

UPDATED ABANDONED PROPERTY LAW GREATLY BENEFITS COMMERCIAL LANDLORDS

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Your tenant's rent check didn't arrive this month. You call and you email, but get no response. You drive to the property, and there is a sign on the door that says "Closed." A look inside reveals that your tenant has left personal property. The business owner next door says your tenant closed two weeks ago, and told her that he was moving to China. How do you get your space back and what are you going to do with the personal property?



We see situations like this occur frequently in our practice and they are usually messy in more

ways than one. California has laws governing the abandonment of real and personal property which, if not followed properly, can expose landlords to liability. On January 1, 2019, significant changes to these laws took effect which greatly benefit property owners.

Usually, the first step in circumstances such as these is to reclaim possession of the real property. The vehicle used to do this is a Notice of Belief of Abandonment of Real Property (NBARP) which can be utilized to avoid an eviction lawsuit. Under the old law, landlords needed to wait until rent was outstanding for 14 days before sending a NBARP. Effective January 1, 2019, the Notice can be served upon the tenant if the landlord believes the property may have been abandoned and the rent has not been paid within the number of days required to declare a lease default according to the lease (provided that it is not less than three days). A NBARP now expires 15 days after the notice is served and the landlord can take possession of the premises at this time. A standard three-day notice requires a court proceeding to evict the tenant.

It is also now statutorily acceptable for a landlord to serve both a three-day notice to pay rent and a NBARP together, which can save time and expense in situations where the tenant does not pay the rent but responds, when served with a NBARP, that the leased premises have not been abandoned. California's new abandoned commercial real property statute also changed the law so that the mere fact a tenant left personal property in the abandoned premises is not enough for the tenant to argue the property has not been abandoned.

Once you have your space back, what do you do about the tenant's abandoned personal property? Serve another notice, of course – this time informing the tenant that he can reclaim the personal property or it will be retained or sold at auction. The personal property must be sold at an auction if its value exceeds a statutory threshold. Effective January 1, 2019, the threshold value of abandoned personal property has been increased to the greater of \$2,500.00 or one month's rent. Any abandoned personal property which is worth less than the new threshold value may now be retained by the landlord (or thrown away) if it is not claimed by the tenant after service of a notice of right to reclaim abandoned personal property.

As an example, if a restaurant tenant leaves personal property estimated to be worth \$10,000.00 within a leased premises and the monthly rent for that premises is \$15,000.00, a landlord will not need to conduct an auction to dispose of the abandoned equipment. In prior years, an auction of the personal property may have been required under these facts. Of

course, other factors exist which may require an auction to be conducted regardless of the value of the abandoned personal property, such as the presence of liens recorded by secured creditors.

We are pleased with these new changes to California law and the attorneys within Trainor Fairbrook's Property Management Law Section have already begun successfully utilizing them. We recommend that property owners and managers continue to seek advice from an attorney regarding tenants' abandoned real and personal property to ensure strict compliance with all applicable laws in order to minimize potential liability.