

Memorandum 73-85

Subject: Study 78 - Landlord-Tenant Relations

The Tentative Recommendation Relating to Landlord-Tenant Relations has been split into two recommendations--one relating to abandonment of leased real property and the other relating to disposition of personal property remaining on premises at termination of tenancy. The staff thinks that this is advisable in order to avoid confusion resulting from the discussion of real property abandonment and personal property abandonment in the same recommendation. The staff contemplates, however, that the two recommendations will be presented to the Legislature as a package. We hope that these two recommendations can be approved for sending out for comment at the November-December meeting. Two copies of each recommendation are attached to this memorandum; please make your suggested editorial revisions on one copy and give it to the staff at the next meeting.

The Tentative Recommendation Relating to Abandonment of Leased Real Property is basically the same as that considered at the September meeting with the addition of the lessee's notice in subdivision (e). A copy of Civil Code Section 1951.2, which the proposed Section 1951.3 supplements, is attached as Exhibit I to this memorandum.

The Tentative Recommendation Relating to Disposition of Personal Property Remaining on Premises at Termination of Tenancy has been substantially re-drafted in a more logical order although the substance remains basically the same. The staff has been concerned with the relationship between the procedures of this recommendation and other procedures for the disposition of personal property in particular cases. We have attempted to resolve any conflict in the second sentence of subdivision (a) of Section 1981. The statutes there referred to are attached as Exhibits II (Civil Code § 1862.5 and Health & Saf. Code § 1250(b)), III (Civil Code §§ 2080.8 and 2080.9), and IV (Civil Code §§ 2081-2081.6).

Respectfully submitted,

Stan G. Ulrich
Legal Counsel

EXHIBIT I

CIVIL CODE § 1951.2

§ 1951.2 Termination of lease; remedy of lessor

(a) Except as otherwise provided in Section 1951.4, if a lessee of real property breaches the lease and abandons the property before the end of the term or if his right to possession is terminated by the lessor because of a breach of the lease, the lease terminates. Upon such termination, the lessor may recover from the lessee:

(1) The worth at the time of award of the unpaid rent which had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the lessee proves could have been reasonably avoided;

(3) Subject to subdivision (c), the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the lessee proves could be reasonably avoided; and

(4) Any other amount necessary to compensate the lessor for all the detriment proximately caused by the lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

(b) The "worth at the time of award" of the amounts referred to in paragraphs (1) and (2) of subdivision (a) is computed by allowing interest at such lawful rates as may be specified in the lease or, if no such rate is specified in the lease, at the legal rate. The worth at the time of award of the amount referred to in paragraph (3) of subdivision (a) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1 percent.

(c) The lessor may recover damages under paragraph (3) of subdivision (a) only if:

(1) The lease provides that the damages he may recover include the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award, or for any shorter period of time specified in the lease, exceeds the amount of such rental loss for the same period that the lessee proves could be reasonably avoided; or

(2) The lessor relet the property prior to the time of award and proves that in reletting the property he acted reasonably and in a good-faith effort to mitigate the damages, but the recovery of damages under this paragraph is subject to any limitations specified in the lease.

(d) Efforts by the lessor to mitigate the damages caused by the lessee's breach of the lease do not waive the lessor's right to recover damages under this section.

(e) Nothing in this section affects the right of the lessor under a lease of real property to indemnification for liability arising prior to the termination of the lease for personal injuries or property damage where the lease provides for such indemnification.

EXHIBIT II

CIVIL CODE § 1862.5

§ 1862.5 Unclaimed property in hospital; sale; notice; expenses; surplus

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.

HEALTH & SAFETY CODE § 1250(b)

(b) "Hospital" means any institution, place, building, or agency which maintains and operates organized facilities for one or more persons for the diagnosis, care, and treatment of human illness, including convalescence and including care during and after pregnancy, or which maintains and operates organized facilities for any such purpose, and to which persons may be admitted for overnight stay or longer. "Hospital" includes sanatorium, nursing home, and maternity home.

EXHIBIT III

CIVIL CODE §§ 2080.8, 2080.9

§ 2080.8 University regents or police department

The Regents of the University of California may provide by resolution or regulation for the care, restitution, sale or destruction of unclaimed property in the possession of the Regents of the University of California or of the University of California Police Department. Any resolution or regulation adopted pursuant to this section shall provide therein (1) that such unclaimed property shall be held by the Regents of the University of California or the University of California Police Department for a period of at least three months, (2) that thereafter such property will be sold at public auction to the highest bidder, and (3) that notice of such sale shall be given by the Regents of the University of California or the University of California Police Department at least five days before the time therefor by publication once in a newspaper of general circulation published in the county in which such property is held. The Regents of the University of California may dispose of any such property upon which no bid is made at any such sale.

§ 2080.9 Trustees of state colleges

The Trustees of the California State Colleges may provide by resolution or regulation for the care, restitution, sale or destruction of unclaimed, lost or abandoned property in the possession of any state college. Any resolution or regulation adopted pursuant to this section shall include therein (1) that such unclaimed or lost property shall be held by the particular state college for a period of at least six months, (2) that thereafter such property, as well as abandoned property, will be sold at public auction to the highest bidder, and (3) that notice of such sale shall be given by the Trustees of the California State Colleges at least five days before the time therefor by publication once in a newspaper of general circulation published in the county in which such property is held. The Trustees of the California State Colleges may dispose of any such property upon which no bid is made at any such sale.

EXHIBIT IV

CIVIL CODE §§ 2081-2081.6

§ 2081. Storage by bailee until freight and charges paid

When any goods, merchandise, or other property has been received by any railroad or express company, other common carrier, commission merchant, innkeeper, or warehouseman, for transportation or safekeeping, and is not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, innkeeper, or warehouseman may hold or store the property with some responsible person until the freight and all just and reasonable charges are paid.

§ 2081.1 Auction; notice

If within 60 days after its receipt no person calls for the property and pays the freight and charges upon it, the carrier, commission merchant, innkeeper, or warehouseman may sell the property, or so much of it as will pay freight and charges, to the highest bidder at public auction, after first causing such notice of sale to be given as is customary in sales of goods by auction at the place where the goods are held or stored.

§ 2081.2 Surplus; disposition

If any surplus remains after paying the freight, storage, expenses of sale, and other reasonable charges, the sum remaining shall be paid over to the owner of the property, upon his demand at any time within 60 days after the sale.

§ 2081.3 Surplus; failure of owner to demand; payment to county treasury

If the owner or his agent fails to demand the surplus within 60 days after the sale, it shall be paid into the county treasury, subject to the order of the owner.

§ 2081.4 Termination of bailee's responsibility; liability of warehousemen

After the storage of the property the responsibility of the carrier, commission merchant, innkeeper, or warehouseman ceases. The person with whom the property is stored is not liable for loss or damage on its account unless the loss or damage results from his negligence or want of proper care.

§ 2081.5 Advances; effect upon sale of unclaimed property

When any commission merchant or warehouseman receives produce, merchandise, or other property on consignment and makes advances upon it, either to the owner or for freight and charges, if the advances are not paid to him within 60 days from the date made, he may cause the produce, merchandise, or property on which the advances were made, to be advertised and sold pursuant to this article.

§ 2081.6 Applicable law

All proceedings pursuant to this article are governed entirely by its provisions and are not controlled or affected by Article 2, Chapter 3, Title 7, Part 4, Division 3 of this code.¹

November 7, 1973

TENTATIVE RECOMMENDATION

relating to

ABANDONMENT OF LEASED REAL PROPERTY

Upon recommendation of the Law Revision Commission,¹ the Legislature in 1970 enacted Civil Code Sections 1951-1952.6 to deal with certain rights and duties of landlords and tenants upon termination or abandonment of a lease of real property. 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" before the end of the term.² Upon such termination, the lessee's right to possession ends and the lessor has the right to recover damages for the breach and the obligation to mitigate those damages.³ However, the statute provides no method for determining what constitutes abandonment of the property. According to case law, abandonment occurs only when the lessee manifests an intention to abandon his leasehold interest.⁴

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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. If the lease so provides, it continues in effect until terminated by the lessor despite a breach of the lease and abandonment of the property by the lessee; 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.
 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 that 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 the intent to abandon is essential to an "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).

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 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 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 abandonment⁸ if the lessee has been in default

5. See *Boswell v. Merrill*, 121 Cal. App. 476, 478, 9 P.2d 341, 342 (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, 44 (1966).

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, 353 (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 and all other addresses where the lessee might reasonably be expected to be located.

on the rent for at least 20 consecutive days and the lessor reasonably believes that the lessee has abandoned the property. The lessee should be allowed at least 15 days where personal notice is given and 18 days where notice is given by mail, or a longer period at the lessor's discretion, within which to give the lessor written notice of his intent not to abandon the property. If the lessor does not receive the lessee's written notice to that effect within the time allowed, then the property should be deemed abandoned and the lease terminated. The 20-day period during which the lessee is in default on rent, combined with the additional period of at least 15 days during which the lessee may communicate to the lessor that he has not abandoned the property, assures that, for the normal tenancy calling for monthly rental 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.

The Commission's recommendation would be effectuated by enactment of the following measure.

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

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

§ 1951.3. Lessor's notice of belief of abandonment

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

1951.3. (a) Property shall be deemed abandoned by the lessee, within the meaning of Section 1951.2, and the lease shall terminate, if the lessor gives notice of his belief of abandonment and the lessee fails to give notice of his intent not to abandon as provided in this section. The date of termination shall be specified in the lessor's notice and shall be not less than 15 days after the notice is served personally or, if mailed, not less than 18 days after the notice is deposited in the mail.

(b) The lessor may give a notice of belief of abandonment to the lessee pursuant to this section only where the rent on the property has been due and unpaid for at least 20 consecutive days and the lessor reasonably believes that the lessee has abandoned the property.

(c) The lessor's notice of belief of abandonment shall be personally delivered to the lessee or sent by first-class mail, postage prepaid, to the lessee at his last known address and all other addresses where the lessee might reasonably be expected to be located at the time the notice is given.

(d) The notice of belief of abandonment shall be in substantially the following form:

NOTICE OF BELIEF OF ABANDONMENT

To: _____
(name of lessee)

(address of lessee)

This notice is given pursuant to Section 1951.3 of the Civil Code concerning the real property leased by you at _____
(state location of the property by address or other sufficient description)

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

The property will be deemed abandoned within the meaning of Section 1951.2 of the Civil Code and your lease will terminate on

(here insert a date not less than 15 days after this notice is served personally or, if mailed, not less than 18 days after this notice is deposited in the mail)

unless before such date the undersigned receives at the address indicated below a written notice from you stating your intent not to abandon the property.

Dated _____

(Signature of lessor or his agent)

(Type or print name of such person)

(Address to which lessee is to send notice)

(e) The lessor may include with the notice of belief of abandonment a post-card or other form entitled "Notice Of Intent Not To Abandon" which may be used by the lessee to communicate his intent not to abandon the property. Such notice shall be in substantially the following form:

NOTICE OF INTENT NOT TO ABANDON

To:

(name of lessor or his agent)

(address of such person)

This notice is to inform you that it is not the intent of the undersigned to abandon the real property leased by him at

(state location of property by address

or other sufficient description)

Dated _____

(Signature of lessee or his agent)

(Type or print name of such person)

(Address of such person)

(f) 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, it was not reasonable for the lessor to believe that the lessee had abandoned the property. The fact that the lessor knew that the lessee left personal property on the property does not, of itself, justify a finding that the lessor did not reasonably believe that the lessee had abandoned the property.

(g) 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 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 1980) which sets forth the lessor's rights and duties as to personal property remaining on the premises after termination of the tenancy.

Subdivisions (a) and (b) provide a procedure by which the lessor can be assured that a lease has been terminated when the rent is in default and it appears that the lessee has abandoned the leased property. When the lease has been so terminated, the lessor can dispose of any personal property remaining

§ 1951.3

on the premises under Chapter 5 (commencing with Section 1980), prepare the property for a new tenant, and relet the property. The 20-day period during which the rent must be in default, combined with the additional period of at least 15 or 18 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 rental payments, at least two rent due dates must pass before abandonment of the property and termination of the lease can occur under this section. 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 the date specified by the lessor in the notice makes known to the lessor in writing his intent not to abandon the property. The notice provided by this section may be given at the same time or in combination with the notice provided by Section 1983 concerning the disposition of abandoned personal property. See Section 1991.

Subdivision (d) provides a form for the lessor's notice to the lessee. The lessor is required to fill in the date before which the lessee must give notice of intent not to abandon in order to avoid a determination that the lease has terminated and the property has been abandoned. Where the lessor's notice is served personally, the lessee must be afforded at least 15 days to give notice to the lessor of his intent not to abandon and, where the lessor gives notice by mail, the lessee must be afforded at least 18 days.

Subdivision (e) provides a form of notice of the lessee's intent not to abandon which the lessor may include with notice of belief of abandonment for the convenience of the lessee. The lessee is not required to use such a form if it is included by the lessor.

If the lessee challenges the termination of the lease, the lessor has the burden of proving that the notice contained the information required by the form provided in subdivision (d) and was given in compliance with subdivisions (a), (b), and (c). Where the lessor proves these matters, under subdivision (f) 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 it was not reasonable for the lessor to believe that he had abandoned the property. The burden of proof on these two matters is placed on the lessee so that the lessor will be able to proceed to relet the property with reasonable assurance that the abandonment and termination will not later be set aside.

Subdivision (f)(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 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's belief as to abandonment was unreasonable. Where the personal property left by the lessee appears to be of little value, it would be reasonable for the lessor to conclude in the absence of other evidence that the personal property, as well as the real property, had been abandoned. 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 had not abandoned the real property. While subdivision (f)(2) precludes a finding that the lessor's belief as to abandonment was unreasonable based solely on the fact that personal property of the lessee remains on the premises, the subdivision does not preclude this fact from being taken into account along with other evidence in determining the issues of the existence of such belief and of its reasonableness.

§ 1951.3

Abandonment within the meaning of Section 1951.2 occurs only where the lessee 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 Abandonment of Leased Real Property, 11 Cal. L. Revision Comm'n Reports 000 (1973). Although this section provides a means by which the lessor may establish by an objective test whether the real property has been abandoned, it does not preclude either party from otherwise proving the fact. See subdivision (g).

Note. Reference is made in the Comment to Chapter 5 (Sections 1980-1991) of this title which is a proposed recommendation of the Commission. See Recommendation Relating to Disposition of Abandoned Personal Property Remaining at Termination of Tenancy, ____ Cal. L. Revision Comm'n Reports 000 (19__).

November 7, 1973

TENTATIVE RECOMMENDATION

relating to

DISPOSITION OF PERSONAL PROPERTY REMAINING ON PREMISES

AT TERMINATION OF TENANCY

BACKGROUND

After termination of a tenancy, frequently the landlord or his agent who enters the premises to prepare them for a new tenant 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, the landlord may seek to appropriate the goods to his own use in payment of the tenant's obligations. However, unless the situation is covered by a specific statute governing the disposition of property, the landlord 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.¹ 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. Further, Section 1174 contains no provision which deals with the case where some person other than the tenant 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.²

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

2. 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 innkeeper's lien law,³ the landlord's lien law,⁴ and the lost property laws.⁵

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.

Optional procedure. The procedure should be optional; but, if the landlord complies with the procedure, he should be protected from any liability concerning the disposition of the property.

"Lost" property. If personal property found on the premises after the tenant's departure 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.⁶ However, if such provisions are inapplicable or if the police or sheriff's department refuses to accept the property as "lost" property, disposition of the property 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

3. Civil Code § 1861. See discussion, p. 8 infra.

4. Civil Code § 1861a. See discussion, p. 8 infra.

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

6. Civil Code § 2080 et seq.

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, before disposing of any personal property, the landlord should be required to give notice, either personally or by mail, to the tenant and any other person reasonably believed to be an owner of the property. The notice should include a general description of the property, a statement that the property will be disposed of according to the statutory procedure unless the person receiving notice pays the reasonable costs of storage and takes possession of the property, a statement of the place where the property may be claimed, and a statement of the time within which a claim must be made.

The tenant or other owner should be allowed a reasonable time within which to claim the property, but the landlord should be free to afford a longer time if he chooses. The person to be notified should have at least 15 days to make his claim if the notice is served personally and at least 18 days if notice is served by mail. The notice should specifically indicate the date by which the claim must be made so that the person receiving notice will not be confused. The recommended minimum period of 15 days will allow time for the tenant or other owner to claim his property if he wants it. At the same time, it will minimize the burden to the landlord of storing property that in the great majority of cases is unwanted.⁷

7. 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, in the great majority of cases, the abandoned property with which this recommendation is concerned will be unwanted property of no significant value.

Disposition procedure generally. If the tenant or other owner fails to pay the landlord the reasonable cost of storage⁸ and take possession of the property before the date specified in the notice, the property should be sold at public sale by competitive bidding. At least five days' notice of the time and place of the sale should be given by publication once in a newspaper of general circulation published in the county where the sale is to be held. The balance of the money received from the sale--after deducting the reasonable costs of 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 balance. If not claimed within this time, the money should belong to the county.⁹

Optional procedure for disposition where property is of little value.

Where the landlord reasonably believes that the total resale value of the personal property remaining unclaimed after the period for making claims has expired does not exceed \$100, he should be permitted to keep the property for his own use or dispose of it as he chooses. In the great majority of such cases, the property is valueless or nearly so, and the tenant does not want it. Hence, it would be unreasonable to require the landlord to incur the expense involved in advertising and selling the property at a public sale. Of course, if the landlord is in doubt whether the property is worth \$100, he can proceed to advertise and sell it. The \$100 limit is arbitrary but is recommended because the line must be drawn high enough to permit the landlord to dispose of what

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8. 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.
 9. 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.

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.¹⁰

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 abandoned property disposed of in an authorized manner. With respect to owners of abandoned property who are not given notice, the landlord should not be liable unless the owner proves that, prior to disposing of the property, the landlord believed or reasonably should have believed that the owner had an interest in the property and also that the landlord knew or should have known upon reasonable investigation such owner's address. The landlord should also be protected from liability if he turns the property over to the tenant or to a person reasonably believed to be the owner even though there may be other persons who are owners or reasonably might be believed to be owners. The landlord should not have to decide conflicting claims to the property at the risk of liability for an incorrect decision. As long as he reasonably follows the recommended procedures, the landlord should not be liable for disposition of the property.

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

10. 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.

vacated the premises. Notice concerning the disposition of any property remaining on the premises should be given to the tenant in the writ of restitution. The storage period for the property should be reduced from 30 to a minimum of 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 repealed since they have been held unconstitutional.¹¹ 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.

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 court¹² 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

11. Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971).

12. 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). A provision in Civil Code Section 1862.5 (relating to abandoned property in hospitals) which allows the hospital to apply proceeds of the sale of abandoned property to sums due from its last known owner should be repealed for the same reason.

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.¹³ Other less important revisions also should be made in Section 1861a.¹⁴

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 1861a and 1862.5 of, to add Chapter 5 (commencing with Section 1980) to Title 5 of Part 4 of Division 3 of, and to repeal Sections 1861 and 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:

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13. 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.
14. These revisions are indicated in the Comment to Section 1861a in the proposed legislation infra.

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, boarder, 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 indebted-~~
ness 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 prop-
erty 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 accom-
plished 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 appliances 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~~

~~as-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;

§ 1861a

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 1988.

Civil Code § 1862 (repealed)

Sec. 3. Section 1862 of the Civil Code is repealed.

Civil Code § 1862 (repealed)

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

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

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

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

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

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Comment. Section 1862 is superseded by Civil Code Section 1980 to 1991.

Civil Code § 1862.5. (amended)

Sec. 4. Section 1862.5 of the Civil Code is amended to read:

§ 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, ^{and} 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.

Comment. The provision of Section 1862.5 which permitted the hospital to apply the proceeds of sale to sums due the hospital from the last known owner of the property has been repealed because a similar provision 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 §§ 1980-1991 (added)

Sec. 5. Chapter 5 (commencing with Section 1980) 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

§ 1980. Definitions

1980. As used in this chapter:

(a) "Landlord" means any operator, keeper, lessor, or sublessor of any furnished or unfurnished premises for hire, or his agent or successor in interest.

(b) "Owner" means any person other than the landlord who has any right, title, or interest in personal property.

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

(d) "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 personal property involved, "reasonable belief" includes the actual knowledge or belief a prudent person would have if such an investigation were made.

(e) "Tenant" means any paying guest, lessee, or sublessee of any premises for hire.

Comment. Section 1980 defines various terms used in this chapter.

Subdivisions (a) and (e) 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 landlords with a general procedure for the disposition of personal property left on the premises after termination of a tenancy. But see Section 1982 (relationship to other statutory procedures) and Comment. 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) makes clear that "premises" includes common areas--such as storage rooms or garages--where personal property may be left when the tenant leaves.

Subdivision (d) establishes a general standard for the landlord's "reasonable belief" as used in Sections 1982 (lost property), 1983 (notice), 1987 (release of property), 1988 (disposition of property), and 1989 (limitation on landlord's liability). This definition has the effect under Sections 1983 and 1989 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. 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, however, that the title taken at a sale of property under Section 1988 is subject to any lien or right preserved by other provisions of law.

§ 1981. Optional procedure, relationship to other statutes, liability

1981. (a) This chapter provides an optional procedure for the disposition of personal property which remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant. This chapter does not apply where Sections 1862.5, 2080.8, 2080.9, or 2081 to 2081.6 apply.

(b) Except as otherwise provided in Section 1982, the landlord's liability is limited as provided in Section 1989 if he does all of the following:

- (1) Gives notice pursuant to Section 1983.
- (2) Preserves the property pursuant to Section 1986.
- (3) Releases the property pursuant to Section 1987 or disposes of the property pursuant to Section 1988.

(c) If the requirements of this chapter are not satisfied, nothing in this chapter affects the rights and liabilities of the landlord, tenant, or any other person.

Comment. Section 1981 makes clear that use of the procedures provided by this chapter is optional. A landlord may, but need not, dispose of personal property left on the premises in the manner provided herein. However, Section 1989 provides limits on the landlord's liability if these procedures are followed. It should be noted that subdivision (a) provides that the procedures of this chapter may not be used where one of the following four statutes applies: Section 1862.5 (property left in a licensed hospital), Section 2089.8 (unclaimed property in possession of the University of California), Section 2080.9 (unclaimed, lost, or abandoned property in possession of a state college), Sections 2081 to 2081.6 (unclaimed property in a warehouse). However, if a motor vehicle is left on the premises, it may be

disposed of pursuant either to this chapter or to Chapter 10 (commencing with Section 22650) of Division 11 of the Vehicle Code. This chapter is inapplicable where the landlord seeks a lien on the property pursuant to Section 1861a.

§ 1982. Lost property

1982. Lost personal property shall be disposed of pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6 of Part 4 of Division 3. However, if the appropriate police or sheriff's department refuses to accept such property, the landlord may dispose of the property pursuant to this chapter. The landlord is not liable to the owner of any property which the landlord reasonably believes to have been lost if he complies with this subdivision.

Comment. Section 1982 provides that personal property lost on the premises shall be treated like any other lost property pursuant to the general provisions concerning lost property. All owners who lose property should be able to rely on the lost property laws. See Civil Code § 2080 et seq. The second sentence is intended to eliminate the uncertainty which would otherwise result if the police or sheriff's department disagrees with the landlord concerning whether property has been lost and therefore refuses to accept the property. The third sentence protects from liability a landlord who acts reasonably under this section. See Section 1980(d) (defining "reasonable belief").

§ 1983. Notice

1983. (a) Where personal property remains on the premises after a tenancy has terminated and the premises have been vacated by the tenant, the landlord shall give written notice to the tenant and to any other person who the landlord reasonably believes may be the owner of the property.

(b) The notice shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the landlord is not protected from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents. The notice shall advise the person to be notified that reasonable costs of storage may be charged before the property is returned, where the property may be claimed, and the date before which the claim must be made. The date specified in the notice shall be a date not less than 15 days after the notice is personally delivered or, if mailed, not less than 18 days after the notice is deposited in the mail.

(c) The notice shall be personally delivered to the person to be notified or sent by first-class mail, postage prepaid, to the person to be notified at his last known address and all other addresses where such person might reasonably be expected to be located at the time the notice is given. If the notice is sent by mail to the tenant, one copy shall be sent to the premises vacated by the tenant.

Comment. Section 1983 generally requires that written notice concerning personal property left on the premises must be given to the tenant and to any other person the landlord reasonably believes may be the owner of personal

property left on the premises. However, under subdivision (a) of Section 1989, a landlord is absolved from liability, whether or not notice is given, if property is released to the tenant. Notice may be given at any time after the premises are vacated and the tenancy has terminated, but sale or other disposition of the property may not occur until a specified period has passed after notice is given. See Sections 1987 and 1988. The requirement that the tenancy be terminated is obvious; a landlord has no need or right to dispose of the tenant's property while the tenancy continues. See Civil Code § 1951.3 (method of declaring abandonment of real property). The requirement that the premises be vacated by the tenant is intended to avoid conflict with the statutory provisions dealing with unlawful detainer. See Code Civ. Proc. § 1161 et seq.

Subdivision (b) prescribes the contents of the notice. The landlord must include four essential elements: (1) a description of the property; (2) the place where the property may be claimed; (3) the date before which the claim must be made; and (4) a statement that payment of storage costs may be required before the property is returned. See Sections 1984 and 1985 for forms which satisfy the requirements of Section 1983. The property description must be reasonably adequate to permit the owner to identify the property. The landlord determines where the property may be claimed. Reasonable costs may, but need not, be charged by the landlord as a condition of releasing the property. See Section 1990.

Subdivision (c) provides for the manner of service of the notice. If notice is sent by mail, the landlord must send copies of the notice to all addresses where the person to be notified might be located. As a matter of course, when serving notice by mail, the landlord should always send a copy addressed to the tenant at the vacated premises.

§ 1984. Form of notice to tenant

1984. A notice given to the tenant which is in substantially the following form satisfies the requirements of Section 1983:

NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

To: _____

(Name of former tenant.)

Address: _____

(Street address; if mailed, notice must be sent to the tenant's last known address and all other addresses where the tenant might reasonably be expected to be located.)

(City and state.)

When you vacated the premises at _____

(Address of premises, including _____

_____, the following personal property room or apartment number, if any) remained:

(Describe property in a manner reasonably adequate to permit the owner of the property to identify it: a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents, may be described as such without describing its contents.)

You may claim this property at _____

(address where property may be claimed)

Unless you pay the reasonable cost of storage for all the above-described property, and take possession of the property which you claim,

not later than _____

(insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail)

this property may be disposed of pursuant to Civil Code Section 1988.

Dated: _____

(Signature of landlord or his agent)

(Type or print name of such person)

(Telephone number of such person)

(Address of such person)

§ 1984

Comment. Section 1984 provides a form of notice to the tenant which satisfies the requirements of Section 1983. See Section 1985 (form of notice to owner other than tenant).

§ 1985. Form of notice to owner other than tenant

1985. A notice which is in substantially the following form given to a person other than the tenant who the landlord believes may be an owner of personal property satisfies the requirements of Section 1983:

NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

To: _____
(Name of person to whom notice is given.)

Address: _____
(Street address; if mailed, a notice must be sent to the last known address and all other addresses where the person might reasonably be expected to be located.)

(City and state.)

When _____ vacated the premises at _____
(Name of former tenant) (Address of pre-

_____, the following premises, including room or apartment number, if any)

sonal property remained:

(Describe the property in a manner reasonably adequate to permit the owner of the property to identify it; a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents, may be described as such without describing its contents.)

If you own any of this property, you may claim it at _____
(Address where property may be claimed). Unless you pay the reasonable cost of storage and take possession of the property to which you are entitled not

later than _____

(Insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail)

it will be disposed of pursuant to Civil Code Section 1988.

Dated: _____
(Signature of landlord or his agent)

(Type or print name of such person)

(Telephone number of such person)

(Address of such person)

§ 1985

Comment. Section 1985 provides a form of notice to a person (other than the tenant) who the landlord believes may be an owner of personal property remaining on the premises which satisfies the requirements of Section 1983. See Section 1984 (form of notice to tenant).

§ 1986. Preservation of property

1986. The personal property described in the notice shall be stored by the landlord in a place of safekeeping until the landlord either releases the property pursuant to Section 1987 or disposes of the property pursuant to Section 1988.

Comment. Section 1986 provides for the preservation of the property remaining on the premises until it is disposed of or released. This requirement is the second condition of the limitation of the landlord's liability under Section 1989. See Section 1981(b).

§ 1987. Release of property to tenant or owner other than tenant

1987. The landlord shall release the personal property described in the notice to the tenant or, at the landlord's option, to any person reasonably believed by the landlord to be its owner if such person pays the reasonable cost of storage and takes possession of the property not later than the date specified in the notice for taking possession.

Comment. Section 1987 provides for release of the property when a claim is made and the costs of storage are paid. See Section 1990 (costs of storage). The landlord is free to specify any date in the notice as long as the period allowed for taking possession meets the minimum requirements of the second sentence of Section 1983(b). This section, along with Section 1988, provides the third condition which must be satisfied before the landlord's liability may be limited pursuant to Section 1989. See Section 1981(b).

§ 1988. Disposition of property not released

1988. (a) If the personal property described in the notice is not released pursuant to Section 1987, it shall be sold at public sale by competitive bidding. However, if the landlord reasonably believes that the total resale value of the property not released is less than one hundred dollars (\$100), he may retain such property for his own use or dispose of it in any manner he chooses.

(b) Notice of the time and place of the public sale shall be given by publication at least once in a newspaper of general circulation published in the county where the sale is to be held not less than five days before the sale is to be held. The notice of the sale shall not be published before the last of the dates specified for taking possession of the property in any notice given pursuant to Section 1983. The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it. The notice may

describe all or a portion of the property, but the landlord is not protected from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(c) After deduction of the costs of storage, advertising, and sale, any balance of the proceeds of the sale which is not claimed by the tenant or an owner other than the tenant 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 tenant or an owner other than the tenant 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 is not liable to other claimants upon payment of the balance.

Comment. Section 1988 provides for the disposition of the property which is not released to the tenant or the owner pursuant to Section 1987. This

section, along with Section 1987, provides the third condition which must be satisfied before the landlord's liability may be limited pursuant to Section 1989. See Section 1981(b). The general rule for disposition of property not released is that it shall be sold at public sale by competitive bidding according to the provisions of subdivision (b). However, as an alternative, where the landlord reasonably believes that the remaining property is worth less than \$100 in total resale value, he may keep or dispose of the property as he desires and still take advantage of the limitation on liability provided by Section 1989.

Subdivision (b) provides for the manner of sale. In order to guarantee that property will not be sold before all of the periods specified in the notices to the tenant and any other owner have expired, subdivision (b) provides that notice of the sale may not be published until all the periods within which possession may be taken have expired. Of course, where the landlord reasonably believes that there are no owners of the property other than the tenant, or where all notices given specify the same date by which possession may be taken, this problem will not arise.

Subdivision (c) provides for the disposition of funds remaining after the costs of storage, advertising, and sale are deducted from the proceeds of the sale of the property. The manner of determining such costs is provided in Section 1990. Insofar as subdivision (c) requires payment to the county, subject to the claim of the tenant or an owner other than the tenant, it retains the substance of former Civil Code Section 1862. The last two sentences of subdivision (c) are intended to protect the county in the event there are conflicting claims to the balance.

§ 1989. Limitations on landlord's liability

1989. (a) Where the landlord releases property to the tenant pursuant to Section 1987, the landlord is not liable with respect to that property to any person.

(b) Where the landlord releases property pursuant to Section 1987 to a person, other than the tenant, who he reasonably believes may be the owner, the landlord is not liable with respect to that property to

(1) any person to whom notice was given pursuant to Section 1983, or

(2) any other person unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person may have had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

(c) Where property is sold at public sale pursuant to Section 1988 or where the landlord reasonably believes that the total resale value of the property not released pursuant to Section 1987 is less than one hundred dollars (\$100), the landlord is not liable with respect to that property to

(1) any person to whom notice was given pursuant to Section 1983, or

(2) any other person unless such person proves that, prior to disposing of the property pursuant to Section 1988, the landlord believed or reasonably should have believed that such person may have had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.

Comment. Section 1989 provides for limitations on the landlord's liability when the procedures of this chapter are followed. See Section 1981.

Generally, a landlord is not liable to any person to whom he has given notice or to any other person unless that person can show that the landlord believed or reasonably should have believed that he may have been an owner. It should be noted that, under the definition of "reasonable belief" in Section 1980(d), 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 subdivisions (b)(2) and (c)(2), the landlord is required to make a reasonable investigation concerning the address of a known owner.

Subdivision (a) makes clear that the landlord may protect himself in any case from liability by releasing property to the tenant pursuant to Section 1987. This is so regardless of whether the landlord has given notice pursuant to Section 1983. Thus, even where the landlord believes that some person other than the tenant may be the owner of the property, the landlord may release the property to the tenant, thereby avoiding the necessity of deciding who is the rightful owner and suffering the consequences of an incorrect decision.

Subdivision (b) makes clear that, where property is released to a person other than the tenant who the landlord believes may be an owner of the property, the landlord is not liable to anyone receiving notice pursuant to Section 1983. The landlord may, however, be liable to a person who proves that he should have received notice--i.e., that the landlord either believed or reasonably should have believed that such person may have been an owner, and should have known his address upon reasonable investigation. See Section 1980(d).

Subdivision (c) provides identical rules of liability to those in subdivision (b) applicable to cases where the property is sold pursuant to Section 1988 or where the property not released pursuant to Section 1987 is worth less than \$100.

§ 1990. Costs of storage

1990. (a) Costs of storage which may be required to be paid under this chapter shall be assessed in the following manner:

(1) Where a tenant claims property pursuant to Section 1987, he may be required to pay the reasonable costs of storage 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 pursuant to Section 1987, he may be required to pay the reasonable costs of storage for only the property in which he claims an interest.

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

(c) If the landlord stores the personal property on the premises, the cost of storage shall be the fair rental value of the premises or portion thereof required for such storage for the term of the storage.

Comment. Section 1990 follows the principle that the tenant is primarily responsible and so should pay the reasonable costs incurred in the preservation of all the property left on the premises after the termination of his tenancy. The owner of personal property who is not himself a tenant should not have to pay the storage costs for any abandoned property other than that which he is claiming. Since the landlord cannot be sure that the owners will claim the property, when the tenant appears first, he may be required to pay the reasonable costs of storage for all the property even that which is known to belong to another person. Of course, under subdivision (b), the landlord may not then charge the owner for these same storage costs should he later appear and make his claim. Subdivision (c) is similar to a 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).

§ 1991. Combining notice to tenant with notice of abandonment of premises

1991. The notice to the tenant given pursuant to Section 1983 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 1991 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 leased real property by a lessee. Cf. Code Civ. Proc. § 1174.

Note. Section 1953.1 is a new section proposed by the Commission. See Tentative Recommendation Relating to Abandonment of Leased Real Property.

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

Sec. 6. 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 to the plaintiff or his attorney or, if no such address is known, at the premises. The writ of restitution of the premises shall include

a statement that personal property remaining on the premises at the time of its restitution to the landlord will be sold or otherwise disposed of in accordance with Section 1174 of the Code of Civil Procedure unless the tenant or the owner pays the landlord 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 landlord.

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 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.~~

ALL IN
STRIKEOUT

~~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.~~

ALL IN
STRIKEOUT

(e) Lost personal property remaining on the premises 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. However, if the appropriate police or sheriff's department refuses to accept such property, it shall be deemed not to have been lost. The landlord is not liable to the owner of any property which the landlord reasonably believes to have been lost if he complies with this subdivision.

(f) Except as otherwise provided in subdivision (e), the landlord's liability with respect to the disposition of personal property remaining on the premises is limited as provided in Section 1989 of the Civil Code if he does all of the following:

(1) Gives notice to the tenant pursuant to subdivision (d).

(2) Gives notice to any person, other than the tenant, who the landlord reasonably believes may be the owner of the property pursuant to Section 1983 of the Civil Code.

(3) Stores the property in a place of safekeeping for at least 15 days after the premises are restored to the landlord pursuant to subdivision (d) or such longer period as stated in the notice given pursuant to Section 1983 of the Civil Code, unless before that time the property is released:

(4) Releases the property to the tenant or to the other person reasonably believed by the landlord to be its owner if such person pays the costs of storage as provided in Section 1990 of the Civil Code and claims the property not later than the date for making such claim specified in the writ of restitution or the notice.

(5) Disposes of property which is not released pursuant to Section 1988 of the Civil Code.

(g) For the purposes of subdivisions (e) and (f), the terms "owner," "premises," and "reasonable belief" have the same meaning as provided in Section 1980 of the Civil Code.

Comment. Section 1174 is amended to conform generally to the provisions of Civil Code Section 1980 et seq. relating to the disposition of personal property remaining on the premises at the termination of a tenancy. See Civil Code § 1980 and Comments. The procedure for disposition of property under Section 1174 differs from the Civil Code procedure to the extent that the notice to the tenant is given in the writ of restitution, and the time allowed the tenant for making a claim is always 15 days after restitution of the premises. Compare subdivision (d) with Civil Code § 1983. The procedure for giving notice to a person reasonably believed by the landlord to be an owner of the property is the same in both procedures. The form of notice to the owner other than the tenant provided in Civil Code Section 1985 satisfies the requirements of subdivision (f)(3). Property which is not released is to be sold (or may be retained by the landlord if worth less than \$100) as provided in Civil Code Section 1988.

The provision that permitted the plaintiff to apply the balance of the proceeds of sale to his judgment has been repealed. 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)).