-month waiting period appears unreasonably long for items left either in furnished or unfurnished premises. Perhaps it made more sense in 1876 when the statute was first enacted, but modern communication facilities eliminate the necessity of such a long wait, particularly when the costs of storage are unlikely to be recovered. Other provisions permitting disposition of unclaimed property all have lesser waiting periods: goods left by a tenant ousted after successful prosecution of an unlawful detainer action need be held only for 30 days;[10] goods committed to a warehouseman, common carrier, or innkeeper for transportation or safekeeping need only be held 60 days before they can be sold;[11] lost property turned over to the local police may be disposed of after 90 days.[12]

The notification provisions of Section 1862 also are subject to question. First, the statute contains no provision for notification other than by publication. Surely, if the owner's whereabouts are known to the landlord, direct notification is proper to protect the interests of the tenant and should be required. If the owner cannot be contacted, however, there seems little justification for requiring four separate publications of the notice of sale. Only one publication is required by other provisions governing lost or abandoned property.[13] From a practical point of view, the expenses of multiple publication cannot be justified by the expected results.

Sections 2080-2080.9 of the Civil Code, dealing with lost property over $10 in value, take an entirely different approach than does Section 1862. The only obligations of a finder who takes possession of lost property are

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10. See Code Civ. Proc. § 1174, set out in note 9 supra.

11. Civil Code § 2081.1.

12. Civil Code § 2080.3.

13. Civil Code § 2080.3; Code Civ. Proc. § 1174, set out in note 9 supra.

to notify the owner, if he is known, and to turn the property over to the police if the owner is not known or does not claim the goods. The burden then falls on the police to hold the goods, make proper notification, and dispose of the items. These provisions specifically exclude abandoned property; otherwise, they could provide the final answer to the problem of how to dispose of items left behind by a former tenant. The reason that abandoned property is not included is that police departments have neither the room nor the personnel to receive, guard, and care for large items of furniture, trunks, and the like. Lost property consists generally of small items which can more easily be stored. Even under current law, police have problems in finding storage for bicycles and similar items turned over to them for disposition. It should be noted that, in 1967, when the wrongful detainer act was amended to add provisions dealing with goods left behind by an ousted tenant, the original provision required the county to remove, store, and sell the goods. In 1968, this provision was changed to place these burdens on the landlord. The cost to the county of storing property left by tenants proved prohibitive and wasteful, especially since so many of the items were of little value and were never claimed.

The lost property provisions would seem to apply to goods left on rental premises unknowingly and unintentionally.[14] Sometimes, it is obvious that an item was lost as, for example, when a ring is located under a rug or in a heating duct. Other times, however, the matter is not so clear as, for example, when a ring is found in a drawer of an abandoned desk. The landlord, then, is left to determine as best he can the reason why the owner failed to remove his property. There is, of course, a strong incentive for the landlord to find that the property was "lost" in order that the burden of dispo-

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14. See People v. Stay, 19 Cal. App.3d 166, 96 Cal. Rptr. 651 (1971).

sition can be shifted to the local police. However, if the police believe that the property was knowingly left behind, they may refuse to accept it.

Insofar as operators of furnished apartments are concerned, the lost property laws appear inconsistent with the provisions of Section 1862. If property was obviously lost in a furnished apartment, it is not clear which set of regulations apply. If the landlord follows Section 1862 to the letter and does not directly notify the owner whose whereabouts are known or could be ascertained, the landlord may be guilty of theft because such notice is required under criminal provisions relating to lost property.[15] If the owner cannot be found and the landlord turns the property over to the police, who dispose of it after 90 days, the landlord may be charged with conversion on the ground he failed to store it for six months. It seems obvious that a coherent statute is needed so that landlords may know what they are expected to do with the goods.

Before composing such an omnibus statute, however, consideration must be given to a subtle problem arising from the fact that a landlord will not often know with certainty who owns various items of property left behind in an apartment. Such items may have been borrowed or rented, or they may have been lost by a casual visitor, or even left by an earlier tenant. Section 1862 clearly encompasses all such items by using the word "owner," rather than "tenant," and by covering all items "which come into the possession" of the landlord. However, Section 1174, the unlawful detainer provision, talks only of "personal property of the tenant."[16] Presumably, a landlord who follows the procedural details of Section 1174 to the letter in selling

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15. Penal Code § 485. See also People v. Stay, 19 Cal. App.3d 166, 96 Cal. Rptr. 651 (1971).

16. See the text of Section 1174, set out in note 9 supra.

goods left on the premises may nevertheless be sued for conversion by a third person who proves that he, rather than the tenant, owned the goods. With respect to items lost by non-tenants, the import of the lost property law must again be considered. If individuals who lose property justifiably rely on the duty of a finder to turn such property over to the police, any statute which permits a different disposition of property found by a landlord may not only be unfair but invalid as a denial of equal protection of the laws or a deprivation of property without due process of law. The latter is a particular danger if notification is directed only to the ex-tenant.

The final problem raised by the statutes is how the goods, or the proceeds of sale, are to be distributed if the owner does not appear. Currently, under Section 1862, the landlord may retain the costs of storage, advertising, and sale. Within one week from the date of sale, he must pay any excess amount into the county treasury. The money is held for one year and, if not claimed, is paid into the general fund of the county. The landlord is not permitted to keep any of the proceeds to offset rent or other amounts owed him by the tenant.

There are several statutory provisions which do permit a landlord to assert a lien on a tenant's goods for unpaid rent, meals, or other services even if the property is still in the tenant's possession. The first of these provisions, Civil Code Section 1861, covers hotels, motels, inns, and boarding houses and permits the landlord to enter the rental premises to take possession of the property and, after giving notice, to sell it and apply the proceeds to the tenant's debt if the debt remains unpaid for 60 days. This provision is patently unconstitutional under modern doctrine regarding pretrial remedies and has been so held by a three-judge federal district court

in Klim v. Jones.[18] It was held that the statute not only deprived tenants of property without due process of law by permitting goods to be taken by the landlord without any court hearing on the merits of the alleged debt, but it also violated the due process and, by implication, the equal protection clauses of the Constitution by allowing the landlord, in effect, to levy on goods that are otherwise exempted from execution.[19] This latter point has been underscored by the recent California appellate court decision in Gray v. Whitmore[20] which struck down that portion of the unlawful detainer statute allowing the landlord to retain out of the proceeds of the sale of tenant's goods amounts equal to the unpaid balance of his judgment in the unlawful detainer suit. Even though the tenant's obligation in Gray was established by judgment, thus eliminating the first objection upheld in Klim, the Gray court, in accordance with the second point in Klim, found no justification for permitting the landlord to keep the proceeds from the sale of items such as tenant's household furniture when other judgment creditors are prohibited from levying on such items by statute.

The California Legislature obviously had these constitutional questions in mind when it amended Civil Code Section 1861a which provides landlords of apartments, both furnished and unfurnished, with a lien similar to that allowed in Section 1861. However, under Section 1861a as amended, the lien applies only to goods which are subject to execution and cannot be enforced until a final judgment in favor of the landlord has been entered.

Whatever the validity of the current lien provisions, it is clear that a statute designed to allow a landlord, without going to court, to dispose of goods left after a tenancy has terminated cannot constitutionally permit the landlord to retain the goods or the proceeds as an offset to debts owed him

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18. 315 F. Supp. 109, 118-124 (N.D. Cal. 1970).

19. Id. at 123-124.

20. 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971).

by the tenant. It is important to note, however, that the court in Gray v. Whitmore specifically upheld the landlord's right to retain the reasonable costs of the storage and sale of the goods themselves.[21]

The decisions in Gray and Klim open to question the validity of Civil Code Section 2080.3, providing that, in the absence of an ordinance giving the proceeds to the county,[22] if the owner fails within the prescribed period and after publication of notice to claim lost property deposited with the police, then upon payment of the costs of publication title vests in the finder. This provision, unlike those involved in Gray and Klim, does not operate to satisfy a judgment and is therefore not akin to an execution on exempt property. But, if Section 2080.3 is valid, it gives rise to an anomalous situation, for, if the landlord in Gray had decided that some of the property was lost, he could ultimately have been held to own it without any offset to his judgment against the tenant. And it would appear to follow that title to any unclaimed proceeds from a landlord's sale of the personal property, after having been held for an appropriate length of time, could be held to vest in the landlord as long as such proceeds did not operate to cancel the owner's outstanding obligations to the landlord. Thus, we would have a rare constitutional right, one which would leave the person to be protected worse off than if the protection did not exist. The absurdity of the situation calls for a reexamination of both the Klim and Gray decisions which erroneously equate execution on property in the hands of a debtor with disposition of property which the debtor, after due notice, has failed to claim.

Given the fact that Gray and Klim appear to state the law in California, however, the question is whether, in spite of the anomaly, the proceeds ultimately should go to the landlord. There are several factors favoring such a

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21. 17 Cal. App.3d at 23-25, 94 Cal. Rptr. at .

22. See Civil Code § 2080.4.

disposition. The landlord has suffered the aggravation of worrying about and handling the property, the unclaimed proceeds could be looked upon as justified compensation for such unliquidated expenses. Moreover, one could argue that an owner of goods who leaves them on rented premises and makes no claim thereafter should be presumed to have intended the goods to be a gift to the landlord. On the other hand, landlords should have every incentive to find the owner of such goods. Landlords who have a selfish interest in an owner's abandonment may hedge in their efforts to locate the owner. The situation differs from a lost property case in that there the police have an independent obligation to find the owner; it is not left solely to the finder who may ultimately benefit if the owner fails to appear. Furthermore, it will only be an accident if any proceeds over and above the costs of storage and sale are reasonably related to the landlord's unliquidated costs of handling the property. Only if such proceeds could be set off against the owner's debts would disposition to the landlord make sense. Given current case law, the most that can be done to assist both the landlord and the owner in setting off the value of the property against debts owed the landlord is already contained in the previously discussed Civil Code Section 1861a, which provides a landlord who has obtained a judgment against a tenant with a lien on goods not exempt from execution.

It is, of course, not enough merely to decide that the proceeds, if unclaimed, will not ultimately be paid to the landlord; some specific disposition must be provided if the landlord is not to face years of uncertainty. For example, under the unlawful detainer law, the proceeds of sale neither belong to the landlord nor are paid to the county. The statute simply provides that the landlord hold them for the tenant. How long they must be held is unclear--perhaps for seven years until the escheat law comes into effect.

Even then, there is some uncertainty because the applicable provision, Code of Civil Procedure Section 1520, permits escheat of property held or owing in the ordinary course of the holder's business. Arguably, a sale of a tenant's abandoned goods is not within the ordinary course of a landlord's business. Such uncertainty is intolerable. The only solution which appears sensible is to require the landlord to turn the proceeds over to the county which must hold them for the owner for a finite period, after which the county becomes the owner.

C. Determining the Date of Termination of an Abandoned Leasehold

All of the prior discussion assumes that there is a specific date when the tenancy terminates and that thereafter, upon entry into the premises, the landlord discovers personal property left by the tenant. In many situations, however, the tenant disappears prior to the normal date of termination, leaving his goods behind. Under Civil Code Section 1951.2, which became effective in 1971, once a tenant abandons the leasehold, his tenancy terminates and the landlord has a duty to try to relet the premises so as to mitigate the tenant's obligations for rent under the lease. However, the statute provides no method for determining when an abandonment has occurred and the common law concepts are deceptively simple and unsatisfactory from a practical perspective. According to the cases, an abandonment takes place when the tenant "offers" to abandon by intending to renounce all future interest in his lease and by performing some act to effectuate this intent and when the landlord accepts the "offer."[23] This formulation is unsatisfactory to tenants who wish to mitigate their liability under the lease since the landlord can thwart the purpose of Section

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23. Wiese v. Steinauer, 201 Cal. App.2d 651, 20 Cal. Rptr. 295 (1962); Anheuser-Busch Brewing Ass'n v. American Products Co., 59 Cal. App. 718, 211 P. 817 (1922). See also Gerhard v. Stephens, 68 Cal.2d 864, 442 P.2d 692, 69 Cal. Rptr. 612 (1968).

1951.2 simply by refusing to "accept" the premises. Furthermore, the case law fails to solve the problems of landlords who wish to re-rent as soon as possible; the landlord can never be certain that a tenant really intended to abandon the lease, and mere nonuse of the premises, no matter how long, will not alone be sufficient evidence of such intention.[24] Even if the landlord, upon thorough investigation, reasonably believes that the tenant has formed the requisite intent, the tenant may at some unexpected point reappear, claiming that he had been ill or otherwise unavoidably detained away from the premises and that he had never intended to abandon his leasehold or his goods. The landlord's problems are enhanced by the fact that, in a subsequent suit, he, not the tenant, will bear the burden of proof on the abandonment issue.[25] Therefore, it would seem highly desirable, not only with respect to disposition of a tenant's personalty, but also with regard to the landlord's right and duty to re-rent, to amend Section 1951.2 specifically to set forth guidelines for determining precisely when a leasehold has been abandoned and, hence, terminated.

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24. Restatement of Property § 504, comment (d). See also Gerhard v. Stephens, supra note 23.

25. Pepperdine v. Keys, 198 Cal.2d 25, 31, 17 Cal. Rptr. 709, (1961), and see cases cited in note 23 supra.