

That “Abandoned Feeling” – Part II **by FDR (Frank, D. Rubin, Attorney)**

Last month, we dealt with getting the tenant out by declaring a tenant to have abandoned the premises and through that procedure, taking over possession without the need to do an eviction or other legal process. However, after a declaration of abandonment of real property has been perfected, or after an unlawful detainer judgment and a sheriff lockout, what do you do with all the personal belongings the resident left at the premises? There is another abandonment procedure besides abandoned real property that has been codified. It is very similar to the abandonment procedure to gain the right to possession in the first place.

This abandonment procedure for personal property is one I also advise clients to use after a sheriff's lockout in an unlawful detainer procedure.

One important point is that the personal property left has to be stored in a safe place. That safe place is not required to be the actual unit that was abandoned. Where you store the leftover personal property is a function of the amount of property left and the economics of keeping the items secure in the same unit versus having a secure storage area in which to place the property.

With the abandoned personal property, you first have to inventory what you have. What you inventory is protected from a conversion action so long as you list the items in your inventory on the notice of abandonment of personal property. You do not have to go into super detail, but you have to be complete. For example, you can say approximately twelve dress shirts, you do not have say three short sleeve Arrows, a Van Heusen and eight Brooks Brothers, etc. You do not have to open and sort through suitcases; just say a suitcase filled with clothing.

There are two levels of notice of abandonment of personal property:

1. Value under \$300 and
2. Value over \$300.00

When making a good faith valuation, you are not dealing with retail or sentimental values, but fire sale, garage sale type values. Even a lot of stuff can realistically be deemed valued under \$300.00. If you think it is a close call, you should photograph what you describe in your list of abandoned items. For example, you may list a refrigerator, but it is old and beat up.

I once had a client who filled an abandonment notice with three double-spaced pages of inventory. It was from three rooms of an office and my client still claimed the value to be under \$300.00. I could not believe it and went to see for myself. Yes, my client was right, just a few beat up valueless desks and tons of paper - mostly printed forms of no value to anyone.

Personal Property Valued Below \$300.00

The notice of abandoned personal property gets mailed to anywhere in the world the abandoning resident may get notice. If the notice is for a value below \$300.00, and you don't hear anything from the tenant, then at the end of the 18 days after mailing, all of the belongings are yours. You may dispose of the items as you please.

During the notice period, if the resident contacts you, you can make arrangements for the resident to come back and pick up the abandoned personal property. It is in your best interest to do so. Abandonment sales do not make much money. Be very careful how you make arrangements with the now locked-out tenant. **Do not give him a key.** You go there and supervise. You unlock and relock the premises after the resident has finished moving the items out they left at your premises. The last thing you want is to have to redo an eviction.

Personal Property Valued Above \$300.00

The situation is quite different if the value of the items is estimated to be over \$300.00. Then, the procedure has a second step. If, after the 18 days are up and you have not heard from the tenant, you must then run an advertisement in a newspaper of "general circulation" for two consecutive weeks. Most local papers are familiar with the process. The newspapers run the ads four times, twice per week over a two-week span. The newspaper carrying your ad about the abandoned personal property will send you a certificate of publication verifying when the ad appeared and a clipping of the ad.

Five days or more after the last advertisement has been published, you conduct an actual auction of the abandoned personal property. You will know the auction day since the date of the auction sale is part of your ad; when you place the ad, you set up the sale date with the newspaper publisher.

At the sale date, you must conduct an auction of the abandoned items. There are no hard and fast rules about how to do the auction. There are professional buyers who look for these sales and attend the auctions. Some of them will buy all of the stuff and some will only select a few items. If all the personal property is not sold, I usually have my client bid and pay \$5.00 for everything not sold. That gives my client control to dispose of the remaining articles as he wishes.

After the auction, follow up with a letter to each buyer listing what they bought and how much they paid. Sometimes, the buyer wants a copy of the certificate of publication. That letter acts as a bill of sale to the purchaser and leaves you with a clear paper trail as to what happened. You even prepare a letter to yourself for the \$5.00 paid to purchase the balance of the property not otherwise sold at the auction.

If, in the unusual situation you receive more money than is owed you from the sale, said funds are to be given to the county treasurer. You may deduct your cost of the sale including reasonable storage fees, advertising, etc. The storage charge cannot exceed the daily rental rate for the premises where the personal property was abandoned.

If you follow these procedures, you are released from all further liability for the safekeeping of the abandoned personal property. That is why I recommend my clients use this procedure even after an unlawful detainer sheriff's lockout. This methodology leaves a clean paper trail that protects my clients from claims of conversion of alleged priceless art treasures.

If you are fond of garage sales, then some of these sales can be fun. Do not get too excited however; most people do not abandon good stuff. Most of what you sell will be pure junk.

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