#78 5/31/73

Memorandum 73-53

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

Attached to this memorandum is another copy of Professor Friedenthal's background study relating to property abandoned on leased premises and a revised version of the tentative recommendation (pink). The Commission considered this subject briefly at the May meeting but did not discuss the statute in detail.

Respectfully submitted,

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DISPOSITION OF PROPERTY LEFT BY TENANT AFTER TERMINATION OF TENANCY

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I. Nature of the Problem

A. In General

After termination of a tenancy, the landlord or his agent enters the premises to prepare for a new tenant frequently to find that the prior tenant has left behind some items of personal property.[1] More often than not, the items left on the premises appear to be little more than junk although on occasion they may seem to have some resale value on the open market. In some situations, the goods appear valuable only to the departed tenant as, for example, when the property consists of personal papers, prescription medicines, or family photographs.

In the large majority of situations, the landlord, after futile attempts to find the departed tenant and have him remove the goods, only wishes to dispose of the property in a speedy, inexpensive manner, which will not result in any risk of future liability for conversion. In a few cases, where the goods have commercial value, and the tenant left owing money to the landlord, the latter may seek to appropriate the goods to his own use in payment of the tenant's obligations. In this regard, it should be noted that under Section 1951.2 of the Civil Code a tenancy terminates when the tenant abandons his leasehold interest. It is quite common for a tenant

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

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

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

B. Practical and Theoretical Considerations

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

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

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

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

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

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

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

A. In General

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

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

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

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

3. See id. at 620.

4. See id. at 621.

5. See id. at 621-622.

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

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

B. Current Statutory Provisions

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

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

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

8. Section 1862 provides:

> 1862. Whenever any trunk, carpetbag, valise, box, bundle, baggage or other personal property has heretofore come, or shall hereafter come into the possession of the keeper of any hotel, inn, or any boarding or lodging house, furnished apartment house or bungalow court and has remained or shall remain unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of such sale may retain the charges for storage, if any, and the expenses of advertising and sale thereof;
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> 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;
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> 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;
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> And in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county.

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

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

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

(3) The items may then be sold publicly.

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

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9. Section 1174 provides:

> 1174. If upon the trial, the verdict of the jury, or, if the case be tried without a jury, the findings of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceedings be for an unlawful detainer after neglect, or failure to perform the conditions or covenants of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement if the notice required by Section 1161 of the code states the election of the landlord to declare the forfeiture thereof, but if such notice does not so state such election, the lease or agreement shall not be forfeited.
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> 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.

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

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

A plaintiff, having obtained a writ of restitution of the premises pursuant to an action for unlawful detainer, shall be entitled to have the premises restored to him by officers charged with the enforcement of such writs. Promptly upon payment of reasonable costs of service, the enforcing officer shall serve or post a copy of the writ in the same manner as upon levy of writ of attachment pursuant to subdivision 1 of Section 542 of this code. In addition, where the copy is posted on the property, another copy of the writ shall thereafter be mailed to the defendant at his business or residence address last known to the plaintiff or his attorney or, if no such address is known, at the premises. If the tenant does not vacate the premises within five days from the date of service, or, if the copy of the writ is posted, within five days from the date of mailing of the additional notice, the enforcing officer shall remove the tenant from the premises and place the plaintiff in possession thereof. It shall be the duty of the party delivering the writ to the officer for execution to furnish the information required by the officer to comply with this section.

All goods, chattels or personal property of the tenant remaining on the premises at the time of its restitution to the plaintiff shall be stored by the plaintiff in a place of safekeeping for a period of 30 days and may be redeemed by the tenant upon payment of reasonable costs incurred by the plaintiff in providing such storage and the judgment rendered in favor of plaintiff, including costs. Plaintiff may, if he so elects, store

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

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

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such goods, chattels or personal property of the tenant on the premises, and the costs of storage in such case shall be the fair rental value of the premises for the term of storage. An inventory shall be made of all goods, chattels or personal property left on the premises prior to its removal and storage or storage on the premises. Such inventory shall either be made by the enforcing officer or shall be verified in writing by him. The enforcing officer shall be entitled to his costs in preparing or verifying such inventory.

In the event the property so held is not removed within 30 days, such property shall be deemed abandoned and may be sold at a public sale by competitive bidding, to be held at the place where the property is stored, after notice of the time and place of such sale has been given at least five days before the date of such sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held. Notice of the public sale may not be given more than five days prior to the expiration of the 30 days during which the property is to be held in storage. All money realized from the sale of such personal property shall be used to pay the costs of the plaintiff in storing and selling such property, and any balance thereof shall be applied in payment of plaintiff's judgment, including costs. Any remaining balance shall be returned to the defendant.

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

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

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

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

11. Civil Code § 2081.1.

12. Civil Code § 2080.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Id. at 123-124.

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

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

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

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

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

22. See Civil Code § 2080.4.

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

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

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

C. Determining the Date of Termination of an Abandoned Leasehold

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

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

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

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

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

I

ABANDONMENT OF LEASED REAL PROPERTY

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

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

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

Chapter 2.5. Abandonment of Leased Real Property

§ 1953.10. Methods of declaring abandonment

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

Comment. Chapter 2.5 is designed to eliminate the uncertainty as to when a tenancy is to be held abandoned within the meaning of Section 1951.2. Under Section 1951.2, once an abandonment occurs, the tenancy is terminated and the lessor has a duty to minimize the lessee's damages by making reasonable efforts to rerent the premises. The time of abandonment is also important under Sections 1963.30-1963.50 which set forth the lessor's rights and duties as to personal property remaining on the premises after termination. Under common law rules, abandonment occurs when the lessor accepts the lessee's offer to end the tenancy. The lessee must in fact have intended to abandon

the property. Appearances of abandonment are not sufficient, and the lessor must accept the premises or the abandonment is not effective. See Wiese v. Steinauer, 201 Cal. App.2d 651, 20 Cal. Rptr. 295 (1962); Anheuser-Busch Brewing Ass'n v. American Products Co., 59 Cal. App. 718, 211 P. 817 (1922). See also Gerhard v. Stephens, 68 Cal.2d 864, 442 P.2d 692, 69 Cal. Rptr. 612 (1968). These rules are insufficient in most cases to guide the parties. However, if the parties do have a clear understanding about the matter, the common law rule may apply and hence is preserved by the last sentence of this section.

§ 1953.20. Declaration of abandonment by lessor

1953.20. (a) If a lessor of real property has no substantial reason to believe that the lessee has not abandoned the property and reasonably believes that the property has been unoccupied for a period of 20 consecutive days during which rent is due and unpaid, the lessor may give written notice to the lessee stating both of the following:

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

(2) Unless the lessee contacts the lessor within 15 days from the date notice was delivered to the lessee personally or deposited in the mail, the property will be deemed abandoned and the lease terminated.

(b) The notice becomes effective when it is delivered to the lessee personally or when it is deposited in the mail addressed to the lessee at his last known residence or place of business. Where the lessor has substantial reason to believe the lessee is temporarily located at a place other than his last known residence or business address, notice given by mail is effective only when an additional copy of the notice is deposited in the mail, addressed to the lessee at the place where he is temporarily located.

(c) If notice is given in compliance with this section, the property shall be deemed to be abandoned within the meaning of Section 1951.2 unless the lessee contacts the lessor within 15 days from the effective date of the notice and manifests his intent not to abandon the property. Thereafter, the lessor is not liable to the lessee for treating the property as abandoned and the lease as terminated. This subdivision does not apply where the lessee proves that the lessor had substantial reason to believe that the lessee did not intend to abandon the property.

(d) The fact that the lessor knew that the lessee left items of personal property on the leased real property does not, of itself, justify a finding

that the lessor was unreasonable in believing the real property to have been abandoned.

Comment. Subdivision (a) of Section 1953.20 generally provides a means by which the landlord can safely decide the abandonment has taken place so that he may dispose of any personal property remaining on the premises and otherwise prepare for a new tenant. A number of safeguards are provided to insure that a determination of abandonment is not prematurely made. Not only must the landlord reasonably believe that abandonment has taken place but the premises must have reasonably appeared to be unoccupied for 20 consecutive days for which no rent has been paid. These requirements, together with the provisions for notice, reasonably assure that a tenant will not be deprived of a leasehold interest which he did not intend to abandon. The 20-day period, combined with the additional 15-day period during which the tenant may contact the landlord and demonstrate his intention to retain the leasehold, assures that, for the normal tenancy calling for monthly payments, at least two due dates must pass before abandonment can be declared. If the landlord wishes faster action, he may resort to an action in unlawful detainer under Code of Civil Procedure Section 1174.

Under subdivision (c), the tenant must claim his leasehold within 15 days of notification or the leasehold is decreed abandoned and the lease terminated. Thereafter, the landlord who reasonably and in good faith follows the procedures in subdivision (a) cannot be held liable to a tenant who later appears to challenge the abandonment. The burden of proving unreasonableness or bad faith falls upon the tenant, thus safeguarding landlords from substantial fear of litigation. Under common law rules, abandonment depends upon the

manifested intentions of the parties to the lease. Even though from all appearances a leasehold seems abandoned, a lessor, who has not had contact with the lessee, can never be certain that the lessee will not suddenly appear and claim that he was on vacation or in the hospital and had never intended to, or manifested an intention to, abandon his interests. This subdivision eliminates this uncertainty.

Subdivision (d) is designed to eliminate a possible problem with regard to what facts may overcome a lessor's reasonable belief that a tenancy is abandoned. Obviously, since many lessees who abandon their leasehold interests leave personal property behind, the mere fact that the lessor knows that the lessee has done so should not, by itself, be held to establish that the lessor has not acted reasonably. The lessor cannot refuse to accept the tenant's "offer to abandon" as apparently he could do under the common law.

§ 1953.30. Declaration of abandonment by lessee

1953.30. (a) Subject to Section 1951.4, real property shall be deemed abandoned within the meaning of Section 1951.2 and the lease terminated:

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

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

(b) The notice is not effective against the lessor unless and until the lessee surrenders possession of the leased property to the lessor.

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

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

Subdivision (c) makes clear that subdivisions (a) and (b) are not the exclusive methods whereby an abandonment and termination of the lease may occur.

II

PROPERTY ABANDONED ON LEASED PREMISES

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

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

Section 1. Chapter 5 (commencing with Section 1963.10) is added to Title 5 of Part 4 of Division 3 of the Civil Code, to read:

Chapter 5. Property Abandoned on Leased Premises

§ 1963.10. Definitions

1963.10. As used in this chapter:

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

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

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

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

(e) "Reasonable knowledge or belief" is that knowledge or belief a prudent person would have without investigation (including the investigation of public records) unless such person has specific information indicating that such investigation would more probably than not reveal pertinent information.

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

Comment. Subdivision (a) defining "item of personal property" provides in effect that a locked, fastened, or tied container need not be opened by a landlord who wishes to dispose of it. The privacy of the owner is thus preserved until disposition. Former Civil Code Section 1862 permitted disposition of a container without opening it even if the container was not secured. The obligation under this chapter to look into unlocked, unfastened, or untied containers is not onerous and will permit the landlord to make a realistic evaluation of the property which is helpful in protecting interests of the owner as well as of the landlord.

Subdivisions (b) and (f) define "landlord" and "tenant" broadly so as to extend coverage of this chapter to all types of rental property whether commercial or residential, furnished or unfurnished. This chapter provides a means for all landords, regardless of the nature of the facilities, to dispose of personal property left on the premises after termination of the tenancy. Former Civil Code Section 1862 provided relief only for those landlords who owned or managed furnished residential facilities. Other landlords had no statutory coverage except in unlawful detainer cases under Code of Civil Procedure Section 1174.

Subdivision (c) defines "owner" to include not only a tenant, but other persons as well, including those having a leasehold, possessory, or security interest. A landlord should be permitted to dispose of property left behind even though, as is often the case, he does not know for certain whether the property actually belonged to the former tenant or to someone else. The unlawful detainer statute provides for disposition of goods owned by a tenant only. See Code Civ. Proc. § 1174. Thus, a landlord who follows the provisions of Code of Civil Procedure Section 1174 apparently still risks an action for conversion by a third person who claims ownership.

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

Subdivision (e) establishes a general standard for the landlord's "reasonable knowledge" or "reasonable belief" as used in Section 1963.30 concerning whether an item of personal property is lost and in Sections 1963.40 and 1963.50 regarding ownership of the item of personal property. This definition has the effect in Sections 1963.40(d) and 1963.50(d) of requiring an investigation into the ownership of an item of personal property only where the landlord has specific information which would lead him to believe an investigation would probably reveal another or a different owner. See Section 1963.40(d) and 1963.50(d) and Comments. Hence, for example, if some expensive furniture or a television set is left on the premises, the landlord is not required to consult public records to find out if there is a security interest in the property or to call local rental or leasing companies unless, of course, he has specific information such as might be gotten from a label on the property or from some definite conversation with the tenant in the past. The mere fact that the property left on the premises is of some value is not to be deemed sufficient to put a burden of investigation on the landlord.

§ 1963.20. Lease provisions nullified

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

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

(1) A provision for an otherwise valid security agreement pursuant to the Commercial Code.

(2) A provision that leasehold improvements, alterations, and personal property affixed to the premises shall be nonremovable.

Comment. Section 1963.20 is designed to protect tenants from onerous contract provisions which can be used to deprive them of their property without a court determination, often in contradiction to statutes which exempt certain personal property from levy and execution. It is unlikely, in most situations, that such self-help clauses would be enforced by California courts. See Jordan v. Talbot, 55 Cal.2d 597, 361 P.2d 20, 12 Cal. Rptr. 488 (1961). However, few tenants have the time, money, and will to engage in a court contest. Section 1963.20 should deter landlords from including or relying on such provisions in their rental agreements. Landlords will be further deterred from abusing tenants' rights in their personal property by the fact that deliberate violations of the proposed section could lead to punitive as well as compensatory damages.

Note that this section does not prohibit the landlord from enforcing valid liens granted by statute. See Civil Code § 1861a; [Study, p. __].

§ 1963.30. General requirements for preservation of property

1963.30. If, after termination of the tenancy and surrender or abandonment of the premises by the tenant, the landlord finds that there remain on the premises items of personal property of which the landlord is not an owner, the landlord shall dispose of such property as follows:

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

(b) All items of personal property remaining on the premises other than lost items subject to subdivision (a) shall be stored by the landlord in a place of safekeeping until either of the following occurs:

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

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

Comment. Section 1963.30 limits the scope of this chapter to situations where (1) the tenancy has been terminated, (2) the tenant has voluntarily left the premises, and (3) the landlord makes no claim on the personal property. The requirement that the tenancy be terminated is obvious: a landlord has no need or right to dispose of the tenant's property while the tenancy continues. See Civil Code § 1953.10 et seq. (methods of declaring abandonment). The

requirement that the tenant voluntarily has left the premises is intended to avoid conflict with the statutory provision dealing with unlawful detainer. See Code Civ. Proc. § 1174. The requirement that the landlord not have an ownership interest in the property is necessary to avoid any conflict with the landlord's claim that the property was his in the first place, that it was a gift from the tenant, or that he has a valid statutory lien on the item. See Civil Code § 1861a. If the landlord proceeds under this chapter, he necessarily gives up any claim of ownership of the items of personal property involved.

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

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

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

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

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

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

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

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

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

(5) A statement that, unless the tenant or the owner pays the landlord the reasonable cost of storage of the item of personal property and takes possession thereof within 15 days from the date notice is effective, such person shall lose all right, title, and interest in such item.

(b) If the tenant or the owner does not pay the landlord the reasonable cost of storage and take possession of an item of personal property within 15 days from the date notice is effective under Section 1963.60, the landlord may dispose of such item of personal property in any manner.

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

(d) In any action with regard to the disposition of an item of property brought by an owner to whom notice was not sent pursuant to subdivision (a), the landlord shall not be held liable unless the owner proves either of the following:

(1) That the landlord was unreasonable in declaring the value of the total property not to exceed $100.

(2) That, prior to disposing of the goods, the landlord knew or reasonably should have known that such owner had an interest in the item of property and also that the landlord knew or should have known upon reasonable investigation the address of such owner's residence or place of business.

Comment. Section 1963.40 permits summary disposition of property appearing to be worth less than $100. The costs of storage and sale of goods worth less than $100 are too high to require a formal disposition as provided in Section 1963.50. The $100 amount applies to the total value of all property subject to Section 1963.30(b). If the total exceeds $100, the landlord may proceed only under Section 1963.50.

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

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

Subdivision (d) covers the situation where the landlord is unaware of who owns the goods. In such a case, the landlord should not be liable if he

has acted in good faith. Therefore, the burden is placed on the owner to prove unreasonableness in order to assure landlords that they will not be subject to the risks of litigation by following the procedures set out in the statute. The requirement that the landlord have made a reasonable determination as to the value of the goods is to protect unknown owners from being deprived unfairly of substantial sums. Any landlord who is in doubt as to value may follow the procedure set forth in Section 1963.50 which protects the owner's economic interests.

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

§ 1963.50. General provisions for disposition

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

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

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

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

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

(4) A statement that, unless the tenant or the owner pays the landlord the reasonable cost of storage of the item of personal property and takes possession thereof within 15 days from the date notice is effective, such item shall be sold at public sale, and the proceeds, less the landlord's reasonable costs for sale, advertising, and storage, shall be turned over to the county treasurer in the county where the sale took place and that the tenant or the owner shall have one year from the date of sale within which to claim such proceeds from the county.

(b) If the tenant or the owner does not pay the landlord the reasonable cost of storage and take possession of an item of property within 15 days from the date notice is effective under Section 1963.60, the item shall be sold at public sale by competitive bidding. The sale shall be held at the place where the property is stored after at least five days' notice of the time and place has been given by publication once in a newspaper of general circulation

published in the county where the sale is to be held. Notice of the public sale shall not be given more than five days before the expiration of the 15-day period after the date notice is effective under Section 1963.60. Money realized from the sale of an item of personal property shall be used to pay the reasonable costs of the landlord in storing and selling such item. If the landlord stores the items of personal property on the premises, the cost of storage shall be the fair rental value of the storage premises for the term of the storage. If a number of items of personal property are stored, advertised, or sold together, the costs shall be apportioned according to the reasonable resale value of each item. Any balance of the sale price after the deduction of costs shall be paid into the treasury of the county in which the sale took place within 30 days from the date of sale. The tenant or the owner shall have one year from the date of sale to claim the balance. In case of multiple claims as to the ownership of the proceeds, the decision of the county shall be final.

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

(d) If an item of property is disposed of in accordance with the provisions of subdivision (b) but no notice was sent to the owner pursuant to subdivision (a), the landlord is not liable unless the owner proves that, prior to disposing of the goods, the landlord knew or reasonably should have known that the owner had an interest in the item of property and also that the landlord knew or should have known upon reasonable investigation the address of the owner's residence or place of business.

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

Subdivision (a) provides for a notice containing full particulars regarding the disposition allowed.

Subdivision (b) provides for sale of the property if it remains unclaimed for 15 days after notification. The underlying assumption is that a person who leaves behind property (other than that which is lost) which he does not claim after due notice is property which he does not want. Therefore, his interests can adequately be protected, without undue burden on the landlord, by allowing the property to be sold immediately. The proceeds, in excess of the landlord's costs for storage and sale, are then turned over to the county from which the owner has one year to claim them. Although one might prefer a system whereby the landlord could use such excess proceeds to offset debts owed him by the owner, such disposition would appear to constitute a violation of the owner's rights to due process and equal protection. Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971); [see Study, p.]. The last sentence of subdivision (b) is designed to protect the county in the event of conflicting claims as to the ownership of the proceeds.

Subdivisions (c) and (d) provide that a landlord who reasonably follows the provisions of subdivisions (a) and (b) shall not be held liable to the owner. See Section 1963.10(e). Under subdivision (d), the burden of showing unreasonableness is placed on the owner. It should be noted that, under the definition of "reasonable knowledge or belief" in Section 1963.10(e), the landlord is not required to make any investigation concerning the existence

of additional owners unless he has specific information which indicates that such an investigation would probably be fruitful. However, under subdivision (d) of this section, the landlord is required to make a reasonable investigation concerning the address of a known owner.

§ 1963.60. Notice

1963.60. For the purposes of this chapter, notice shall be in writing and shall be effective:

(a) Upon delivery of a copy thereof to the person to be notified; or

(b) Upon depositing a copy of the notice in the mail, addressed to the person to be notified at such person's last known address. If the landlord has substantial reason to believe that the tenant is temporarily located at another address, notice by mail shall be effective only upon deposit in the mail of an additional copy of the notice addressed to the tenant at such temporary location. Where notice is mailed to an address not in this state, it shall be effective upon mailing if sent by airmail or five days after date of mailing if not sent by airmail.

Comment. Section 1963.60 is designed to maximize the chance that the person to be notified will in fact receive such notification. If notice is mailed, it is to be sent to the last known address regardless of whether it is a residence or business address.

Sec. 2. Section 1862 of the Civil Code is repealed.

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

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

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

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

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

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. A statement that personal property remaining on the premises shall be sold or otherwise disposed of if not redeemed within 15 days from the time plaintiff takes possession of the premises shall be included with the copy of the writ. In addition, where the copy is posted on the property, another copy of the writ shall thereafter be mailed to the defendant at his business or residence address last known to the plaintiff or his attorney or, if no such address is known, at the premises. If the tenant does not vacate the premises within five days from the date of service, or, if the copy of the writ is posted, within five days from the date of mailing of the additional notice, the enforcing officer shall remove the tenant from the premises and place the plaintiff in possession thereof. It shall be the duty of the party delivering the writ to the officer for execution to furnish the information required by the officer to comply with this section.

(e) All goods, chattels or personal property ~~of the tenant~~ of which the plaintiff is not an owner remaining on the premises at the time of its restitution to the plaintiff shall be stored by the plaintiff in a place of safekeeping for a period of ~~30~~ 15 days and may be redeemed by the tenant or the owner upon payment of reasonable costs incurred by the plaintiff in providing such storage ~~and the judgment rendered in favor of plaintiff, including costs~~ . Plaintiff may, if he so elects, store such goods, chattels or personal property of the tenant on the premises, and the costs of storage in such case shall be the fair rental value of the premises for the term of storage. ~~An~~ The plaintiff shall make an inventory ~~shall be~~ made of all goods, chattels or personal property left on the premises prior to its removal and storage or storage on the premises. ~~Such inventory shall either be made by the enforcing officer or shall be verified in writing by him. The enforcing officer shall be entitled to his costs in preparing or verifying such inventory.~~

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

(f) Property so held by the plaintiff shall be disposed of as follows:

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

(2) If the plaintiff reasonably believes that the total resale value of the aggregate of all such property not subject to paragraph (1) does not exceed $100, such property may be disposed of in any manner unless the tenant or owner pays the plaintiff the reasonable cost of storage and takes possession of the property within 15 days from the time the plaintiff takes possession of the premises.

(3) Any such property not subject to paragraph (1) may be sold at public sale by competitive bidding unless the tenant or owner pays the plaintiff the reasonable cost of storage and takes possession of the property within 15 days from the time the plaintiff takes possession of the premises. The sale shall be held at the place where the property is stored, after notice of the time and place of such sale has been given at least five days before the date of such sale by publication once in a newspaper of general circulation published in the county in which the sale is to be held. Notice of the public sale may not be given more than five days prior to the expiration of the ~~30~~ 15 days during which the property is to be held in storage. All money realized from the sale of such ~~personal~~ property shall be used to pay the costs of the plaintiff in storing and selling such property . ~~,~~ and

~~any balance thereof shall be applied in payment of plaintiff's judgment, including costs.~~ Any remaining balance shall be ~~returned to the defendant.~~ paid into the treasury of the county in which the sale took place within 30 days from the date of sale. The tenant or the owner shall have one year from the date of sale to claim the balance.

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

(5) "Reasonable belief" under this subdivision is that belief a prudent person would have without investigation (including the investigation of public records) unless such person has specific information indicating that such investigation would more probably than not reveal pertinent information.

Comment. Section 1174 is amended to conform generally to the provisions of Civil Code Section 1963.10 et seq. relating to disposition of property abandoned on leased premises. See Civil Code § 1963.10 et seq. and Comments. See also Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971); cf., Love v. Keays, 6 Cal.3d 339, 491 P.2d 395, 98 Cal. Rptr. 811 (1971).

III.

INNKEEPERS' AND LANDLORDS' LIENS

An act to amend Section 1861a of, and to repeal Section 1861 of, the Civil Code, relating to innkeepers' and landlords' liens.

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

Section 1. Section 1861a of the Civil Code is amended to read:

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

Such lien may be enforced only after final judgment in an action brought to recover such charges or moneys. During the pendency of the proceeding, the plaintiff may take possession of such baggage and property upon an order issued by the court, where it appears to the satisfaction of the court from an affidavit filed by or on behalf of the plaintiff that the baggage or property is about to be destroyed, substantially devalued, or removed from the premises. Ten days written notice of the hearing on the motion for such order shall be served on the defendant and shall inform the defendant that he may file affidavits on his behalf and

present testimony in his behalf and that if he fails to appear the plaintiff will apply to the court for such order. The plaintiff shall file an undertaking with good and sufficient sureties, to be approved by the court, in such sum as may be fixed by the court.

Upon such order, the plaintiff shall have the right to enter peaceably the ~~unfurnished apartment house, apartment, cottage, or bungalow court~~ premises used by his guest or tenant without liability to such guest or tenant, including any possible claim of liability for conversion, trespass, or forcible entry. The plaintiff shall have the same duties and liabilities as a depository for hire as to property which he takes into his possession. An entry shall be considered peaceable when accomplished with a key or passkey or through an unlocked door during the hours between sunrise and sunset. Unless the judgment shall be paid within 30 days from the date when it becomes final, the plaintiff may sell the baggage and property, at public auction to the highest bidder, after giving notice of such sale by publication of a notice containing the name of the debtor, the amount due, a brief description of the property to be sold, and the time and place of such sale, pursuant to Section 6064 of the Government Code in the county in which ~~said apartment house, apartment, cottage, or bungalow court~~ the premises is situated, and after by mailing, at least 15 days prior to the date of sale, a copy of such notice addressed to such tenant or guest at his residence or other known address, and if not known, such notice shall be addressed to such tenant or guest at the place where ~~such apartment house, apartment, cottage, or bungalow court~~ the premises is situated; and, after satisfying such lien out of the proceeds of such sale, together with any reasonable costs, that may have been incurred in enforcing said lien, the residue of said proceeds of sale, if any, shall, ~~upon demand made within six months after such sale,~~

~~be paid to such tenant or guest; and if not demanded within six months~~ 30 days from the date of such sale, ~~said residue, if any, shall~~ be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representative within one year thereafter, it shall be paid into the general fund of the county; and such sale shall be a perpetual bar to any action against said keeper for the recovery of such baggage or property, or of the value thereof, or for any damages, growing out of the failure of such tenant or guest to receive such baggage or property.

When the baggage and property are not in the possession of the keeper as provided herein, such lien shall be enforced only by writ of execution.

~~This section does not apply to:~~

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

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

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

~~(d)--All other household, table or kitchen furniture not expressly mentioned in paragraph (c), including but not limited to radios, television sets, phonographs, records, motor vehicles that may be stored on the premises except so much of any such articles as may be reasonably sufficient to satisfy the lien provided for by this section; and provided further, that such lien shall be secondary to the claim of any prior bona fide holder of a chattel mortgage on and the rights of a conditional seller of such articles, other than the tenant or guest.~~ Any property which is exempt from attachment or execution under the provisions of the Code of Civil Procedure shall not be subject to the lien provided for in this section.

Comment. The provisions of Section 1861a have been amended to extend to keepers of hotels, motels, inns, boardinghouses, and lodginghouses. Former Section 1861 provided a lien for such keepers, but this lien was unconstitutional since there were no provisions for a hearing prior to imposition of the lien or for exemption of property exempt from attachment. See Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970)(three-judge court); see also Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971). The amendment of Section 1861a standardizes the provisions for all keepers, whether they are innkeepers, motel keepers, or apartment keepers. The duplicative listing of exemptions from execution has been eliminated as unnecessary since the last sentence of Section 1861a incorporates all exemptions from attachment and execution. See Code Civ. Proc. §§ 537.3 and 690.1 et seq. The former requirement that the plaintiff hold the residue of the proceeds from sale for six months has been changed to require the plaintiff to turn over the remaining proceeds to the county within 30 days in order to conform to the provisions of Civil Code Section 1963.50(b).

Sec. 2. Section 1861 of the Civil Code is repealed.

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

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~~and property may be sold in the manner provided by the~~ Code of Civil Procedure for the sale of property under a writ of execution, to satisfy a judgment obtained in any action brought to recover the said charges or indebtedness.

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

This section does not apply to:

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

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

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Comment. Section 1861 is repealed because it was unconstitutional. See Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970)(three-judge court); see also Gray v. Whitmore, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971). Provisions concerning the innkeeper's lien are now identical to the landlord's lien under Section 1861a. See Section 1861a and Comment.

SINCE 1898

(213) 385-9381

Tishman Realty & Construction Co., Inc.

WEST COAST HEADQUARTERS

3460 WILSHIRE BOULEVARD, LOS ANGELES, CALIFORNIA 90010

May 1, 1973

John H. DeMoully, Esq.
California Law Revision Commission
Stanford University
Stanford, California 94305

Re: Tenant's Abandoned Property and Definition of "Abandonment"

Dear John:

Thank you for your kind invitation that I be present at the Commission's deliberations this weekend regarding the captioned matter. It will be a pleasure to assist the Commission in any way possible as well as presenting the point of view of my company, which as you know is the largest private enterprise commercial landlord in the State of California.

As was our custom when originally working jointly on the Civil Code Section 1951.2 project several years ago, returned herewith is a copy of the proposed legislation which accompanied Memorandum 73-42 received by me yesterday. On it I have marked both matters of substance and form which preliminarily would seem to be appropriate modifications thereof. Perhaps the same could be photocopied and furnished to the Commission in time for this weekend.

However, five critical areas deserve highlighting in this letter:

1. Concept of Good Faith. The Comment to proposed Section 1862.4 (see last paragraph on page 29) perfectly expresses the main thrust of the entire legislative package, namely, that reduction of both court congestion and commercial frustration can be achieved only by permitting a good faith lessor ". . . to dispose of goods in a realistic manner without fear of future litigation" (emphasis supplied). Unfortunately, the typed draft of Section 1862.3 (see pages 24-25), Section 1862.4 (see pages 27-28), and Section 1951.3 protects lessor only if he "reasonably believes", in several instances, and imposes liability on him if

he fails to notify an owner whom lessor should have discovered upon "reasonable investigation". It is submitted that no careful lessor will use the proposed remedies, or any of them, if an owner can later use a "rule of reason" foothold to fasten liability on lessor: thus substitution of the "good faith" test is respectfully proposed by me.

2. Definition of "Owner": For sake of clarity, as well as to preclude future litigation, I propose that "owner" include persons having any leasehold, possessory, or security interest; in the same sense, persons having any claim of ownership (even though doubtful) should be included in order to further insulate lessor.

3. "Chattel Mortgages" should not be nullified: Proposed Section 1862.1 (see page 21) surprisingly seems to preclude the good faith security-device often found in leases of restaurants, bars, and barber shops. In these and even in other types of leases, lessor may well spend much of his own money in performing extensive pre-occupancy alterations and improvements in reliance on continuity of the same type of tenancy: in the absence of a security-interest to guarantee payment of rent (which rent always includes amortization of lessors said expenditures), lessors of stores will be disinclined to risk making valuable such improvements. As a separate critique of Section 1862.1, it seems unfair to prevent lessor and lessee from agreeing in the lease that personal property annexed to the real property becomes part of the realty: I propose that the Section be appropriately limited in this regard.

4. Redemption rights of lessee: Perhaps it is mere inadvertence, but Section 1862.3(b) and (c) and also Section 1862.4-A-(3) and 1862.4(b) seem to fail to give lessee the right to reclaim an item of personal property. Also through probable inadvertence, both Sections fail to insulate lessor from claims by the lessee himself. Corrective proposals are marked on the enclosed copy of the legislation.

5. Definition of "Abandonment":

(a) Basically, my company would prefer that abandonment be defined as provided in Proposal "A" annexed hereto;

(b) However, if Professor Friedenthal's proposal is felt to be more appropriate, then:

(i) again only a "good faith" approach provides certainty; and

(ii) under Section 1951.3(b), at page 32, lessee should not be able to unilaterally work an abandonment while retaining possession of the premises.

In addition to the foregoing, we would appreciate the Commission considering the following related matter:

Effective Date of Sections 1951.2 et seq.: Ever since July 1, 1971, lessors have been in doubt as to whether Civil Code Section 1951.2 applies to post-July 1971 amendments of pre-July 1971 leases. We, in fact, have felt constrained in all such cases to propose appropriate amendatory Section 1951.2 provisions into each such amendment: in more than a few cases, lessees have refused to accept such provisions, thus possibly depriving us of any "expectancy damages" remedy. Proposal "B" annexed hereto would remedy such ambiguity and is properly within the jurisdiction of the Commission.

With many thanks in advance for the opportunity to aid the Commission, I am

Cordially,

RONALD P. DENITZ
Assistant General Counsel

RPD:svh
encl.

COMMENTS OF RON DENITZ OF TISHMAN REALTY & CONSTRUCTION CO, INC, CONCERNING

A PROPOSED ARTICLE GOVERNING DISPOSITION

OF UNCLAIMED GOODS AFTER

TERMINATION OF TENANCY

§ 1862. Definitions as used in this article

1862. (a) "Landlord"* means any operator, keeper, lessor, or sublessor of any furnished or unfurnished hotel, motel, inn, boarding house, lodging house, apartment house, apartment, cottage, bungalow court, or commercial facility (INCLUDING BUT NOT LIMITED TO STORES AND OFFICES PREMISES).

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

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

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

(e) "Item of personal property" means any individual piece of personal property (AS AN INTEGRATED UNIT) or any trunk, valise, box, or other container which because it is locked or tied deters immediate access to the contents thereof.

Comment. Subdivisions (a) and (b) define "landlord" and "tenant" broadly so as to extend coverage of the article to all types of rental property, whether commercial or residential, furnished or unfurnished. All landlords, regardless of the nature of the facilities, need a procedure by which they can dispose of goods left behind after termination of tenancy. At present, Civil Code Section 1862, which would be replaced, provides relief only for those who own or manage furnished, residential facilities. Other landlords have no statutory coverage except in unlawful detainer cases under Code of Civil Procedure Section 1174.

NOTE * SHOULDN'T THIS BE "LESSOR" & "LESSEE" TO CORRESPOND TO CIVIL CODE §§ 1951.2 ET SEQ.?

This article does not apply to unlawful detainer situations. See proposed Section 1862.2.

Subdivision (c) defines "owner" to include not only a tenant, but other persons as well. A landlord should be permitted to dispose of goods left behind even though, as is often the case, he does not know for certain whether the goods belonged to the former tenant or to someone else. The unlawful detainer statute, Code of Civil Procedure Section 1174, provides for disposition of goods owned by a tenant only. A landlord who follows the provisions of that section still risks an action for conversion by a third person who claims ownership.

Subdivision (d) defines premises to include common areas such as storage rooms or garages where personal property may be left when the tenant leaves.

Subdivision (e) provides that a locked or tied container need not be opened by a landlord who wishes to dispose of it. The privacy of the owner is thus preserved until disposition. Section 1862 of the Civil Code currently permits disposition of a container without opening it even if the container is not secured. The obligation to look into unlocked or untied containers is not onerous and will permit the landlord to make a realistic evaluation of the goods, which is helpful in protecting interests of the owner as well as of the landlord.

, INCLUDING BUT NOT LIMITED TO PERSONS HAVING ANY LEASEHOLD, POSSESSORY, OR SECURITY INTEREST.

§ 1862.1. Lease provisions nullified

1862.1. Notwithstanding any provision in a rental agreement between landlord and tenant, ~~the~~ tenant shall have the right during the tenancy and upon termination thereof to remove tenant's personal property from the premises, whether or not tenant is indebted to ~~the~~ landlord.

Comment. This provision is specifically designed to protect tenants from onerous contract provisions which can be used to deprive them of their goods without a court determination, often in contradiction to statutes which exempt certain personal property from levy and execution. It is unlikely, in most situations, that such self-help clauses would be enforced by California courts (see Jordan v. Talbot, 55 Cal.2d 597, 361 P.2d 20, 12 Cal. Rptr. 488 (1961)), but few tenants have the time, money, and will to engage in a court contest. The proposed Section 1862.1 will deter landlords from including or relying on such provisions in their rental agreements. Landlords will be further deterred from abusing tenant's rights in their personal property by the fact that deliberate violations of the proposed section could lead to punitive as well as compensatory damages.

Note that the proposed section does not prohibit the landlord from enforcing valid liens granted by statute. See Civil Code § 1861a; Study p. __.

NOTHING CONTAINED HEREIN SHALL PRECLUDE LANDLORD AND TENANT FROM PROVIDING IN SUCH RENTAL AGREEMENT (a) FOR OTHERWISE VALID SECURITY AGREEMENT PURSUANT TO THE CALIFORNIA COMMERCIAL CODE, AND (b) THAT LEASEHOLD IMPROVEMENTS, BETTERMENTS, ALTERATIONS AND PERSONAL PROPERTY AFFIXED TO THE PREMISES SHALL BE NON-REMOVABLE

§ 1862.2. General requirements for preservation of property

1862.2. (a) If, after termination of tenancy and surrender or abandonment of the premises by tenant, ~~the~~ landlord finds that there remains on the premises items of personal property of which landlord is not an owner, landlord shall dispose of such property as follows:

(1) If an item of property reasonably appears to have been lost, it shall be disposed of pursuant to Article 1 (commencing with Section) of Chapter 4, Title 6 of the Civil Code.

(2) If the appropriate police or sheriff's department refuses to accept property under paragraph (1), it shall be deemed not to have been lost.

(b) All items of personal property REMAINING ON THE PREMISES, other than those subject to paragraph (1) or subdivision (a), shall be stored by ~~the~~ landlord in a place of safekeeping until TENANT OR AN owner pays landlord the reasonable costs of storage and takes possession of such items of property or until such property is AT THE OPTION OF LANDLORD, disposed of pursuant to Section 1862.3 or 1862.4.

Comment. Subdivision (a) of the section limits the scope of this article to situations where (1) the tenancy has been terminated; (2) ~~the~~ tenant has voluntarily left the premises; and (3) ~~the~~ landlord makes no claim on the goods. The requirement that the tenancy be terminated seems obvious; a landlord has no need nor right to dispose of tenant's goods while the tenancy continues. A problem does arise in deciding when a tenancy has been terminated by abandonment since the present law gives inadequate guidelines. See Study . Proposed Section 1951.3 is designed to remedy this situation. The requirement that ~~the~~ tenant have voluntarily left the premises is simply to avoid conflict with the statutory provision dealing with ~~wrongful~~ UNLAWFUL detainer; see

Code of Civil Procedure Section 1174, which provides a detailed method for disposing of goods left by an ousted tenant. The requirement that ~~the~~ landlord does not have an ownership interest in the goods is necessary to avoid any conflict with landlord's claim that the property was his in the first place or that it was a gift from ~~the~~ tenant or that he has a valid statutory lien on the item. If ~~the~~ landlord proceeds under this article with regard to any items, he necessarily gives up any claim of ownership of such items.

Subdivision (a)(1) provides that items of property lost on the premises shall be treated like any other lost items pursuant to the Lost Property Laws (Civil Code §§ 208-) which have specific provisions for notification and disposition. See Study, p. __. All owners who lose property should be able to rely on the Lost Property Laws, thus maximizing chances for retrieval.

Subdivision (a)(2) eliminates any uncertainty which would arise if the police or sheriff's department disagreed with a landlord as to whether an item of property was lost or was knowingly left behind.

Subdivision (b) sets forth a general obligation of ~~the~~ landlord, thus leaving no situation uncovered.

COVERS ALL ITEMS OTHER THAN LOST PROPERTY AND

§ 1862.3. Disposition of goods valued at less than $100

1862.3. If landlord reasonably believes that the total resale value of the AGGREGATE OF ALL items of personal property subject to subdivision (b) of Section 1862.2 does not exceed $100, such property may be disposed of as follows:

(a) Landlord shall ~~notify the~~ GIVE NOTICE TO tenant and any other person landlord ~~reasonably~~ IN GOOD FAITH believes is the owner of any item of such personal property. Such notice shall contain:

(1) A general description of each item of the personal property, the name of ~~the~~ tenant, the address of the premises, and the address where each item is currently stored.

(2) A statement of ~~the~~ landlord's belief that the total resale value of THE AGGREGATE OF all such items does not exceed $100.

(3) The name of each person, IF ANY, other than ~~the~~ tenant, who landlord ~~reasonably~~ believes OR CLAIMS TO BE is an owner of any item of the property, specifying such items.

(4) A statement that, unless ~~the owner~~ SUCH PERSON pays landlord the reasonable costs of storage of an item and takes possession thereof within 15 days from the date notice was delivered or mailed, such ~~owner may~~ PERSON SHALL lose all right, title, and interest in such item.

(b) If TENANT OR SUCH ANY owner does not pay landlord the reasonable costs of storage and take possession of an item of property within 15 days from the date notice pursuant to subdivision (a) was delivered or deposited in the mails, ~~the~~ landlord may dispose of such item of property in any manner.

(c) ~~The~~ Landlord shall not be held liable in any action with regard to the disposition of an item of property brought by TENANT OR an owner to whom notice was sent pursuant to subdivision (a).

(d) In any action with regard to the disposition of an item of property brought by an owner to whom notice was not sent pursuant to subdivision (a), landlord shall not be held liable unless such owner proves either (1) that landlord did not act in good faith ~~was unreasonable~~ in declaring the value of the total property not to exceed $100 or (2) that, prior to disposing of the goods, landlord knew ~~or should have known~~ that such owner had an interest in the item of property and also that ~~the~~ landlord knew ~~or should have known upon reasonable investigation~~ the address of such owner's residence or place of business.

Comment. This section permits summary disposition of property appearing to be worth less than $100. The costs of storage and sale of goods worth less than $100 are too high to require a formal disposition. The $100 figure is arbitrary as any figure would be. Any such amount must be high enough to be useful in the many situations where goods of little value are left behind; the landlord must not fear his evaluation will be held unreasonable. At the same time, the figure must not be so high as to provide a windfall. Given the costs of storage and of sale, plus the inconvenience to ~~the~~ landlord, the $100 figure seems justifiable. Note that the $100 amount applies to the total value of all property subject to proposed Section 1862.2(b). If the total exceeds $100, justification for a summary procedure disappears and ~~the~~ landlord may only proceed under proposed Section 1862.4.

Subdivision (a) sets forth the requirements of notice to be given to ~~the~~ tenant and, if known, to any other person who owns any item of property.

Subdivision (b) provides that, unless ~~the~~ tenant or an owner appears within 15 days, ~~the~~ landlord may dispose of the property in any manner. The 15-day period is deliberately short to protect ~~the~~ landlord's interests in removing property of little or no value. It is unfair to require ~~the~~ landlord to endure any

greater costs and inconvenience particularly since, in the vast majority of cases, ~~the~~ TENANT OR owner does not care about the property and will never claim it.

Subdivision (c) provides that a person to whom proper notice was sent may not later make a claim against ~~the~~ landlord regarding his disposition of the property. The requirements of notice under proposed Section 1862.5 give maximum protection to ~~the~~ tenant + ANY OWNER without unduly burdening ~~the~~ landlord.

Subdivision (d) covers the situation where ~~the~~ landlord is unaware of who owns the goods. In such case, ~~the~~ landlord should not be liable if he has acted in good faith, and the burden is placed on the owner to prove bad faith in order to assure landlords that they will not be subject to the risks of litigation by following the procedures set out in the statute. The requirement that ~~the~~ landlord have made a good faith determination as to the value of the goods is to protect unknown owners from being deprived unfairly of substantial sums. Any landlord who is in doubt as to value may follow the procedure set forth in Section 1862.4 which protects the owner's economic interests.

§ 1862.4. General provisions for disposition

1862.4. Landlord may dispose of any item of personal property subject to subdivision (b) of Section 1862.2 as follows:

(a) Landlord shall ~~notify the~~ GIVE NOTICE TO tenant and any other person landlord ~~reasonably~~ IN GOOD FAITH believes is the owner of such item. Such notice shall contain:

(1) A general description of the item of personal property, the name of ~~the~~ tenant, the address of the premises, and the address where such item is currently stored.

(2) The name of each person, IF ANY, other than ~~the~~ tenant, who landlord ~~reasonably~~ IN GOOD FAITH believes is an owner of the item. OR CLAIMS TO BE

(3) A statement that, unless ~~the owner~~ SUCH PERSON pays landlord the reasonable cost of storage of such item and takes possession thereof within 15 days from the date notice was delivered or mailed, such item may be sold at public sale, and the proceeds, less ~~the~~ landlord's reasonable costs for sale, advertising, and storage, turned over to the county treasurer in the county where the sale took place and that the owner TENANT OR shall have one year from the date of sale in which to claim such proceeds from the county.

(b) If owner TENANT OR SUCH ANY does not pay landlord the reasonable costs of storage and take possession of an item of property within 15 days from the date notice pursuant to subdivision (a) was delivered or deposited in the mails, the item ~~may~~ SHALL be sold at public sale by competitive bidding to be held at the place 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 newspaper of general circulation published in the county where the sale is to be held. Notice of the public sale cannot be given ~~more~~ EARLIER than five days prior to the expiration of the 15 days after the service or mailing of notice under

subdivision (a). Money realized from the sale of an item of property shall be used to pay the reasonable costs of ~~the~~ landlord in storing and selling such item. If a number of items are stored, advertised, or sold together, the costs shall be apportioned according to the reasonable resale value of each item. Any balance of the sale price shall be ~~held by landlord for seven days and, if not claimed by the owner, shall be~~ paid into the treasury of the county in which such sale took place. The owner of any item OR TENANT shall have one year from the date of sale to claim such balance. In case of multiple claims, the decision of the county as to the ownership of any such proceeds shall be final.

(c) If an item of property is disposed of in accordance with the provisions of subdivision (b) and NOTICE GIVEN ~~the owner was notified~~ pursuant to subdivision (a), ~~the~~ landlord SHALL ~~is~~ not BE liable, ~~to the owner~~ with respect to such property OR THE PROCEEDS FROM THE SALE THEREOF, TO ANY PERSON TO WHOM NOTICE WAS GIVEN.

(d) If an item of property is disposed of in accordance with the provisions of subdivision (b) but no notice was sent to the owner pursuant to subdivision (a), ~~the~~ landlord SHALL ~~is~~ not BE liable unless the owner proves that, prior to disposing of the goods, landlord knew ~~or should have known~~ that such owner had an interest in the item of property and also that landlord knew ~~or should have known upon reasonable investigation~~ the address of such owner's residence or place of business.

Comment. Section 1862.4 is the basic provision governing disposition of property and is an alternative to Section 1862.3 even in situations where the items do not appear to exceed $100 in resale value.

Subdivision (a) provides for a notice containing full particulars regarding the disposition allowed.

Subdivision (b) provides for sale of the property if it remains unclaimed for 15 days after notification, which is the crucial provision of the entire proposed law. The underlying assumption is that a person who leaves behind goods (other than those which are lost) which he does not claim after due notice are goods which he does not want, at least in specie. Therefore, his interests can adequately be protected, without undue burden on ~~the~~ landlord, by allowing the goods to be sold immediately. The proceeds, in excess of ~~the~~ landlord's costs for storage and sale, are then turned over to the county from which the owner has one year to claim them. Although one might prefer a system whereby the landlord could use such excess proceeds to offset debts owed him by the owner, such disposition would appear to constitute a violation of the owner's rights to due process and equal protection. Gray v. Whitmore, 17 Cal. App.3d 1, Cal. Rptr. (19); see Study, p. . The last sentence of the section is designed to protect the county in the event of multiple, conflicting claims as to the ownership of the proceeds.

Subdivisions (c) and (d) provide that a landlord who in good faith follows the provisions of subdivisions (a) and (b) shall not be held liable to the owner. Under subdivision (d), the burden of showing bad faith is placed on the owner. One of the major purposes of the entire legislation is to permit landlords to dispose of goods in a realistic manner without fear of future litigation. See Study, p. __. Whatever provisions are adopted, they must have this safeguard.

§ 1862.5. Notice; methods

1862.5. Notice under Sections 1862.3(a) and 1862.4(a) shall be in writing and shall be effective:

(a) Upon delivery of a copy thereof to the person to be notified, or

(b) ~~By~~ UPON depositing a copy of the notice in the mail, addressed to the person to be notified at such person's last known RESIDENCE OR BUSINESS address. If ~~the~~ landlord has substantial reason to believe that ~~the~~ tenant is temporarily located at another address, notice by mail shall be effective only upon deposit in the mail of an additional copy of the notice addressed to ~~the~~ tenant at such temporary location. Whenever mailed notice IN WHOLE OR IN PART is sent to an address out of the State OF CALIFORNIA, notice shall be effective only UPON MAILING IF ~~such~~ sent by airmail; IF SENT

Comment. Section 1862.5 is designed to maximize the chance that the person to be notified will in fact receive such notification.

OTHER THAN BY AIRMAIL TO AN ADDRESS OUT OF THE STATE OF CALIFORNIA, SAID NOTICE SHALL BE EFFECTIVE UPON RECEIPT BY THE CENTRAL POST-OFFICE IN THE CITY OR TOWN TO WHICH IT IS ADDRESSED.

§ 1951.3. Methods of declaring abandonment

1951.3. (a)(1) If a lessor of real property ~~reasonably~~ IN GOOD FAITH believes that the property has not been occupied for a period of 20 consecutive days during which rent is due and unpaid, ~~and the lessor has no substantial reason to believe that the lessee has not abandoned the premises~~, then the lessor may notify the lessee in writing, stating as follows:

(i) that ~~the~~ lessor believes the property to have been abandoned

(ii) that, unless the lessee contacts ~~the landlord~~ LESSOR within 15 days from the date notice was personally delivered to lessee or deposited in the mail, the property will be deemed abandoned, ~~and the lease terminated.~~

(2) If, by the end of 15 days from the date notice was delivered or mailed, ~~the~~ lessee has not contacted ~~the landlord~~ LESSOR and manifested his intention not to abandon the property, the property shall be deemed abandoned within the meaning of Section 1951.2.

(3) Thereafter, in any action brought by lessee, lessor shall not be held liable for treating the property as abandoned and the lease as terminated unless lessee proves that ~~the~~ lessor ~~had substantial reason to~~ DID NOT IN GOOD FAITH believe that lessee ~~did not~~ intend ED to abandon the property or that lessor willfully failed to notify ~~the~~ lessee as required in subdivision (a)(5).

(4) The fact that lessor knew that lessee left items of personal property on the leasehold premises shall not, of itself, justify a finding that lessor ~~was unreasonable~~ LACKED GOOD FAITH in believing the real property to have been abandoned.

(5) Notification under subdivision (a)(1) above shall be effective when the notice is delivered in person to ~~the~~ lessee or when deposited in the mail addressed to lessee at his last known residence or place of business. If notification is by mail, it shall be effective only when an additional copy

of the notice is deposited in the mail, addressed to lessee at the place, if any, where lessor has substantial reason to believe the lessee is temporarily located.

IF A LESSEE OF REAL PROPERTY WISHES TO ESTABLISH THE DATE UPON WHICH SAID

(b) Property shall be deemed abandoned within the meaning of Section 1951.2, THEN THE SAME SHALL BE:

AFTER COMPLETE CESSATION OF OCCUPANCY,

(1) Upon delivery by ~~the~~ lessee to the lessor of a written statement that lessee has abandoned the PROPERTY ~~premises~~, or

AFTER COMPLETE CESSATION OF OCCUPANCY,

(2) Fifteen days after lessee has deposited in the mail a written notice addressed to lessor at his last known place of business, stating the lessee has abandoned the ~~premises~~ PROPERTY.

(c) Nothing in subdivision (a) or (b) above shall preclude lessor or lessee from otherwise proving that the property had been abandoned within the meaning of Section 1951.2.

Comment. Section 1951.3 is designed to eliminate the uncertainty as to when a tenancy is to be held abandoned within the meaning of Civil Code Section 1951.2. Under the latter provision, once an abandonment occurs AND IS COUPLED WITH LESSEES BREACH OF THE LEASE, the tenancy is terminated (EXCEPT IN CASES GOVERNED BY SECTION 1951.4) and ~~the~~ lessor has a duty to minimize ~~the~~ lessee's damages by making reasonable efforts to rerent the premises. The time of abandonment is also important under proposed Sections 1862.2-1862.4 which set forth ~~the~~ lessor's rights and duties as to ITEMS OF PERSONAL property remaining on the premises after termination.

Unfortunately, however, Section 1951.2 does not specify when an abandonment occurs. Under common law rules, abandonment occurs when ~~the~~ lessor accepts ~~the~~ lessee's offer to end the tenancy. ~~The~~ Lessee must in fact have intended to abandon the property. Appearances of abandonment are not sufficient, and ~~the~~ lessor must accept the premises or the abandonment is not effective.

See Wiese v. Steinauer, 201 Cal. App.2d 651, 20 Cal. Rptr. 295 (1962); Anheuser-Busch Brewing Ass'n v. American Products Co., 59 Cal. App. 718, 211 P. 817 (1922). See also Gerhard v. Stephens, 68 Cal.2d 864, 442 P.2d 692, 69 Cal. Rptr. 612 (1968). These rules are insufficient in most cases to guide the parties although, if they do have a clear understanding about the matter, the common law rule should apply and hence is preserved in subdivision (c).

Subdivision (a) generally provides a means by which ~~the landlord~~ LESSOR can safely decide the abandonment has taken place so that he may dispose of any goods remaining on the premises and otherwise prepare for a new ~~tenant~~ LESSEE.

Subdivision (a)(1) provides for notification to a ~~tenant~~ LESSEE who appears to have abandoned the property. A number of safeguards are provided to insure that a determination of abandonment is not prematurely made. Not only must ~~landlord reasonably~~ LESSOR IN GOOD FAITH believe that abandonment has taken place but the premises must have appeared to be unoccupied for 20 consecutive days for which no rent has been paid.

These requirements, together with the provisions for notice in subdivision (a)(5), reasonably assure that a ~~tenant~~ LESSEE will not be deprived of a leasehold interest which he did not intend to abandon. The 20-day period is deliberately chosen to assure that, for the normal tenancy calling for monthly payments, at least two due dates must pass before abandonment can be declared since the ~~tenant~~ LESSEE has an additional 15 days under subdivision (a)(2) during which to contact the ~~landlord~~ LESSOR and demonstrate his intention to retain the leasehold. If ~~the landlord~~ LESSOR wishes faster action, he may, of course, resort to an action in unlawful detainer under Code of Civil Procedure Section 1174.

Subdivision (a)(2) provides that ~~the tenant~~ LESSEE must claim his leasehold within 15 days of notification or the leasehold is decreed abandoned. Given the safeguards set forth in subdivision (a)(1), the 15-day period is reasonable. A ~~landlord~~ LESSOR should not be required to wait any longer before abandoned property is restored to his possession.

Subdivision (a)(3) provides that ~~the landlord~~ LESSOR who in good faith follows the procedures in subdivisions (a)(1) and (a)(5) cannot be held liable to a ~~tenant~~ LESSEE who later appears to challenge the abandonment. The burden of proving bad faith falls upon ~~the tenant~~ LESSEE, thus safeguarding ~~landlords~~ LESSORS from substantial fear of litigation. Under common law rules, abandonment depends upon the manifested intentions of the parties to the lease. Even though from all appearances a leasehold seems abandoned, a lessor, who has not had contact with ~~the~~ lessee, can never be certain that ~~the~~ lessee will not suddenly appear and claim that he was on vacation or in the hospital and had never intended to, or manifested an intention to, abandon his interests. This section eliminates this uncertainty.

Subdivision (a)(4) is designed to eliminate a possible problem with regard to what facts may overcome a lessor's reasonable belief that a tenancy is abandoned. Obviously, since many lessees who abandon their leasehold interests leave personal property behind, the mere fact that the lessor knows that ~~the~~ lessee has done so should not, by itself, be held to establish that ~~the~~ lessor has not acted in good faith. ~~The~~ Lessor cannot refuse to accept ~~the tenant's~~ LESSEE'S "offer to abandon" as apparently he can do under the common law. Subdivision (a)(5) specifies how notification is to be made. The requirements are designed to insure that ~~the~~ lessee will in fact get notice if his whereabouts are known.

SINCE UNDER NORMAL CIRCUMSTANCES †, IF THE LEASE SO PROVIDES, LESSOR IS ENTITLED TO SO-CALLED "EXPECTANCY DAMAGES" UNDER SECTION 1951.2.

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Subdivision (b) provides a method by which ~~the~~ lessee can declare his leasehold abandoned in order IN MOST CASES, to terminate the lease and require ~~the~~ lessor under Section 1951.2 to take steps to mitigate ~~the~~ lessee's obligations.

AN ACT TO AMEND CHAPTER 2 OF TITLE 5 OF PART 4 OF DIVISION 3 OF THE CIVIL CODE, RELATING TO ABANDONMENT OF HIRED REAL PROPERTY

Sec. 1. Section 1953 is added to the Civil Code as follows:

1953. (a) If a lessee of real property is in default and for a period of 15 days the lessee or his agent, representative, or member of his family has neither:

(1) bodily occupied the real property, nor

(2) paid rent, nor

(3) actually communicated to the lessor his intent to continue the tenancy,

then the lessee shall be deemed to have abandoned the real property.

(b) The provisions of paragraph "(a)" shall not preclude the lessor from otherwise proving that the lessee has abandoned the real property.

PROPOSAL "A"

AN ACT TO AMEND SECTION 1952.2 OF THE CIVIL CODE, RELATING TO LANDLORD-TENANT

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

1952.2. (a) Except as provided in subdivision (b), Sections 1951 to 1952, inclusive, do not apply to:

~~(a)~~ (1) Any lease executed before July 1, 1971, whether or not amended subsequent to July 1, 1971.

~~(b)~~ (2) 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.

(b) For the purposes of this section, an agreement whereby a lease is "amended" includes, but is not limited to, a modification of a pre-existing lease to change the term, rent, size, or location of the property demised or to require or change the amount of an advance payment as defined in Section 1951.7.

PROPOSAL

"B"