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Abandoned Personal Property: Disposition of Items Left Behind After Termination of a Tenancy

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Introduction

After the termination of a tenancy, a landlord often finds items of personal property left on the premises by either a former tenant or other persons. This legal memorandum discusses California law regarding the disposition of abandoned property after the end of a tenancy.

These rules do not apply to manufactured homes, mobilehomes, or commercial coaches. Cal. Civ. Code § 1981.

I. Landlord Request That Tenant Retrieve Property

Q 1. *Upon termination of tenancy, what should a landlord do if a tenant has left behind personal property on the premises?*

A If a tenant has left personal property on the premises at the termination of the tenancy, a landlord should first attempt to contact the tenant to inform him/her that property left behind should be retrieved. Cal. Civ. Code § 1983(a).

Q 2. *How should a landlord notify a former tenant, or other person, that the landlord believes may have left property on the previously rented premises?*

A When a tenant has vacated the premises after termination of the tenancy and property has been left behind, a landlord must give a written notice (Notice) to the tenant and any other person the landlord reasonably believes may own the property. The Notice should contain the following items:

- A description of the property which is sufficiently clear to permit the owner of the property to identify it; The place where the property may be claimed;
- A statement to the owner that reasonable storage costs may be charged before the property is returned;

from the date the Notice is personally delivered, or, if mailed, 18 days from the date the Notice is deposited in the mail. Cal. Civ. Code § 1983(b).

In addition to the items listed above, the Notice should also contain a description of what will happen to the property if it is unclaimed. If the property is believed to be worth \$300 or more, the Notice should include these points:

- If the owner fails to reclaim the property, it will be sold at a public sale after a Notice of Sale has been given by publication;
- The owner has the right to bid on the property at the sale;
- Once the property is sold, the costs of storage, advertising, and sale will be deducted from the sale price and any remaining money will be paid over to the county; and
- The original property owner may claim the money at any time within one year from the date the county receives the money. Cal. Civ. Code § 1984.

If the property is believed to be worth less than \$300, the Notice need only state this fact and that the property may be kept, sold, or destroyed without further warning to the owner if it is not claimed within the time period listed in the Notice.

Q 3. If a landlord sends a written Notice to a former tenant or other property owner by mail, where should the Notice be mailed?

A The landlord should mail the Notice, via first-class mail, postage prepaid, to the presumed property owner's last known address. If the landlord believes a former tenant owned the property, then a copy of the Notice must also be sent to the vacated premises. Cal. Civ. Code § 1983(c).

If the landlord has reason to believe the presumed property owner will not receive the Notice at his/her last known address, then the landlord must also send the Notice to all other addresses known by the landlord where the property owner could reasonably be expected to receive the Notice. Other addresses where the property owner might be expected to receive the Notice include a place of business, a post office box, or a relative's home. Cal. Civ. Code § 1983(c).

Q 4. What forms for the Notice satisfy the requirements of the law?

A Notice that is given either to the former tenant or to a person other than the former tenant needs to comply substantially with the format of the forms below—the first would go to the tenant and the second to someone other than the tenant if the landlord reasonably believes someone else to be the owner of the personal property. Cal. Civ. Code §§ 1984-5.

FORM OF NOTICE TO TENANT

NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

To: _____
(Name of former tenant)

(Address of former tenant)
when you vacated the premises at _____ (Address of premises, including room or apartment number, if any) _____, the following personal property remained:
_____ (Insert description of personal property)

You may claim this property at _____ (Address where property may be claimed).

Unless you pay the reasonable cost of storage for all of the above-described property which you claim, not later than _____ (insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail) this property may be disposed of pursuant to Civil Code Section 1988.

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

OR

[Because this property is believed to be worth less than \$300, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above.]

Dated:

(Signature of Landlord)

(Type or print name of Landlord)

(Telephone number)

(Address)

Cal. Civ. Code § 1984.

FORM OF NOTICE TO OWNER OTHER THAN TENANT

NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

To: _____
(Name)

(Address)

When _____ (name of the former tenant) vacated the premises

at _____ (address of premises, including room or apartment number, if any)
the following personal property remained:

_____ (insert description of the personal property).

If you own any of this property, you may claim it at _____ (address where the property may be claimed).

Unless you pay the reasonable cost of storage and take possession of the property to which you are not entitled not later than _____ (insert date not less than 15 days after notice is personally delivered or, if mailed, not less than 18 days after notice is deposited in the mail) this property may be disposed of pursuant to Civil Code Section 1988.

Dated: _____

(Signature of Landlord)

(Type or print name of Landlord)

(Telephone number)

(Address)

Cal. Civ. Code § 1985.

Q 5. *Where should a landlord keep the abandoned property pending either retrieval of the property by a tenant or a sale of the property?*

A The personal property which the landlord has described in the Notice must either be left on the vacated premises or stored by the landlord in a safe place until the landlord either releases the property to the tenant or rightful owner or disposes of the property at a public sale. Cal. Civ. Code § 1986.

Q 6. *Is a landlord liable to a tenant or any other rightful owner of the property if the property is lost, destroyed, or stolen while it is in storage?*

A As long as the landlord exercises reasonable care in storing the property, the landlord will not be liable to the tenant or any other rightful owner. However, a landlord will be liable for losses caused by his/her deliberate or negligent acts. Cal. Civ. Code § 1986.

Q 7. What happens when someone appears at the designated location to take possession of the property?

A A landlord may release the property to a former tenant or to any other person the landlord reasonably believes to be the owner of the property as long as the tenant or other owner pays the reasonable storage fees and takes possession of the property prior to the date specified in the written Notice. Cal. Civ. Code § 1987(a).

Q 8. What if the date, specified in the Notice, by which a presumed owner must claim the property has elapsed, but he or she still contacts a landlord in order to reclaim the property?

A As long as the Notice received by the presumed owner stated that the property would be sold at a public sale, the owner may claim the property at any time prior to the sale. The owner must pay the landlord the reasonable cost of storage, advertisement, and sale incurred prior to the item's withdrawal from sale. The landlord must then release the property to its owner. Cal. Civ. Code § 1987(b).

Q 9. If a landlord releases the property to a former tenant who the landlord believes is the rightful owner, could the release expose the landlord to liability from other persons?

A When the landlord releases property to a former tenant, the landlord is not liable to any other persons. Cal. Civ. Code § 1989(a).

Q 10. If a landlord releases the property to someone other than a former tenant, is the landlord liable to someone else who may claim ownership of the property?

A As long as the landlord releases the property to a person whom the landlord reasonably believes is the owner, then the landlord is not liable to any other person to whom the Notice of abandoned property might have been sent. The landlord is also not liable to any person not in receipt of the Notice unless that person can prove that prior to releasing the item the landlord believed or should have believed this person had an interest in the property and the landlord knew or should have known upon reasonable investigation the address of this person. These rules also apply after the sale of property. Cal. Civ. Code § 1989(b)(1-2).

Q 11. What are the storage costs which a landlord may recover from a property owner who claims the abandoned items?

A If the property owner claims the property by the date specified in the Notice or any time prior to the sale of the property, the landlord may charge all the reasonable costs of storage incurred which remain unpaid from the time of the termination of tenancy to the time the property is claimed. Cal. Civ. Code § 1990(a)(1).

If the person claiming the property is not a former tenant, the landlord may only charge this person reasonable costs of storage for the item that person is claiming. Cal. Civ. Code § 1990(a)(2).

The landlord may never charge more than one person who claims the property for the same storage costs. Cal. Civ. Code § 1990(b).

Q 12. Can the landlord charge the property owner a storage fee for storing the abandoned item on the rental premises?

A When the landlord stores the abandoned item on the rental premises, he/she may charge the party who claims the item the fair rental value of the space reasonably required to store the item for the term of the storage. Cal. Civ. Code § 1990(c).

Q 13. If no one comes to claim the property, how should the property be sold?

A As mentioned above, if a landlord reasonably believes that the value of the abandoned item(s) is less than \$300, the landlord may keep the property or dispose of it in any manner. Cal. Civ. Code § 1988(a).

If, on the other hand, the property has a value of \$300 or more, the landlord must sell the item(s) at a public sale by competitive bidding. Cal. Civ. Code § 1988(a).

Q 14. How does a landlord conduct a public sale?

A First, the landlord must wait until the date to claim property given in the Notice has elapsed. Cal. Civ. Code § 1988(a).

Then, notice of the time and place of the public sale must be given in a newspaper of general circulation in the county where the sale is to be held (Notice of Sale). The Notice of Sale must appear in the paper once a week for two weeks. The date of the last publication must be at least five days before the auction is held. The Notice of Sale should not be published before the last of the dates specified for taking possession of the property in the Notice. Cal. Civ. Code § 1988(b).

Q 15. In addition to giving the time and the place of the sale, what else should a Notice of Sale include?

A The Notice of Sale should describe the property to be sold in a manner reasonably adequate to allow the rightful owner to identify it. It is important to note that the landlord's protection from liability does not extend to the disposition of any property which has not been described in the Notice of Sale. Cal. Civ. Code § 1988(b).

Q 16. If the item for sale is a locked trunk, is a landlord expected to open the trunk and describe the contents in the Notice of Sale?

A If the item for sale is a trunk, box, or other container which is locked, fastened, or tied in a manner that does not permit immediate access to its contents, the landlord may describe the container without describing its contents. The landlord will not be exposed to liability in such a situation. Cal. Civ. Code § 1988(b).

Q 17. After the sale, does a landlord get to keep all the sale proceeds?

A No. From the proceeds the landlord may deduct the expenses for storage, advertising, and sale. The balance, if not claimed by a former tenant or property owner, must be paid into the treasury of the county in which the sale took place not more than 30 days after the sale. The landlord should contact the county treasury department to determine how sale proceeds should be paid to the treasurer. Cal. Civ. Code § 1988(c).

Q 18. If a former tenant or other property owner contacts a landlord after the sale to recover the sale price of the item, what should the landlord do?

A The landlord may refer the property owner to the county treasurer. The property owner has one year from the date of sale in which to make a claim to the treasurer for the balance of the sale proceeds by making application to the county treasurer or other official designated by the county. Cal. Civ. Code § 1988(c).

II. Tenant Request For Return Of Property

Q 19. May a residential landlord refuse to return a former tenant's personal property left on the rental premises after the end of the tenancy?

A A residential landlord may not refuse to return items which a former tenant has left on the premises when the tenancy ends if the tenant requests the items under the following conditions:

- The tenant makes a written demand which includes a description of the personal property and the tenant's mailing address within 18 days of the end of the tenancy;
- The landlord or his/her agent has control or possession of the item at the time the request is received;
- The tenant, in response to the landlord's written request, pays the landlord's reasonable storage and removal costs for the item prior to the landlord returning the item; and,
- The tenant agrees to claim and remove the item at a reasonable time agreeable to the landlord but no later than 72 hours after the tenant pays the storage and removal fees. Cal. Civ. Code § 1965(a)(1-4).

Q 20. What should a landlord's written request for storage fees include?

A The written storage fee request should include an itemized list of all reasonable storage and removal costs and the nature and amount of each fee. Cal. Civ. Code § 1965(a)(3).

Reasonable costs for removal of property are those actually incurred in removing the personal property to a storage area, including disassembly and transportation. Reasonable costs for storage should not exceed the fair rental value of the space reasonably required to store the item. Cal. Civ. Code § 1965(b)(1).

Q 21. When and how should the storage fee request be submitted to a former tenant who requests an item left on the premises?

A The list should be personally delivered to the tenant or his/her representative or mailed to the address the tenant gives in his/her demand within five days of the landlord's receipt of the demand, unless the landlord has already returned the item. Cal. Civ. Code § 1965(a)(3).

Q 22. If a landlord disposes of personal property pursuant to a tenant's proper request, is a landlord liable to another person requesting the same item?

A No. If the procedures outlined in Question 19 are followed, the landlord is not liable to another person claiming the property. If there are conflicting demands for the item, the item goes to the person who made the first demand. Cal. Civ. Code § 1965(d).

Q 23. What can happen if a landlord keeps personal property after a tenant's proper request?

A A landlord may be liable for actual damages not exceeding the value of the personal property if he/she does not surrender the item by the later of the following:

- Within a reasonable time after the tenant's demand for surrender or
- After the tenant has paid the storage fees and attempted to retrieve the property within 72 hours thereafter .

Cal. Civ. Code § 1965(e)(1-2).

In addition, a landlord may be charged up to \$250 for each bad faith violation of the rules for surrendering property, as well as the tenant's court costs and reasonable attorney's fees. Cal. Civ. Code § 1965(e)(2).

III. Lost Property

Q 24. If a landlord suspects the property remaining does not belong to a former tenant, but might have been lost on the premises, what should the landlord do?

A If the landlord suspects the property found on the premises was lost rather than left behind by a former tenant or other owner, the item must be treated as lost or unclaimed property. The landlord is not bound to take care of the item, but if choosing to do so must inform the owner (if known) within a reasonable time, and return the item to the owner. The landlord may not charge a fee for returning the item other than a reasonable charge for taking care of the property. Cal. Civ. Code § 1982(a).

In the event the owner is unknown or does not claim the property and the property has a value of \$100 or more, the landlord must turn the property over to the local police or sheriff's department within a reasonable time after finding the property. The landlord must then fill out a report stating where and how the property was saved, whether or not he/she knows the owner and that the landlord has not hidden, withheld, or disposed of any part of the property. The police or sheriff's department must notify the owner, if known, that it possesses the property and where it may be claimed. In addition, a charge may be levied to defray costs of storage and care of the property. Cal. Civ. Code § 2080.1(a)(b).

Q 25. What if a police or sheriff's department will not accept the property from a landlord?

A If the police or sheriff's department refuses to accept the property, the landlord must dispose of the property as if it was abandoned on the landlord's premises by the former tenant or other owner. Cal. Civ. Code § 1992(b).

IV. Abandoned Vehicles

Q 26. Who is responsible for an automobile abandoned on private property?

A No one may abandon a vehicle upon public or private property without the permission of the real property owner. Any person who does abandon a vehicle on private property is liable for the cost of removal and disposition of the vehicle. Cal. Veh. Code § 22658.

Q 27. Under what circumstances may a real property owner have a vehicle removed from the premises?

A If any one of the following conditions is satisfied:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 by 22 inches in size, with lettering not less than one inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency. The sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

Cal. Veh. Code § 22658(a)(1-4).

As mentioned above, the vehicle owner is liable for the vehicle's storage and towing fees.

Real property owners should also check local ordinances which may give additional procedures for removing abandoned vehicles from the premises.

Q 28. How does a real property owner notify a vehicle owner that the vehicle was removed from the premises?

A If the real property owner knows the name and address of the vehicle owner or is able to get this information from the registration records of the Department of Motor Vehicles, the property owner must immediately give the vehicle's registered and legal owner written notice of the removal, grounds for removal, mileage on the vehicle when removed, and the new location of the vehicle. If the vehicle is stored in a public garage, a copy of this notice must also be given to the garage's owner. Cal. Veh. Code § 22658(b).

If the property owner is unable to determine who owns the vehicle or is otherwise unable to notify its owner, then the property owner must obtain a vehicle removal form from the Department of Justice in Sacramento. The property owner must prepare the form, which should include a complete description of the vehicle, the date, time, and place where removed, mileage at time of removal, and the location where the vehicle is stored. The property owner must then mail the form to the Department of Justice and file a copy with the garage owner where the vehicle is stored. Cal. Veh. Code § 22658(b).

Q 29. What is the procedure for vehicle removal from a common interest development?

A An abandoned vehicle may be removed from a common interest development if all of the following requirements are met:

1) There is a sign—not less than 17 by 22 inches in size with lettering not less than one inch in height—appearing at each entrance to the common interest development that contains both of the following:

(a) A statement that public parking is prohibited and all vehicles not authorized to park on the common interest development will be removed at the owner's expense.

(b) The telephone number of the local traffic law enforcement agency.

Cal. Veh. Code § 22658.2(a)(1).

The sign may also indicate that a citation may be issued for the violation. Cal. Veh. Code § 22658.2(a)(1).

2) The president of the association notifies the registered owner of the vehicle of the removal if that person's identity is known or reasonably ascertainable. (If the vehicle owner's identity is unknown, the president should follow the steps above in Question 28); and

3) The association president notifies the local traffic enforcement agency immediately after removal of the vehicle. The notice should include a description of the vehicle, its license number, and address from where it was removed. Cal. Veh. Code § 22658.2(a)(2-3).

The association may remove, without notice, any vehicle parked in a marked fire lane, within 15 feet of a fire hydrant, in a parking space designated for handicapped without proper authority, or in a manner which interferes with any entrance to, or exit from, the common interest development or from any separate unit. Cal. Veh. Code §22658.2(b)

The association will not be liable for the removal or damages to a vehicle removed in compliance with the above rules, unless the damage results from the association's negligent or intentional actions. Cal. Veh. Code §22658.2(c).

V. Additional Information

Q 30. Where can I obtain additional information on the subjects discussed in this memorandum?

A This memorandum is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit *C.A.R. Online* at www.car.org.

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depending upon a wide variety of factors. Therefore, readers with specific legal questions should seek the advice of an attorney.

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