

**STATE OF CALIFORNIA**

# **CALIFORNIA LAW REVISION COMMISSION**

**RECOMMENDATIONS**

*relating to*

**Landlord-Tenant Relations**

**Abandonment of Leased Real Property**

**Personal Property Left on Premises Vacated by Tenant**

**December 1973**

**CALIFORNIA LAW REVISION COMMISSION**

**School of Law**

**Stanford University**

**Stanford, California 94305**

# THE CALIFORNIA LAW REVISION COMMISSION

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## NOTE

This pamphlet begins on page 951. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 11 of the Commission's *Reports, Recommendations, and Studies*.

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

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*Ex Officio*

November 30, 1973

To: THE HONORABLE RONALD REAGAN  
*Governor of California* and  
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 130 of the Statutes of 1965 to make a study to determine whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised. In response to this directive, the Commission submitted a recommendation to the 1970 Legislature which resulted in the enactment of Civil Code Sections 1951–1952.6. See *Recommendation Relating to Real Property Leases*, 9 CAL. L. REVISION COMM'N REPORTS 153 (1969). The Commission retained the topic on its agenda for the study of additional aspects of the topic or new developments.

The 1970 statute does not deal with two matters: (1) what constitutes an abandonment of leased real property and (2) disposition of personal property left on premises vacated by a tenant. This report contains recommendations on these matters.

The Commission wishes to acknowledge the substantial contribution of its consultant, Professor Jack H. Friedenthal, Stanford Law School, who prepared the background study that served as the basis for the recommendations contained in this report. The report draws heavily on this excellent study. The Commission also is indebted to other persons who contributed to the development of this recommendation by attending Commission meetings, especially to Ronald P. Denitz, Los Angeles.

Respectfully submitted,  
JOHN D. MILLER  
*Chairman*



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# ABANDONMENT OF LEASED REAL PROPERTY

## Background

Upon recommendation of the Law Revision Commission,<sup>1</sup> the Legislature in 1970 enacted Civil Code Sections 1951–1952.6 to deal with certain of the rights and duties of the lessor and lessee 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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 to mitigate 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.<sup>5</sup> The situation

<sup>1</sup> See *Recommendation Relating to Real Property Leases*, 9 CAL. L. REVISION COMM’N REPORTS 153 (1969); Cal. Stats. 1970, Ch. 89.

<sup>2</sup> 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.

<sup>3</sup> For a general discussion, see *Recommendation Relating to Real Property Leases*, 9 CAL. L. REVISION COMM’N REPORTS 153 (1969).

<sup>4</sup> There have been no decisions construing the term “abandons” as used in Section 1951.2; however, there is no reason to believe that the common law interpretation of abandonment would not apply. Under the common law, 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). Mere nonuse of the premises, no matter how long, is not alone sufficient evidence of the intent to abandon. *Cf. Gerhard v. Stephens*, 68 Cal.2d 864, 442 P.2d 692, 69 Cal. Rptr. 612 (1968).

<sup>5</sup> 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 Consol. Mines, Inc. v. Alhambra Shumway Mines, Inc.*, 239 Cal. App.2d 590, 598, 49 Cal. Rptr. 38, 44 (1966).

is aggravated by the fact that the lessor has the burden of proof on the issue of abandonment.<sup>6</sup>

### Recommendation

The Commission has concluded that a more 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.<sup>7</sup> Accordingly, the Commission recommends the following:

(1) The lessor of real property should be authorized to give the lessee written notice of belief of abandonment if the lessee has been in default on the rent for at least 20 consecutive days and the lessor reasonably believes that the lessee has abandoned the property.<sup>8</sup>

(2) 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, 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 notify the lessor that he has not abandoned the property, assures that, for the usual 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.

<sup>6</sup> 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).

<sup>7</sup> Although the recommended legislation provides a means by which the lessor may establish whether the leased property has been abandoned by the lessee, it would not preclude either the lessor or lessee from otherwise proving that fact.

<sup>8</sup> Notice should be given by delivery to the lessee personally or by mail addressed 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, then to such other address, if any, known to the lessor where the lessee may reasonably be expected to receive the notice.

### Proposed Legislation

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 leased real property.*

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

#### **Civil Code § 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) 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, that he does not intend to abandon the 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 20 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)

\_\_\_\_\_  
(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 lessor 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 \_\_\_\_\_ (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 real property.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of lessor)

\_\_\_\_\_  
(Type or print name of lessor)

\_\_\_\_\_  
(Address to which lessee 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 20 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 of his intent not to abandon 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.

**Comment.** Section 1951.3 provides a method for establishing that leased real property has been abandoned by the lessee 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 a reasonable effort 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 on the premises under Chapter 5 (commencing with Section 1980), prepare the premises for a new tenant, and relet the premises. 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. §§ 1161-1179a. 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 of belief of abandonment. The lessor is required to complete the form by inserting the date before which the lessee must give notice of intent not to abandon in order to avoid the termination of the lease. Where the lessor's notice is served personally, the lessee must be afforded at least 15 days to give written 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.

The lessee can establish that he has not abandoned the property by proving (1) that rent was not due and unpaid for 20 consecutive days when notice was given, (2) that it was not reasonable for the lessor to believe that he had abandoned the property, or (3) that, within the permitted time, he gave written notice of his intent not to abandon the property. The burden of proof on these 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.

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 (e) (2) precludes a finding that the lessor's belief of 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.

Although this section provides a means by which the lessor may establish by a more objective test whether the real property has been abandoned, it does not preclude either party from otherwise proving the fact. See subdivision (f).

**Note.** Reference is made in the Comment to Chapter 5 (Sections 1980-1991) which is added by the bill proposed in the second recommendation contained in this report.

## **PERSONAL PROPERTY LEFT ON PREMISES VACATED BY TENANT**

### **Background**

After termination of a tenancy, the landlord or his agent who enters the premises to prepare them for a new tenant frequently finds items of personal property which appear to belong to the prior tenant. More often than not, the items 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, 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 rent, the landlord may seek to appropriate the goods to his own use in payment of the tenant's obligations. In many situations, the California landlord can find no reliable statutory guidance as to how he should dispose of the property left by the departed tenant. The statutes which do exist 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, providing 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 property under Section 1862:

- (1) The property must be unclaimed for at least 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 property, 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 within that time, 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.<sup>1</sup> 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 at least six months—an unreasonably long period.

Another statute with wide coverage is Code of Civil Procedure Section 1174 applying to personal property remaining 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 following one publication of notice of the time and place of the sale. Although this procedure applies to all leased premises—whether furnished or unfurnished, residential or commercial—it also has serious deficiencies. Like Civil Code Section 1862, Section 1174 makes no provision for notice to the tenant of the proposed disposition of the property left on the premises. Further, it contains no provision dealing with the case where a 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.<sup>2</sup>

<sup>1</sup> Compare CODE CIV. PROC. § 1174 (unlawful detainer proceedings).

<sup>2</sup> *Gray v. Whitmore*, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971). Finding a denial of substantive and procedural due process and equal protection of the laws, the court pointed out that these provisions resulted in circumvention of the execution statutes and prevented a tenant from asserting his claim for exemption, that they deprived the tenant of the opportunity to dispute the landlord's claim that his money judgment be satisfied out of the tenant's property in the landlord's possession, and that they resulted in an invidious discrimination between debtors without a compelling interest or a necessity furthering the statutory purpose. *Gray v. Whitmore* was cited with approval in *Love v. Keays*, 6 Cal.3d 339, 491 P.2d 395, 98 Cal. Rptr. 811 (1971).



Other statutes of limited application which deal peripherally with the problem under consideration are the provisions concerning innkeeper's liens,<sup>3</sup> landlord's liens,<sup>4</sup> lost property,<sup>5</sup> and the disposition of unclaimed property in hospitals<sup>6</sup> and at state colleges<sup>7</sup> and the University of California.<sup>8</sup>

### **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 arising from 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.<sup>9</sup> 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 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

<sup>3</sup> CIVIL CODE § 1861.

<sup>4</sup> CIVIL CODE § 1861a.

<sup>5</sup> CIVIL CODE §§ 2080–2080.7. See also *People v. Stay*, 19 Cal. App.3d 166, 96 Cal. Rptr. 651 (1971).

<sup>6</sup> CIVIL CODE § 1862.5.

<sup>7</sup> CIVIL CODE § 2080.9.

<sup>8</sup> CIVIL CODE § 2080.8.

<sup>9</sup> CIVIL CODE §§ 2080–2080.7.

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 to any person he reasonably believes to be an owner of the property. The notice should include a 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 allow 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 state specifically the date by which the claim must be made. 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.<sup>10</sup>

### General Disposition Procedure

If the tenant or other owner fails to pay the landlord the reasonable cost of storage<sup>11</sup> and take possession of the property before the date specified in the notice, property appearing to have significant commercial value should be sold at public sale

<sup>10</sup> 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 §§ 2080.3 (lost property turned over to police may be disposed of after 90 days), 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). It should be noted that the property referred to in Civil Code Sections 2080.3 and 2081.1 will almost always be property of value whereas, in the great majority of cases, the property with which this recommendation is concerned will be unwanted property of no significant value.

<sup>11</sup> The owner of personal property who is not the tenant should not have to pay the storage costs for any property other than that which he claims. Since, insofar as the landlord is concerned, the former tenant is responsible for all property left on the premises, regardless of its ownership, the former tenant should be required to pay the reasonable cost of storage for all of the abandoned property, even that which is known to belong to another person. The landlord should not, however, be permitted to charge both the tenant and another person for the same storage costs.

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.<sup>12</sup>

### **Optional Procedure for Low-Value Property**

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 ordinarily will be junk or 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.<sup>13</sup>

### **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. If the landlord turns the property over to the former tenant, he should not be liable to any other person regardless of whether notice was given to such person. In all other cases, the landlord should not be liable to owners of abandoned property who are not given

<sup>12</sup> 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.

<sup>13</sup> 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.

notice 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 would have discovered such owner's address upon reasonable investigation. 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 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.<sup>14</sup> 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.

### **Proposed Legislation**

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

*An act to add Chapter 5 (commencing with Section 1980) to Title 5 of Part 4 of Division 3, and to repeal Section 1862, of the Civil Code, and to amend Section 1174 of the Code of Civil Procedure, relating to abandoned personal property.*

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<sup>14</sup> See note 2, *supra*.

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

**Civil Code § 1862 (repealed)**

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

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

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

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

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

**Comment.** Section 1862 is superseded by Civil Code Sections 1980–1991.

**Civil Code §§ 1980–1991 (added)**

**SEC. 2.** 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” includes 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

1981(b) (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 that 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; application and effect of chapter**

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.

(b) This chapter does not apply where Section 1862.5, 2080.8, 2080.9, or 2081 to 2081.6, inclusive, applies.

(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.

**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 (b) provides that the procedures of this chapter may not be used where one of the following statutes applies: Section 1862.5 (property left in a licensed hospital), Section 2080.8 (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. See, *e.g.*, Section 1861a.

## **§ 1982. Lost property**

1982. (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.

**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 §§ 2080–2080.7. See also Section 1980(d) (defining “reasonable belief”).



Subdivision (b) is intended to eliminate the uncertainty which would otherwise exist if the police or sheriff's department disagrees with the landlord's belief that property was lost and therefore refuses to accept the property.

### § 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 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 cost 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.

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

Subdivision (b) prescribes the contents of the notice. The notice must include four items of information: (1) a description of the property; (2) the address of the place where the property may be claimed; (3) the date before which the claim must be made; and (4) a statement that payment of storage costs may be required before the property is returned. (See Sections 1984 and 1985 for forms.) The property description must be reasonably adequate to permit the owner to identify the property. The landlord determines where the property may be claimed. The landlord is free to specify any date in the notice as long as the period allowed for taking possession meets the minimum requirements of the last sentence of subdivision (b). Reasonable costs of storage may, but need not, be charged by the landlord as a condition of releasing the property. See Section 1990.

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

**Note.** The Comment refers to Section 1951.3; this section is proposed to be added to the Civil Code by the first recommendation contained in this report.

**§ 1984. Form of notice to former tenant**

1984. A notice given to the former 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 of former tenant)

When you vacated the premises at \_\_\_\_\_

(address of premises,  
\_\_\_\_\_, the following

including room or apartment number, if any)

personal property remained: (Insert description of the personal property.)

You may claim this property at \_\_\_\_\_

(address where property may be

\_\_\_\_\_. Unless you pay the reasonable cost of storage for claimed)

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)

\_\_\_\_\_  
(Type or print name of landlord)

\_\_\_\_\_  
(Telephone number)

\_\_\_\_\_  
(Address)

**Comment.** Section 1984 provides a form of notice to the former tenant. See Section 1983 for the requirements of the notice, such as the manner of describing the personal property.

**§ 1985. Form of notice to owner other than former tenant**

1985. 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 \_\_\_\_\_ vacated the premises at  
(name of former tenant)

\_\_\_\_\_,  
(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  
\_\_\_\_\_ . Unless you pay the

(address where property may be claimed)  
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)

**Comment.** Section 1985 provides a form for the notice to a person (other than the former tenant) the landlord reasonably believes to be the owner of any personal property remaining on the premises. See Section 1983 for the requirements of the notice, such as the manner of describing the personal property.

**§ 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 imposes on the landlord a duty to preserve the property remaining on the premises until it is disposed of or released.

**§ 1987. Release of property to former tenant or other owner**

1987. 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.

**Comment.** Section 1987 requires the landlord to release the property when a claim is made and the costs of storage are paid. See Section 1990 (costs of storage).

**§ 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 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.

**Comment.** Section 1988 provides for the disposition of the property which is not released to the former tenant or the owner pursuant to Section 1987. 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 limitations on liability provided by Section 1989. See Section 1980(d) (defining "reasonable belief").

Subdivision (b) provides for the manner of sale. To protect against sale of the property before all of the periods specified in the notices to the former 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 former 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 other owner, it retains the substance of former Civil Code Section 1862. The last sentence of subdivision (c) is intended to protect the county from liability 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 former 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 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.

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

Under subdivision (a), the landlord may protect himself *in any case* from liability by releasing property *to the former 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 former tenant may be the owner of the property, the landlord may release the property to the former 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 former tenant) believed by the landlord to 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 because the landlord believed or reasonably should have believed that such person was an owner and should have known his address upon reasonable investigation. See Section 1980(d) (defining "reasonable belief"). 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 (c) provides protection against liability similar to that provided in subdivision (b). Subdivision (c) applies where the property is disposed of as authorized by Section 1988. Thus, the protection against liability applies in cases (1) where the property is sold pursuant to Section 1988 and the proceeds of the sale (less costs of storage, advertising, and sale) are released to the former tenant or another owner or are paid over to the county or (2) where the property not released pursuant to Section 1987 is worth less than \$100 and the landlord retains the property for his own use or makes some other disposition of it.



## § 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 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.

**Comment.** Section 1990 adopts the principle that the former 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. On the other hand, the owner of personal property who is not the tenant should not have to pay the storage costs for any property other than that which he is claiming. Since, insofar as the landlord is concerned, the former tenant is responsible for all property left on the premises, regardless of its ownership, the former tenant 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 charge both the former tenant and another person for the same storage costs. As to the remedy of the former tenant where the landlord demands 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. 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.

**Comment.** Section 1991 applies where the tenant is in default on the rent and appears to have abandoned the leased real property and the lessor is giving notice of belief of abandonment pursuant to Section 1951.3. In such a case, the notice of the right to reclaim the personal property under this chapter may be given at the same time or after the notice of belief of abandonment under Section 1951.3 is given notwithstanding that the time for the termination of the lease as specified in the notice of belief of abandonment has not arrived. Section 1991 thus is an exception to the requirement of Section 1983 that the notice of right to reclaim abandoned property may be given only where the tenancy has terminated. Section 1991 also authorizes combination of the notice under Section 1951.3 with the notice under Section 1983.

**Note.** Section 1951.3 is a new section proposed in the first recommendation contained in this report.

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

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

1174. (a) If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for an unlawful detainer after neglect, or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent,

the judgment shall also declare the forfeiture of such lease or agreement if the notice required by Section 1161 of the code states the election of the landlord to declare the forfeiture thereof, but if such notice does not so state such election, the lease or agreement shall not be forfeited.

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

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

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

(d) A plaintiff, having obtained a writ of restitution of the premises pursuant to an action for unlawful detainer, shall be entitled to have the premises restored to him by officers charged with the enforcement of such writs. Promptly upon payment of reasonable costs of service, the enforcing officer shall serve or post a copy of the writ in the same manner as upon levy of writ of attachment pursuant to subdivision 1 of Section 542 of this code. In addition, where the copy is posted on the property, another copy of the writ shall thereafter be mailed to the defendant at his business or residence address last known 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.

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.

*(e) Personal property remaining on the premises 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 of Part 4 of Division 3 of the Civil Code. The landlord is not liable to the owner of any property which he disposes of in this manner. If the appropriate police or sheriff's department refuses to accept such property, it shall be deemed not to have been lost for the purposes of this subdivision.*

*(f) The landlord shall give notice pursuant to Section 1983 of the Civil Code to any person (other than the tenant) reasonably believed by the landlord to be the owner of personal property remaining on the premises.*

*(g) The landlord shall store the personal property in a place of safekeeping until it is either released pursuant to subdivision (h) or disposed of pursuant to subdivision (i).*

*(h) The landlord shall release the personal property to the tenant or, at the landlord's option, to a person reasonably believed by the landlord to be its owner if such*

*tenant or other person pays the costs of storage as provided in Section 1990 of the Civil Code and claims the property not later than the date specified in the writ of restitution before which the tenant must make his claim or the date specified in the notice before which a person other than the tenant must make his claim.*

*(i) Personal property not released pursuant to subdivision (h) shall be disposed of pursuant to Section 1988 of the Civil Code.*

*(j) Where the landlord releases personal property to the tenant pursuant to subdivision (h), the landlord is not liable with respect to that property to any person.*

*(k) Where the landlord releases personal property pursuant to subdivision (h) to a person (other than the tenant) reasonably believed by the landlord to be its owner, the landlord is not liable with respect to that property to:*

*(1) The tenant or to any person to whom notice was given pursuant to subdivision (f); 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 had an interest in the property and also that the landlord knew or should have known upon reasonable investigation the address of such person.*

*(l) Where personal property is disposed of pursuant to Section 1988 of the Civil Code, the landlord is not liable with respect to that property to:*

*(1) The tenant or to any person to whom notice was given pursuant to subdivision (f); or*

*(2) Any other person, unless such person proves that, prior to disposing of the property pursuant to Section 1988 of the Civil Code, 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.*

*(m) For the purposes of subdivisions (e), (f), (h), (k), and (l), 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 Sections 1980–1991 relating to the disposition of personal property remaining on the premises at the termination of a tenancy. 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) of Section 1174 *with* Civil Code Section 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 requirement of subdivision (f). 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 limitations on the landlord's liability provided in subdivisions (j)–(l) are substantively identical to those provided in Civil Code Section 1989. See Comment to Civil Code Section 1989.

The provisions that allowed the landlord to apply the proceeds of the sale of the tenant's personal property to his judgment and required the tenant to satisfy the landlord's judgment before property left on the premises could be reclaimed have been deleted from Section 1174. These provisions were held unconstitutional in *Gray v. Whitmore*, 17 Cal App.3d 1, 94 Cal. Rptr. 904 (1971). Finding a denial of substantive and procedural due process and equal protection of the laws, the court pointed out in *Gray v. Whitmore* that the deleted provisions resulted in circumvention of the execution statutes and prevented a tenant from asserting his claim for exemption, that they deprived the tenant of the opportunity to dispute the landlord's claim that his money judgment be satisfied out of the tenant's property in the landlord's possession, and that they resulted in an invidious discrimination between debtors without a compelling interest or a necessity furthering the statutory purpose. *Gray v. Whitmore* was cited with approval in *Love v. Keays*, 6 Cal.3d 339, 491 P.2d 395, 98 Cal. Rptr. 811 (1971).

### **Bill Contingent Upon Enactment of Another Bill**

**SEC. 4.** This bill shall not be operative unless Assembly Bill 2831 of the 1973–74 Regular Session and this bill are

both chaptered and become operative on or before January 1, 1975.

**Note.** The bill referred to is the bill proposed in the first recommendation contained in this report.

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