9/19/78

Memorandum 78-64

Subject: New Topics

Summary

The staff recommends that the Commission request authority to study three new topics:

(1) The law relating to the rights and disabilities of minors and incompetent persons.

(2) The law relating to powers of appointment.

(3) The law relating to the hiring of property and related matters.

The description of these topics, prepared for inclusion in the Annual Report, is attached as Exhibit 2 to this Memorandum.

Rights and Disabilities of Minors and Incompetent Persons

Our work on guardianship and conservatorship law has revealed a major problem area: The law relating to the rights of minors and incompetent persons is a mess. The law is unclear as to even such fundamental matters as the right to marry or hold public office. Where there is a statutory standard specified, the standard is often inappropriate. In some cases, the courts have interpreted the statutory standards to mean something quite different from that set out in the statute. Many of the statutes are predicated on the assumption that appointment of a conservator amounts to a determination that a person is incompetent. This assumption is incorrect.

Studies of California law and the law of other jurisdictions, such as the American Bar Foundation's "The Mentally Disabled and the Law" (1971) and Allen, Ferster, and Weihofen's "Mental Impairment and Legal Incompetency" (1968) have noted the following typical defects in the statutes of California and other jurisdictions:

> 1. they fail to state whether a formal legal adjudication of mental disability is required before personal and property rights are restricted;
> 2. they fail to indicate whether prohibition of rights applies to a person who is in fact incompetent but who has not been so adjudicated;
> 3. they neglect to spell out administrative procedures enforcing the suspension of rights; and
> 4. they fail to specify when or how reinstatement of any suspended rights occurs.

The Commission has undertaken to straighten out the law relating to the ability of a conservatee to engage in transactions that affect the conservatorship estate. This will be a useful clarification of the law, but it is just the tip of the iceberg. The staff believes that the Commission can make a substantial contribution to the law in this area by a thorough study of the rights of minors and incompetent persons, with the view to recommending a uniform statutory scheme that clarifies the circumstances under which a person's rights are impaired and sets appropriate statutory standards. This would be a major undertaking, but the staff believes that the Commission is perhaps the only entity in any kind of a position to accomplish such a reform in the law, and it is something that should be done. The study could be conducted by considering specific problems and clarifying the law in particular areas by a series of recommendations submitted over a period of years.

Powers of Appointment

We have on hand a draft of a law review article discussing one problem in connection with application of anti-lapse provisions to powers of appointment. We could consider that article and determine whether any change should be made in the California statute with a modest expenditure of Commission time and resources. If the topic is authorized for study, we could continue it on our agenda in case any other problems come to our attention in connection with the powers of appointment statute which was enacted upon Commission recommendation.

Hiring of Property and Related Matters

The Commission will recall that several persons, including Assemblyman McVittie, are strongly of the view that a reorganization and restatement of the statutory provisions relating to landlord-tenant relations is greatly needed. Exhibit 1 sets out the existing statutory provisions. We believe that an examination of the provisions demonstrates the need for a recodification. In preparing a new statute, technical defects could be corrected and modest substantive changes also could be made.

Mobile Homes

The Commission received a letter suggesting that the subject of mobile homes be studied with a view to limiting rent increases for

mobile home spaces. See Exhibit 3 attached. The staff recommends that authority not be requested to study this topic.

Changes in Civil Practice and Procedure

Assemblyman McAlister suggests that the Commission be authorized to study changes in civil practice and procedure that would result in a saving of judicial time or litigant's costs and expenses. If the Commission is authorized to make such a study, the Legislature undoubtedly would expect to see something result from the study. In other words, the Commission would be held accountable for producing something significant and within a reasonable time if the study were to be authorized. On the other hand, perhaps this is the area where the Commission's resources should be allocated. Does the Commission wish to request authority to make such a study? This area is one that is of primary concern to the Judicial Council.

Respectfully submitted,

John H. DeMoully
Executive Secretary

EXHIBIT 1

TITLE 5

Hiring

Chapter

CHAPTER 1

Hiring in General

§ 1925. Hiring, what. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter

agrees to return the same to the former at a future time. [1872.] *Cal Jur 3d Bailments § 11, Employer and Employee § 15; Cal Jur 2d L & T § 2; Witkin Summary (8th ed) pp 1729, 2108.*

§ 1926. Products of thing. The products of a thing hired, during the hiring, belong to the hirer. [1872.] *Cal Jur 3d Accession and Confusion of Goods § 2, Bailments § 19; Cal Jur 2d L & T § 118.*

§ 1927. Quiet possession. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same. [1872.] *Cal Jur 3d Bailments § 19; Cal Jur 2d L & T §§ 58, 59, 60, 112, 247; Cal Practice § 198:1; Witkin Summary (8th ed) p 2123.*

§ 1928. Degree of care, etc., on part of hirer. The hirer of a thing must use ordinary care for its preservation in safety and in good condition. [1872.] *Cal Jur 3d Animals § 18 Bailments § 27; Cal Jur 2d L & T § 136; Cal Practice § 194:2; Witkin Procedure 2d, p 1164; Summary (8th ed) p 2132.*

§ 1929. [Must repair injuries, etc.] The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his want of ordinary care. [1872; 1905 ch 454 § 1.] *Cal Jur 3d Bailments § 14; Cal Jur 2d L & T § 136; Cal Practice §§ 194:2, 253:4, Witkin Summary (8th ed) pp 1729, 2132.*

§ 1930. [Thing let for a particular purpose.] When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does, he is liable to the letter for all damages resulting from such use, or the letter may treat the contract as thereby rescinded. [1872; 1905 ch 454 § 1.] *Cal Jur 3d Bailments § 26; Cal Jur 2d L & T §§ 119, 120, 121, 282, 330, O & G § 53, Waste § 8; Cal Practice §§ 193:2, 193:3; Witkin Summary (8th ed) pp 581, 1731, 2173, 2176.*

§ 1931. When letter may terminate the hiring. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make. [1872.] *Cal Jur 3d Bailments §§ 9, 26; Cal Jur 2d L & T §§ 275, 281, 282; Cal Forms 21:123–126; Witkin Summary (8th ed) pp 1731, 1732.*

§ 1932. [Hirer may terminate the hiring, when.] The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer. [1872; 1905 ch 454 § 3.] *Cal Jur 3d Bailments § 9; Cal Jur 2d L & T §§ 192, 256, 275, 281; Witkin Summary (8th ed) pp 2135, 2174.*

§ 1933. When hiring terminates. The hiring of a thing terminates:

1. At the end of the term agreed upon;

2. By the mutual consent of the parties;

3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,

4. By the destruction of the thing hired. [1872.] *Cal Jur 3d Bailments § 9; Cal Jur 2d L & T §§ 192, 249, 256, 263, 272; Cal Forms 21:122; Witkin Summary (8th ed) p 2174.*

§ 1934. When terminated by death, etc., of party. If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby. [1872.] *Cal Jur 3d Bailments § 9; Cal Jur 2d L & T § 250.*

§ 1935. Apportionment of hire. When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him. [1872.] *Cal Jur 3d Bailments § 9; Cal Jur 2d L & T §§ 197, 211: Witkin Summary (8th ed) pp 452, 2119, 2120.*

CHAPTER 2

Hiring of Real Property

§ 1940. [Application of chapter.] (a) Except as provided in subdivision (b), this chapter shall apply to all persons who hire dwelling units located within this state including tenants, lessees, boarders, lodgers, and others, however denominated.

(b) The term "persons who hire" shall not include a person who maintains either of the following:

(1) Transient occupancy in a hotel, motel, residence club, or other facility when such occupancy is or would be subject to tax under Section 7280 of the Revenue and Taxation Code.

(2) Occupancy at a hotel or motel where the innkeeper retains a right of access to and control of the dwelling unit and the hotel or motel provides or offers all of the following services to all of the residents:

(A) Facilities for the safeguarding of personal property pursuant to Section 1860.

(B) Central telephone service subject to tariffs covering the same filed with the California Public Utilities Commission.

(C) Central dining, maid, mail, room and recreational services.

(D) Occupancy for periods of less than seven days.

(c) "Dwelling unit" means a structure or the part of a structure that is used as a

home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(d) Nothing in this section shall be construed to limit the application of any provision of this chapter to tenancy in a dwelling unit unless such provision is so limited by its specific terms. [1976 ch 712 § 1.]

§ 1941. [Lessor to make dwelling-house fit for its purpose.] The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenantable, except such as are mentioned in section nineteen hundred and twenty-nine. [1872; 1873–74 ch 612 § 205.] *Cal Jur 2d L & T §§ 55, 65, 134, 146; Cal Practice § 253:4; Cal Forms 21:11–24, 31 et seq. Witkin Summary (8th ed) pp 2128, 2129, 2130, 2131, 2142, 2205, 2206.*

§ 1941.1. [When dwelling untenantable.] A dwelling shall be deemed untenantable for purposes of Section 1941 if it substantially lacks any of the following affirmative standard characteristics:

(a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.

(b) Plumbing facilities which conformed to applicable law in effect at the time of installation, maintained in good working order.

(c) A water supply approved under applicable law, which is under the control of the tenant, capable of producing hot and cold running water, or a system which is under the control of the landlord, which produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.

(d) Heating facilities which conformed with applicable law at the time of installation, maintained in good working order.

(e) Electrical lighting, with wiring and electrical equipment which conformed with applicable law at the time of installation, maintained in good working order.

(f) Building, grounds and appurtenances at the time of the commencement of the lease or rental agreement in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.

(g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter, and being responsible for the clean condition and good repair of such receptacles under his control.

(h) Floors, stairways, and railings maintained in good repair. [1970 ch 1280 § 1.] *Witkin Summary (8th ed) pp 2129, 2131.*

§ 1941.2. [Tenant's violations as excusing landlord's duties under §§ 1941 or 1942.] (a) No duty on the part of the lessor shall arise under Section 1941 or 1942 if the lessee is in substantial violation of any of the following affirmative obligations:

(1) To keep that part of the premises which he occupies and uses clean and sanitary as the condition of the premises permits.

(2) To dispose from his dwelling unit all rubbish, garbage and other waste, in a clean and sanitary manner.

(3) To properly use and operate all electrical, gas and plumbing fixtures and keep them as clean and sanitary as their condition permits.

(4) Not to permit any person on the premises, with his permission, to willfully or wantonly destroy, deface, damage, impair or remove any part of the structure or dwelling unit or the facilities, equipment, or appurtenances thereto, nor himself do any such thing.

(5) To occupy the premises as his abode, utilizing portions thereof for living, sleeping, cooking or dining purposes only which were respectively designed or intended to be used for such occupancies.

(b) Paragraphs (1) and (2) of subdivision (a) shall not apply if the lessor has expressly agreed in writing to perform the act or acts mentioned therein. [1970 ch 1280 § 2.] *Witkin Summary (8th ed) pp 2130, 2131.*

§ 1942. [When lessee may make repairs, etc.] (a) If within a reasonable time after notice to the lessor, of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the cost of such repairs does not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may

vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions. This remedy shall not be available to the lessee more than once in any 12-month period.

(b) For the purposes of this section, if a lessee acts to repair and deduct after the 30th day following notice, he is presumed to have acted after a reasonable time. The presumption established by this subdivision is a presumption affecting the burden of producing evidence. [1872; 1873–74 ch 612 § 206; 1970 ch 1280 § 3.] *Cal Jur 2d L & T §§ 55, 66, 134, 146; Cal Practice § 198:2; Witkin Procedure 2d, p 3864; Summary (8th ed) pp 425, 2128, 2130, 2131, 2142, 2205, 2206, 2207.*

§ 1942.1. [Agreement to waive tenant's rights under §§ 1941 or 1942: Arbitration.] Any agreement by a lessee of a dwelling waiving or modifying his rights under Section 1941 or 1942 shall be void as contrary to public policy with respect to any condition which renders the premises untenantable, except that the lessor and the lessee may agree that the lessee shall undertake to improve, repair or maintain all or stipulated portions of the dwelling as part of the consideration for rental.

The lessor and lessee may, if an agreement is in writing, set forth the provisions of Sections 1941 to 1942.1, inclusive, and provide that any controversy relating to a condition of the premises claimed to make them untenantable may by application of either party be submitted to arbitration, pursuant to the provisions of Title 9 (commencing with Section 1280), Part 3 of the Code of Civil Procedure, and that the costs of such arbitration shall be apportioned by the arbitrator between the parties. [1970 ch 1280 § 4.] *Witkin Summary (8th ed) pp 2130, 2131.*

§ 1942.5. [Tenant's remedy for retaliation for exercising rights or filing complaint.] (a) If the lessor has as his dominant purpose retaliation against the lessee because of the exercise by the lessee of his rights under this chapter or because of his complaint to an appropriate governmental agency as to tenantability of a dwelling, and if the lessee of a dwelling is not in default as to the payment of his rent, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 60 days:

(1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942; or

(2) After the date upon which the lessee, in good faith, has filed a written complaint, with an appropriate governmental agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenantability; or

(3) After the date of an inspection or issuance of a citation, resulting from a written complaint described in paragraph (2) of which the lessor did not have notice; or

(4) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor.

In each instance, the 60-day period shall run from the latest applicable date referred to in paragraphs (1) to (4), inclusive.

(b) A lessee may not invoke the provisions of this section more than once in any 12-month period.

(c) Nothing in this section shall be construed as limiting in any way the exercise by the lessor of his rights under any lease or agreement or any law pertaining to the hiring of property or his right to do any of the acts described in subdivision (a) for any lawful cause. Any waiver by a lessee of his rights under this section shall be void as contrary to public policy.

(d) Notwithstanding the provisions of subdivisions (a) to (c), inclusive, a lessor may recover possession of a dwelling and do any of the other acts described in subdivision (a) within the period or periods prescribed therein if the notice of termination, rent increase, or other act, and any pleading or statement of issues in an arbitration, if any, states the ground upon which the lessor, in good faith, seeks to recover possession, increase rent, or do any of the other acts described in subdivision (a). If such statement be controverted, the lessor shall establish its truth at the trial or other hearing. [1970 ch 1280 § 5.] *Cal Jur 3d Ejectment and Related Remedies; Witkin Summary (8th ed) pp 2207, 2208.*

§ 1943. [Term of hiring when no limit is fixed.] A hiring of real property, other than lodgings and dwelling-houses, in places where there is no custom or usage on the subject, is presumed to be a month to month tenancy unless otherwise designated in writing; except that, in the case of real property used for agricultural or grazing purposes a hiring is presumed to be for one year from

its commencement unless otherwise expressed in the hiring. [1872; 1953 ch 1541 § 1.] *Cal Jur 2d L & T §§ 35, 45; Witkin Evidence p 218; Summary (8th ed) p 2114.*

§ 1944. Hiring of lodgings [or dwelling-house] for indefinite term. A hiring of lodgings or a dwelling-house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly. [1872.] *Cal Jur 2d L & T §§ 45, 135; Witkin Evidence p 218; Summary (8th ed) p 2114.*

§ 1945. Renewal of lease by lessee's continued possession. If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year. [1872.] *Cal Jur 2d L & T §§ 45, 309; Cal Practice § 195:12; Witkin Summary (8th ed) p 2161.*

§ 1945.5. [Required printing of provision in lease of residential property.] Notwithstanding any other provision of law, any term of a lease executed after the effective date of this section for the hiring of residential real property which provides for the automatic renewal or extension of the lease for all or part of the full term of the lease if the lessee remains in possession after the expiration of the lease or fails to give notice of his intent not to renew or extend before the expiration of the lease shall be voidable by the party who did not prepare the lease unless such renewal or extension provision appears in at least eight-point bold-face type, if the contract is printed, in the body of the lease agreement and a recital of the fact that such provision is contained in the body of the agreement appears in at least eight-point bold-face type, if the contract is printed, immediately prior to the place where the lessee executes the agreement. In such case, the presumption in Section 1945 of this code shall apply.

Any waiver of the provisions of this section is void as against public policy. [1965 ch 1664 § 1; 1976 ch 1107 § 1.] *Witkin Summary (8th ed) pp 427, 428, 2161.*

§ 1946. [Notice required to prevent renewal of hiring for unspecified term: Termination of monthly tenancies: Notice.] A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding 30 days; provided, however, that as to tenancies from month to month either of the parties may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination. It shall be competent for the parties to provide by an agreement at the time such tenancy is created that a notice of the intention to terminate the same may be given at any time not less than seven days before the expiration of the term thereof. The notice herein required shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail addressed to the other party. In addition, the lessee may give such notice by sending a copy by certified or registered mail addressed to the agent of the lessor to whom the lessee has paid the rent for the month prior to the date of such notice or by delivering a copy to the agent personally. [1872; 1931 ch 643 § 1; 1937 ch 354 § 1; 1941 ch 784 § 1; 1947 ch 676 § 2; 1969 ch 442 § 1; 1973 ch 167 § 10.] *Cal Jur 2d L & T §§ 291, 294, 298, 300, 309, O & G § 144; Cal Practice § 195:12; Cal Forms 21:94, 95; Witkin Summary (8th ed) pp 2183, 2205.*

§ 1947. Rent, when payable. When there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at termination of the respective periods, as it successively becomes due. [1872.] *Cal Jur 2d L & T § 202; Cal Practice § 191:1; Witkin Summary (8th ed) p 2118.*

§ 1948. Attornment of a tenant to a stranger. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction. [1872.] *Cal Jur 2d L & T § 95; Witkin Summary (8th ed) p 2100.*

§ 1949. [Tenant must deliver notice served on him.] Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession

thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him [if] in writing. [1872; 1873–74 ch 612 § 207.] *Cal Jur 3d Ejectment and Related Remedies § 26; Cal Jur 2d L & T § 95; Cal Practice § 195:18.*

§ 1950. Letting parts of rooms forbidden. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues. [1872.] *Cal Jur 2d L & T §§ 19, 113.*

§ 1950.5. [Security for performance of rental agreement for residential property.] (a) The provisions of this section shall apply to security for a rental agreement for residential property, that is, property used as the dwelling of the tenant.

(b) As used in this section, "security" means any payment, fee, deposit or charge, including, but not limited to, an advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following:

(1) The compensation of a landlord for a tenant's default in the payment of rent.

(2) The repair of damages to the premises caused by the tenant.

(3) The cleaning of the premises upon termination of the tenancy.

(c) A landlord may not demand or receive security, however denominated, in an amount or value in excess of an amount equal to two months' rent, in the case of unfurnished residential property, and an amount equal to three months' rent in the case of furnished residential property, in addition to any rent for the first month paid on or before initial occupancy. This subdivision shall not be construed to prohibit an advance payment of not less than six months' rent where the term of the lease is six months or longer.

This subdivision shall not be construed to preclude a landlord and a tenant from entering into a mutual agreement for the landlord, at the request of the tenant and for a specified fee or charge, to make structural, decorative, furnishing, or other similar alterations, such alterations being other than that cleaning or repairing for which the landlord may charge the previous tenant as provided by subdivision (e).

(d) Any security shall be held by the landlord for the tenant who is party to such lease or agreement. The claim of a tenant to such security shall be prior to the claim of any creditor of the landlord.

(e) The landlord may claim of the security only such amounts as are reasonably necessary to remedy tenant defaults in the payment of rent, to repair damages to the premises caused by the tenant, exclusive of ordinary wear and tear, or to clean such premises, if necessary, upon termination of the tenancy. No later than two weeks after the tenant has vacated the premises, the landlord shall furnish the tenant with an itemized written statement of the basis for, and the amount of, any security received and the disposition of such security and shall return any remaining portion of such security to the tenant.

(f) Upon termination of the landlord's interest in the dwelling unit in question, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within a reasonable time, do one of the following acts, either of which shall relieve him of further liability with respect to such security held:

(1) Transfer the portion of such security remaining after any lawful deductions made under subdivision (e) to the landlord's successor in interest, and thereafter notify the tenant by personal delivery or certified mail of such transfer, of any claims made against the security, and of the transferee's name, address, and telephone number. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of such notice and sign his name on the landlord's copy of such notice.

(2) Return the portion of such security remaining after any lawful deductions made under subdivision (e) to the tenant, together with an accounting as provided in subdivision (e).

(g) Upon receipt of any portion of such security under paragraph (1) of subdivision (f), the transferee shall have all the rights and obligations of a landlord holding such security with respect to such security.

(h) The bad faith claim or retention by a landlord or transferee of a security or any

portion thereof, in violation of this section, may subject the landlord or his transferee to damages not to exceed two hundred dollars ($200), in addition to any actual damages. In any action under this section, the landlord shall have the burden of proof as to the reasonableness of the amounts claimed.

(i) No lease or rental agreement shall contain any provision characterizing any security as "nonrefundable."

(j) Any action under this section may be maintained in small claims court if the damages claimed, whether actual or punitive or both, are within the jurisdictional amount allowed by Section 116.2 of the Code of Civil Procedure.

(k) To the extent that this section is a recodification of the provisions of Chapter 1317 of the Statutes of 1970, as amended by Chapter 618 of the Statutes of 1972, this section became operative on January 1, 1971, and shall apply only to payments or deposits made on or after such date.

The amendments made to the law, as effective on January 1, 1977, by the enactment of this section in the 1977–78 Legislative Session, exclusive of subdivision (e), shall be applicable to all tenancies, leases, or rental agreements for residential property created or renewed on or after January 1, 1978.

Subdivision (e) of this section shall be applicable to all tenancies, leases, or rental agreements for residential property terminated on or after January 1, 1978. [1977 ch 971 § 2.]

§ 1950.7. [Security for performance of rental agreement for other than residential property.] (a) Any payment or deposit of money the primary function of which is to secure the performance of a rental agreement for other than residential property or any part of such an agreement, other than a payment or deposit, including an advance payment of rent, made to secure the execution of rental agreement, shall be governed by the provisions of this section. With respect to residential property, the provisions of Section 1950.5 shall prevail.

(b) Any such payment or deposit of money shall be held by the landlord for the tenant who is party to such agreement. The claim of a tenant to such payment or deposit shall be prior to the claim of any creditor of the landlord, except a trustee in bankruptcy.

(c) The landlord may claim of such payment or deposit only such amounts as are reasonably necessary to remedy tenant defaults in the payment of rent, to repair damages to the premises caused by the tenant, or to clean such premises upon termination of the tenancy, if the payment or deposit is made for any or all of those specific purposes. Any remaining portion of such payment or deposit shall be returned to the tenant no later than two weeks after termination of his tenancy.

(d) Upon termination of the landlord's interest in the unit in question, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent shall, within a reasonable time, do one of the following acts, either of which shall relieve him of further liability with respect to such payment or deposit:

(1) Transfer the portion of such payment or deposit remaining after any lawful deductions made under subdivision (c) to the landlord's successor in interest, and thereafter notify the tenant by personal delivery or certified mail of such transfer, of any claims made against the payment or deposit, and of the transferee's name and address. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of such notice and sign his name on the landlord's copy of such notice.

(2) Return the portion of such payment or deposit remaining after any lawful deductions made under subdivision (c) to the tenant.

(e) Upon receipt of any portion of such payment or deposit under paragraph (1) of subdivision (d), the transferee shall have all of the rights and obligations of a landlord holding such payment or deposit with respect to such payment or deposit.

(f) The bad faith retention by a landlord or transferee of a payment or deposit or any portion thereof, in violation of this section, may subject the landlord or his transferee to damages not to exceed two hundred dollars ($200), in addition to any actual damages.

(g) This section is declarative of existing law and therefore operative as to all tenancies, leases, or rental agreements for other than residential property created or renewed on or after January 1, 1971. [1977 ch 971 § 3.]

§ 1951. ["Rent": "Lease."] As used in Sections 1951.2 to 1952.6, inclusive:

(a) "Rent" includes charges equivalent to rent.

(b) "Lease" includes a sublease. [1970 ch 89 § 1.] *Witkin Procedure 2d, pp 984, 1004; Summary (8th ed) pp 348, 350, 2109, 2119, 2193, 2194, 2211.*

§ 1951.2. [Breach by lessee: Lessor's remedies: Indemnification for prior liabilities of lessee.] (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 rate 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. [1970 ch 89 § 2.] *Witkin Summary (8th ed) pp 537, 2109, 2119, 2181, 2193, 2194, 2195, 2196, 2197, 2198, 2209, 2210.*

§ 1951.3. [Procedure for establishing leased real property has been abandoned by lessee: Notice of belief of abandonment.] (a) Real property shall be deemed abandoned by the lessee, within the meaning of Section 1951.2, and the lease shall terminate if the lessor gives written notice of his belief of abandonment as provided in this section and the lessee fails to give the lessor written notice, prior to the date of termination specified in the lessor's notice, stating that he does not intend to abandon the real property and stating an address at which the lessee may be served by certified mail in any action for unlawful detainer of real property.

(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 14 consecutive days and the lessor reasonably believes that the lessee has abandoned the property. The date of termination of the lease 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.

(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, if there is reason to believe that the notice sent to that address will not be received by the lessee, also to such other address, if any, known to the lessor where the lessee may reasonably be expected to receive the notice.

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

Notice of Belief of Abandonment

To: _____

(Name of lessee/tenant)

(Address of lessee/tenant)

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 14 consecutive days and the lessor/landlord believes that you have abandoned the property. The real 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 both of the following:

(1) Your intent not to abandon the real property.

(2) An address at which you may be served by certified mail in any action for unlawful detainer of the real property.

You are required to pay the rent due and unpaid on this real property as required by the lease, and your failure to do so can lead to a court proceeding against you.

Dated: _____

(Signature of lessor/landlord)

(Type or print name of lessor/landlord)

(Address to which lessee/tenant is to send notice)

(e) The real property shall not be deemed to be abandoned pursuant to this section if the lessee proves any of the following:

(1) At the time the notice of belief of abandonment was given, the rent was not due and unpaid for 14 consecutive days.

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

(3) Prior to the date specified in the lessor's notice, the lessee gave written notice to the lessor stating his intent not to abandon the real property and stating an address at which he may be served by certified mail in any action for unlawful detainer of the real property.

(4) During the period commencing 14 days before the time the notice of belief of abandonment was given and ending on the date the lease would have terminated pursuant to the notice, the lessee paid to the lessor all or a portion of the rent due and unpaid on the real property.

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

(g) Nothing in this section precludes the lessor from serving a notice requiring the lessee to pay rent or quit as provided in Sections 1161 and 1162 of the Code of Civil Procedure at any time permitted by those sections, or affects the time and manner of giving any other notice required or permitted by law. The giving of the notice provided by this section does not satisfy the requirements of Sections 1161 and 1162 of the Code of Civil Procedure. [1974 ch 332 § 1.]

§ 1951.4. [*Continuation of lease.*] (a) The remedy described in this section is available only if the lease provides for this remedy.

(b) Even though a lessee of real property has breached his lease and abandoned the property, the lease continues in effect for so long as the lessor does not terminate the lessee's right to possession, and the lessor may enforce all his rights and remedies under the lease, including the right to recover the rent as it becomes due under the lease, if the lease permits the lessee to do any of the following:

(1) Sublet the property, assign his interest in the lease, or both.

(2) Sublet the property, assign his interest in the lease, or both, subject to standards or conditions, and the lessor does not require compliance with any unreasonable standard for, nor any unreasonable condition on, such subletting or assignment.

(3) Sublet the property, assign his interest in the lease, or both, with the consent of the lessor, and the lease provides that such consent shall not unreasonably be withheld.

(c) For the purposes of subdivision (b), the following do not constitute a termination of the lessee's right to possession:

(1) Acts of maintenance or preservation or efforts to relet the property.

(2) The appointment of a receiver upon initiative of the lessor to protect the lessor's interest under the lease. [1970 ch 89 § 3.]

Witkin Procedure p 984; Summary (8th ed) pp 2109, 2119, 2193, 2194, 2208, 2209, 2210.

§ 1951.5. (Operative until July 1, 1978) [Liquidated damages.] Sections 1670 and 1671, relating to liquidated damages, apply to a lease of real property. *Witkin Summary (8th ed) pp 2109, 2119, 2193, 2194, 2198, 2209.*

§ 1951.5. (Operative beginning July 1, 1978) [Liquidated damages.] Section 1671, relating to liquidated damages, applies to a lease of real property. [1970 ch 89 § 3; 1977 ch 198 § 8, operative July 1, 1978.]

§ 1951.7. [Advance payments to lessor: Notice of reletting.] (a) As used in this section, "advance payment" means moneys paid to the lessor of real property as prepayment of rent, or as a deposit to secure faithful performance of the terms of the lease, or any other payment which is the substantial equivalent of either of these. A payment that is not in excess of the amount of one month's rent is not an advance payment for the purposes of this section.

(b) The notice provided by subdivision (c) is required to be given only if:

(1) The lessee has made an advance payment;

(2) The lease is terminated pursuant to Section 1951.2; and

(3) The lessee has made a request, in writing, to the lessor that he be given notice under subdivision (c).

(c) Upon the initial reletting of the property, the lessor shall send a written notice to the lessee stating that the property had been relet, the name and address of the new lessee, and the length of the new lease and the amount of the rent. The notice shall be delivered to the lessee personally, or be sent by regular mail to the lessee at the address shown on the request, not later than 30 days after the new lessee takes possession of the property. No notice is required if the amount of the rent due and unpaid at the time of termination exceeds the amount of the advance payment. [1970 ch 89 § 5.] *Witkin Procedure p 1004; Summary (8th ed) pp 2119, 2198.*

§ 1951.8. [Lessor's right to equitable relief unaffected.] Nothing in Section 1951.2 or 1951.4 affects the right of the lessor under a lease of real property to equitable relief where such relief is appropriate. [1970 ch 89 § 6.] *Witkin Summary (8th ed) pp 2119, 2194, 2199.*

§ 1952. [Effect of actions for unlawful detainer, forcible entry, forcible detainer.] (a) Except as provided in subdivision (c), nothing in Sections 1951 to 1951.8, inclusive, affects the provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, relating to actions for unlawful detainer, forcible entry, and forcible detainer.

(b) Unless the lessor amends the complaint as provided in paragraph (1) of subdivision (a) of Section 1952.3 to state a claim for damages not recoverable in the unlawful detainer proceeding, the bringing of an action under the provisions of Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure does not affect the lessor's right to bring a separate action for relief under Sections 1951.2, 1951.5, and 1951.8, but no damages shall be recovered in the subsequent action for any detriment for which a claim for damages was made and determined on the merits in the previous action.

(c) After the lessor obtains possession of the property under a judgment pursuant to Section 1174 of the Code of Civil Procedure, he is no longer entitled to the remedy provided under Section 1951.4 unless the lessee obtains relief under Section 1179 of the Code of Civil Procedure. [1970 ch 89 § 7; 1977 ch 49 § 1.] *Witkin Procedure 2d, p 984; Summary (8th ed) pp 2119, 2194, 2195, 2199, 2200, 2210.*

§ 1952.2. [Leases affected.] Sections 1951 to 1952, inclusive, do not apply to:

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

(b) Any lease executed on or after July 1, 1971, if the terms of the lease were fixed by a lease, option, or other agreement executed before July 1, 1971. [1970 ch 89 § 8.] *Witkin Summary (8th ed) pp 2109, 2119, 2193, 2194.*

§ 1952.3. [Possession delivered to lessor before trial or judgment in unlawful detainer proceeding.] (a) Except as provided in subdivisions (b) and (c), if the lessor brings an unlawful detainer proceeding and possession of the property is no longer in issue because possession of the property has been delivered to the lessor before trial or, if there is no trial, before judgment is entered, the case becomes an ordinary civil action in which:

(1) The lessor may obtain any relief to which he is entitled, including, where applicable, relief authorized by Section 1951.2; but, if the lessor seeks to recover damages described in paragraph (3) of subdivision (a)

of Section 1951.2 or any other damages not recoverable in the unlawful detainer proceeding, the lessor shall first amend the complaint pursuant to Section 472 or 473 of the Code of Civil Procedure so that possession of the property is no longer in issue and to state a claim for such damages and shall serve a copy of the amended complaint on the defendant in the same manner as a copy of a summons and original complaint is served.

(2) The defendant may, by appropriate pleadings or amendments to pleadings, seek any affirmative relief, and assert all defenses, to which he is entitled, whether or not ehe lessor has amended the complaint; but subdivision (a) of Section 426.30 of the Code of Civil Procedure does not apply unless, after delivering possession of the property to the lessor, the defendant (i) files a cross-complaint or (ii) files an answer or an amended answer in response to an amended complaint filed pursuant to paragraph (1).

(b) The defendant's time to respond to a complaint for unlawful detainer is not affected by the delivery of possession of the property to the lessor; but, if the complaint is amended as provided in paragraph (1) of subdivision (a), the defendant has the same time to respond to the amended complaint as in an ordinary civil action.

(c) The case shall proceed as an unlawful detainer proceeding if the defendant's default (1) has been entered on the unlawful detainer complaint and (2) has not been opened by an amendment of the complaint or otherwise set aside.

(d) Nothing in this section affects the pleadings that may be filed, relief that may be sought, or defenses that may be asserted in an unlawful detainer proceeding that has not become an ordinary civil action as provided in subdivision (a). [1977 ch 49 § 2.]

§ 1952.4. [Agreement for exploration for or removal of natural resources as lease.] An agreement for the exploration for or the removal of natural resources is not a lease of real property within the meaning of Sections 1951 to 1952.2, inclusive. [1970 ch 89 § 9.] *Witkin Summary (8th ed) pp 2109, 2119, 2193, 2194.*

§ 1952.6. [Leases involving public entities or nonprofit corporations: Exclusions.] Sections 1951 to 1952.2, inclusive, shall not apply to any lease or agreement for a lease of real property between any public entity and any nonprofit corporation whose title or interest in the property is subject to reversion to or vesting in a public entity and which issues bonds or other evidences of indebtedness, the interest on which is exempt from federal income taxes, for the purpose of acquiring, constructing, or improving the property or a building or other facility thereon, or between any public entity and any other public entity, unless such lease or such agreement shall specifically provide that Sections 1951 to 1952.2, inclusive, or any portions thereof, are applicable to such lease or such agreement. As used in this section, "public entity" includes the state, a county, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation. [1970 ch 89 § 10; 1971 ch 732 § 1 effective August 24, 1971. *Witkin Summary (8th ed) pp 2109, 2119, 2193, 2194.*

§ 1952.8. [Lease of service station: Vapor control systems.] On and after the effective date of this section, no owner of a gasoline service station shall enter into a lease with any person for the leasing of the station for the purpose of operating a gasoline service station, unless (a) the station is equipped with a vapor control system for the control of gasoline vapor emissions during gasoline marketing operations, including storage, transport, and transfer operations, if such vapor control system is required by law or by any rule or regulation of the State Air Resources Board or of the air pollution control district in which the station is located or (b) no vapor control system has been certified by the board prior to the date of the lease.

A lease entered into in violation of this section shall be voidable at the option of the lessee. [1976 ch 1030 § 1, effective September 20, 1976.]

§ 1953. [Public policy: Certain lease provisions void.] (a) Any provision of a lease or rental agreement of a dwelling by which the lessee agrees to modify or waive any of the following rights shall be void as contrary to public policy:

(1) His rights or remedies under Section 1950.5 or 1954.

(2) His right to assert a cause of action against the lessor which may arise in the future.

(3) His right to a notice or hearing required by law.

(4) His procedural rights in litigation in any action involving his rights and obligations as a tenant.

(5) His right to have the landlord exercise

a duty of care to prevent personal injury or personal property damage where that duty is imposed by law.

(b) Any provision of a lease or rental agreement of a dwelling by which the lessee agrees to modify or waive a statutory right, where the modification or waiver is not void under subdivision (a) or under Section 1942.1, 1942.5, or 1954, shall be void as contrary to public policy unless the lease or rental agreement is presented to the lessee before he takes actual possession of the premises. This subdivision does not apply to any provisions modifying or waiving a statutory right in agreements renewing leases or rental agreements where the same provision was also contained in the lease or rental agreement which is being renewed.

(c) This section shall apply only to leases and rental agreements executed on or after January 1, 1976. [1975 ch 302 § 1.]

§ 1954. [Entry of dwelling unit by landlord.] A landlord may enter the dwelling unit only in the following cases:

(a) In case of emergency.

(b) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors.

(c) When the tenant has abandoned or surrendered the premises.

(d) Pursuant to court order.

Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours unless the tenant consents at the time of entry.

The landlord shall not abuse the right of access or use it to harass the tenant. Except in cases of emergency, when the tenant has abandoned or surrendered the premises, or if it is impracticable to do so, the landlord shall give the tenant reasonable notice of his intent to enter and enter only during normal business hours. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the contrary. [1975 ch 302 § 2.]

CHAPTER 3

Hiring of Personal Property

§ 1955. Obligations of letter of personal property. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use. [1872.] *Cal Jur 3d Bailments §§ 14, 15, 16, 17, 19; Cal Jur 2d Min & M § 175; Witkin Summary (8th ed) pp 1729, 1730, 1731, 3117, 3118.*

§ 1956. Ordinary expenses. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter. [1872.] *Cal Jur 3d Bailments § 13.*

§ 1957. Extraordinary expenses. If a letter fails to fulfill his obligations, as prescribed by section nineteen hundred and fifty-five, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him. [1872.] *Cal Jur 3d Bailments §§ 14, 16; Cal Jur 2d Min & M § 175; Witkin Summary (8th ed) pp 1729, 1730.*

§ 1958. Return of thing hired. At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring; or, if no particular place was so contemplated by them, at the place at which it was at that time. [1872.]

§ 1959. Charter party, what. The contract by which a ship is let is termed a charter party. By it the owner may either let

the capacity or burden of the ship, continuing the employment of the owner's master, crew, and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or a part owner may be a charterer. [1872.] *Cal Jur 2d Ins § 455, Ship § 125.*

CHAPTER 4

Identification of Property Owners

[Added by Stats 1972 ch 941 § 1, operative July 1, 1973.]

§ 1961. [Chapter's application to multiunit dwelling structures.] The provisions of this chapter shall apply to every multiunit dwelling structure in excess of two units which is offered to the public for rent or for lease for residential purposes as a tenant. [1972 ch 941 § 1, operative July 1, 1973.] *Witkin Summary (8th ed) p 2106.*

§ 1962. [Information required in multiunit dwelling rental agreement.] (a) The owner of any dwelling structure specified in Section 1961 or a party signing a rental agreement on behalf of the owner shall disclose therein the name and usual address of each person who is

(1) Authorized to manage the premises; and

(2) An owner of the premises or who is authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for all notices and demands.

(b) In the case of an oral rental agreement the owner or a person acting on behalf of the owner for the receipt of rent or otherwise, on written demand, shall furnish the tenant with a written statement containing the information required by subdivision (a).

(c) The information required by this section shall be kept current and the provisions of this section shall extend to and be enforceable against any successor owner or manager.

(d) If a party who enters into a rental agreement on behalf of the owner fails to comply with this section, he is deemed an agent of each person who is an owner:

(1) For the purpose of service of process and receiving and receipting for notices and demands; and

(2) For the purpose of performing the obligations of the owner under law and under the rental agreement.

(e) Nothing in this section limits or excludes the liability of any undisclosed owner. [1972 ch 941 § 1, operative July 1, 1973.] *Witkin Summary (8th ed) p 2106.*

§ 1962.5. [Alternative methods of disclosing information to multiunit dwelling tenant.] (a) Notwithstanding subdivisions (a) and (b) of Section 1962, the information required by Section 1962 to be disclosed to a tenant may, instead of being disclosed in the manner described in subdivisions (a) and (b) of Section 1962, be disclosed by the following method:

(1) In each multiunit dwelling structure containing an elevator a printed or typewritten notice containing the information required by Section 1962 shall be placed in every elevator and in one other conspicuous place.

(2) In each multiunit structure not containing an elevator, a printed or typewritten notice containing the information required by Section 1962 shall be placed in at least two conspicuous places.

(b) Except as provided in subdivision (a), all the provisions of Section 1962 shall be applicable. [1972 ch 941 § 1, operative July 1, 1973.] *Witkin Summary (8th ed) p 2106.*

CHAPTER 5

Disposition of Personal Property Remaining on Premises at Termination of Tenancy

[Added by Stats 1974 ch 331 § 2.]

§ 1980. [Definitions.] 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" includes any paying guest, lessee, or sublessee of any premises for hire. [1974 ch 331 § 2.] Cal Jur 3d Abandoned, Lost, and Escheated Property §§ 71, 98, Ejectment and Related Remedies § 133.

§ 1981. [Optional procedure: Exceptions.] (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.

(b) This chapter does not apply where Section 1862.5, 2080.8, 2080.9, or 2081 to 2081.6, inclusive, applies. This chapter does not apply to property which exists for the purpose of providing utility services and is owned by a public utility, whether or not such property is actually in operation to provide such utility services.

(c) If the requirements of this chapter are not satisfied, nothing in this chapter affects the rights and liabilities of the landlord, former tenant, or any other person. [1974 ch 331 § 2.]

§ 1982. [Property believed to be lost.] (a) Personal property which the landlord reasonably believes to have been lost shall be disposed of pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Title 6. The landlord is not liable to the owner of the property if he complies with this subdivision.

(b) If the appropriate police or sheriff's department refuses to accept property pursuant to subdivision (a), the landlord may dispose of the property pursuant to this chapter. [1974 ch 331 § 2.]

§ 1983. [Notice to former tenant concerning property remaining after termination of tenancy.] (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 such tenant and to any other person the landlord reasonably believes to 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 limitation of liability provided by Section 1989 does not protect the landlord 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, if there is reason to believe that the notice sent to that address will not be received by that person, also to such other address, if any, known to the landlord where such person may reasonably be expected to receive the notice. If the notice is sent by mail to the former tenant, one copy shall be sent to the premises vacated by such tenant. [1974 ch 331 § 2.]

§ 1984. [Form of notice to former tenant.] (a) A notice given to the former tenant which is substantially the following form satisfies the requirements of Section 1983:

Notice of Right to Reclaim Abandoned Property

To: _____
(Name of former tenant)

_____
(Address of former tenant)

When you vacated the premises at ..... (address of premises, including room or apartment number, if any), the following personal property remained: ..... (insert description of the personal property).

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.

(Insert here the statement required by subdivision (b) of this section)

Dated: _____

_____
(Signature of landlord)

_____
(Type or print name of landlord)

_____
(Telephone number)

_____
(Address)

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

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

(2) "Because this property is believed to be worth less than $100, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above." [1974 ch 331 § 2.]

§ 1985. [Form of notice to person other than former tenant.] A notice which is in substantially the following form given to a person (other than the former tenant) the landlord reasonably believes to be the owner of personal property satisfies the requirements of Section 1983:

Notice of Right to Reclaim Abandoned Property

To: _____
(Name)

_____
(Address)

When ..... (name of former tenant) vacated the premises at ..... (address of premises, including room or apartment number, if any), the following personal property remained: ..... (insert description of the personal property).

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

Dated: _____

_____
(Signature of landlord)

_____
(Type or print name of landlord)

_____
(Telephone number)

_____
(Address)

[1974 ch 331 § 2.]

§ 1986. [Storage of abandoned property:

Responsibility of landlord.] The personal property described in the notice shall either be left on the vacated premises or 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. The landlord shall exercise reasonable care in storing the property, but he is not liable to the tenant or any other owner for any loss not caused by his deliberate or negligent act. [1974 ch 331 § 2.]

§ 1987. [Release of property upon payment of costs.] (a) The personal property described in the notice shall be released by the landlord to the former tenant or, at the landlord's option, to any person reasonably believed by the landlord to be its owner if such tenant or other 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.

(b) Where personal property is not released pursuant to subdivision (a) and the notice stated that the personal property would be sold at a public sale, the landlord shall release the personal property to the former tenant if he claims it prior to the time it is sold and pays the reasonable cost of storage, advertising, and sale incurred prior to the time the property is withdrawn from sale. [1974 ch 331 § 2.]

§ 1988. [Sale or other disposition of unreleased property: Disposition of sale proceeds.] (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. Nothing in this section shall be construed to preclude the landlord or tenant from bidding on the property at the public sale.

(b) Notice of the time and place of the public sale shall be given by publication pursuant to Section 6066 of the Government Code in a newspaper of general circulation published in the county where the sale is to be held. The last publication shall be 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 limitation of liability provided by Section 1989 does not protect the landlord 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 former tenant or an owner other than such 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 former tenant or other owner may claim the balance within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county. If the county pays the balance or any part thereof to a claimant, neither the county nor any officer or employee thereof is liable to any other claimant as to the amount paid. [1974 ch 331 § 2.] *28 Cal Jur 3d Ejectment and Related Remedies § 133.*

§ 1989. [Limitation of liability of landlord.] (a) Notwithstanding subdivision (c) of Section 1981, where the landlord releases to the former tenant property which remains on the premises after a tenancy is terminated, 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 former tenant) reasonably believed by the landlord to be the owner of the property, 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 person to whom notice was not given pursuant to Section 1983 unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person 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 disposed of pursuant to Section 1988, 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 person to whom notice was not given pursuant to Section 1983 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 had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person. [1974 ch 331 § 2.]

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

(1) Where a former 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 former 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 space reasonably required for such storage for the term of the storage. [1974 ch 331 § 2.]

§ 1991. [Notice combined with notice of belief of abandonment of leased real property.] Where a notice of belief of abandonment is given to a lessee pursuant to Section 1951.3, the notice to the former tenant given pursuant to Section 1983 may, but need not, be given at the same time as the notice of belief of abandonment even though the tenancy is not terminated until the end of the period specified in the notice of belief of abandonment. 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 the notices are given. [1974 ch 331 § 2.]

Memorandum 78-64

EXHIBIT 2

TOPICS FOR FUTURE CONSIDERATION

The Commission recommends that it be authorized to study the new topics described below.

A study to determine whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. Major national studies of the law governing the legal capacity of persons under disabilities such as minority and incompetence have revealed fundamental defects in the law of California and other jurisdictions.[1]

California law is inadequate in a number of respects:

(1) The statutes that specify legal capacity for various purposes are often disorganized[2] and unclear,[3] or employ ambiguous[4] or inconsistent[5] standards.

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1. See, e.g., American Bar Foundation, The Mentally Disabled and the Law (rev. ed. 1971) and Allen, Ferster, and Weihofen, Mental Impairment and Legal Incompetency (1968).

2. The law relating to the ability of a minor to give consent to medical treatment, for example, is characterized by a disorganized series of provisions that address particular problems with no coherent overall scheme. See Civil Code §§ 25.5 (blood donation), 25.6 (married minor), 25.7 (minor in armed services), 25.8 (consent by custodian), 34.5 (pregnancy), 34.6 (minor living apart from parents), 34.7 (venereal disease), 34.8 (rape victim), 34.9 (victim of sexual assault), 34.10 (drugs and alcoholism).

3. Marriage, for example, is a personal relation arising out of a civil contract to which the consent of the parties "capable of making that contract" is necessary. Civil Code § 4100. Despite this requirement, the marriage is subject to annulment if a party was of "unsound mind" at the time of marriage (Civil Code § 4425(c)) and is subject to dissolution if a party has "incurable insanity" (Civil Code § 4506(2)).

4. California statutes impose disabilities on persons for such undefined conditions as "incompetence," "unsoundness of mind," "insanity," "incapacity," and "disability." See, e.g., Civil Code §§ 39 ("unsound mind" as basis of contractual capacity), 2355 ("incapacity" to act as agent), 2810 ("disability" of principal in suretyship); Code Civ. Proc. § 372 (guardian ad litem for "insane" or "incompetent" person). See also In re Zanetti, 34 Cal.2d 136, 141, 208 P.2d 657, ___ (1949) (discussion of the various meanings of the term "insane").

5. For example, Code of Civil Procedure Section 352(a)(2) provides for the tolling of the statute of limitations when a person is "insane." However, the statute does not accurately state the law

(2) Fundamental questions concerning personal and property rights are left unanswered.[6]

(3) Procedural issues such as the manner of adjudicating that a person is incapacitated, the burden of proof on the issue, and the manner of restoration to capacity, are not addressed.[7]

A comprehensive study and review of California law should be made to determine whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.

A study relating to whether the law relating to powers of appointment should be revised. Upon recommendation of the Law Revision Commission,[1] a fairly comprehensive statute relating to powers of appointment was enacted in 1969.[2] Professor Susan F. French of the Law School at the University of California at Davis has written an article on the application of the anti-lapse statutes to appointments made by will.[3] This article takes the position that Civil Code Section 1389.4 (the anti-lapse provision of the powers of appointment statute) is inadequate. A review of Section 1389.4 should be made to determine whether revision

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since cases have held that statutes of limitation must also be tolled while an incompetent person is under conservatorship. See, e.g., Gottesman v. Simon, 169 Cal. App.2d 494, 337 P.2d 906 (1959).

6. For example, the consequences of guardianship or conservatorship for the ward or conservatee are not specified. The Law Revision Commission, in its recommended revison of guardianship and conservatorship law, has proposed to clarify the impact of the protective proceeding on the ability of the conservatee to bind or obligate his or her estate. See Recommendation Relating to Guardianship-Conservatorship Law, 14 Cal. L. Revision Comm'n Reports 501 (1978). Other rights and powers of a conservatee should also be addressed and clarified.

7. At present, such matters are addressed to a limited extent only in guardianship and conservatorship proceedings. See, e.g., Prob. Code §§ 1460-1463 (appointment of guardians for insane or incompetent persons), 1470-1472 (restoration to capacity).

1. Recommendation Relating to Powers of Appointment, 9 Cal. L. Revision Comm'n Reports 301 (1969).

2. 1969 Cal. Stats., Ch. 155 (enacting Civil Code §§ 1380.1-1392.1). See also 1969 Cal. Stats., Ch. 113. The Commission drafted supplemental legislation which was enacted in 1978. 1978 Cal. Stats., Ch. 266.

3. The author provided the Commission with a copy of a draft of the article.

is needed and the other provisions of the powers of appointment statute should also be reviewed to determine whether any other changes in the statute are desirable.

A study to determine whether the law relating to the hiring of property and related matters should be revised. Title 5 (commencing with Section 1925) of Part 4 of Division 3 of the Civil Code relates to the hiring of real and personal property and related matters. The addition of a number of separately enacted provisions to this title in recent years[1] has created the need for a reorganization and restatement of the entire title. Since this title includes the statutory provisions governing the landlord-tenant relationship, it is important that the law be stated in a clear and well organized manner. In revising this title, any technical or substantive defects in the existing statute that are discovered in the course of the study would also be corrected.

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1. See 1965 Cal. Stats., Ch. 1664; 1969 Cal. Stats., Ch. 442; 1970 Cal. Stats., Chs. 89, 1280; 1971 Cal. Stats., Ch. 732; 1972 Cal. Stats., Ch. 941; 1973 Cal. Stats., Ch. 167; 1974 Cal. Stats., Chs. 331, 332; 1975 Cal. Stats., Ch. 302; 1976 Cal. Stats., Chs. 712, 1030; 1977 Cal. Stats., Chs. 49, 198, 971.

Memo 78-64 EXHIBIT 3

7 June 1978

California Law Revision Commission
Office: Stanford School of Law
Stanford, CA 94305

Dear Sir:

I wish to alert you to a problem related to Mobile Homes.

After a person buys a Mobile Home and locates it in a Mobile Home Park, a park owner can increase the rent without limit. The home owners options are:

1. Pay the increase and the next increase and the next.

2. Pay to move the mobile home. Usually there are no vacancies and even if there were, the problem can only repeat itself in the new park. One also has to consider the exorbitant rates of the movers.

3. Sell the mobile home usually at a loss.

   - If a park owner buys the mobile home, then he effectively ends up with a horizontal type of apartment.

   - If a buyer moves the mobile home from the park, then a dealer can move in one of his mobile homes. He can then sell this mobile home at a higher price than he could have received from the dealer's lot.

   - In some cases the park owner, buyer, and dealer are the same person.

- After a person buys a mobile home in a park, a park owner can then start to increase the rent or sell the park and let the new owner increase the rent. This drives out the present owner and sets the trap for the next buyer.

There appears to be two legal solutions. One is some sort of rent controls for mobile home parks. The other is a law which forces the park owner to offer the tenants the option to buy the park before the park owner can increase the rent or sell the park to a new owner.

For example, suppose the park owner bought a park for $2000000. His own investment is $100000. The current prime rate is 8%. If the tenants decided to buy the park, then they would take over the loan, return the $100000. to the park owner plus $8000. A years interest on his investment.

In any case the lack of control in this area adds fuel to inflation. It can effect banks, elected representatives, Mobile Home Industry, home owners, and probably many areas unknown to me.

Sincerely yours,

Charles W. Algea

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San Jose, CA 95111