

NOTICE OF BELIEF OF ABANDONMENT

TO: _____

This notice is given pursuant to Section 1951.3 of the Civil Code FOR PREMISES LOCATED at:

Street: _____ Apt: _____

City: _____, CA Zip: _____

The rent on this property has been due and unpaid for fourteen (14) consecutive days and the Lessor/Landlord believes that you have abandoned the property.

The real property will be deemed abandoned within the meaning of Section 1951.2 of the Civil Code and your lease/rental agreement will terminate on _____. unless before such date the undersigned receives at the address indicated below a written notice from you stating both of the following:

1. Your intent not to abandon the real property.
2. An address at which you may be served by certified mail in any action for Unlawful Detainer (eviction) of real property.

You are required to pay the rent due and unpaid on this real property as required by the lease/rental agreement. Failure to do so can lead to a court proceeding against you.

Date: _____

Signature: _____

Print Name: _____

Owner's Phone: _____

Address: _____



NOTICE OF RIGHT TO RECLAIM ABANDONED PROPERTY

TO: _____

When you vacated the premises at: _____

The following personal property remained: _____

You may claim the above described personal property at: _____

Unless you pay the reasonable cost of storage for all of the above described property, and take possession of the property, which you claim, not later than _____ this property may be disposed of pursuant to Civil Code, Section 1988.

- Because this property is believed to be worth less than \$700.00, it may be kept, sold or destroyed without further notice if you fail to reclaim it within the time indicated above.
- If you fail to reclaim the property, it will be sold at 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.

Date: _____

Signature: _____

Print Name: _____

Owner's Phone: _____

Address: _____



This chapter outlines the proper steps to take to deal with property left behind by tenants who have moved out, so that you can prepare the premises for the next tenant. Obviously, you want to protect yourself from claims by the tenant who has moved out that you have destroyed or stolen her property. (In legal jargon, this is known as "unlawful conversion." Conversion occurs when you take someone else's property and convert it to your own use or benefit, either by selling it or otherwise disposing of it, or using it yourself.)

A. PERSONAL PROPERTY

Whether a tenant vacates voluntarily, or with the aid of the sheriff or marshal, landlords all too often must not only clean up and repair damage, but also dispose of a pile of junk. You're much more likely to deal with a tenant's property when the tenant was evicted and wasn't allowed to take everything. The belongings of evicted tenants are not put into the street. The law enforcement officer performing an eviction will allow the tenant to carry out a few armloads of personal possessions, leaving the remainder to be locked in the premises and stored by you until the tenant can arrange to take them away.

Removing obvious trash is normally no problem, but even here you must exercise care. If you toss a moth-eaten book in the dumpster, and it turns out to have been a valuable first edition, you could have problems.

As a general rule, the more valuable the property left behind by a tenant, the more formalities you must comply with when disposing of it. In rare instances, you may have a judgment against a tenant for unpaid rent or damages to your premises, and this tenant has left behind valuable property that she never claims. If so, you can safely have the property sold and the money applied to pay your judgment, but only if you follow the legal procedures outlined in this chapter.

You cannot touch a tenant's property until you have legally gained possession of the premises. This occurs when a tenant finally leaves voluntarily, whether or not she gives you the keys, or when the tenant is physically evicted by the sheriff, marshal or constable. If you gained possession of the property after having heard nothing from the tenant for 18 days since mailing a Notice of Belief of Abandonment (see Chapter 19), you should understand that your mailing of the abandonment notice relating to the real property---the premises---has nothing to do with any personal property abandoned inside. In other words, it only allows you to enter legally after the premises we abandoned, not dispose of property. You may dispose of property only after following the procedures described in this chapter.

1. If the Tenant Demands His Property

Ideally, a tenant who has left behind property after moving out will contact you about reclaiming it. If not, try to contact the tenant to pick up the property. If you can't reach him, look through the tenant's rental application and phone personal or business references listed there.

By all means, if a tenant is willing to pick up his property, return everything to him, even if he owes you money. If a tenant owes you money---for example, back rent---you cannot insist that he pay you before you return his property. You can, however, deduct back rent from any security deposit. But remember that the basic rule for returning deposits within three weeks after the tenant leaves applies to abandonments---regardless of whether the tenant has left property behind. (See Chapter 20 for details on returning security deposits.)

There's one exception, however: You may insist the tenant pay your costs of moving and storing the property before you return his belongings. If you've kept the property on the premises the tenant vacated, you have the right to insist on being paid the prorated daily rental value for keeping the property on your premises and/or any out-of-pocket costs you incur after that for renting storage space. You can also subtract the value of your time for packing the tenant's property up in the first place.

However, in most situations where there is not a lot of property, we recommend that you give the tenant his belongings and forget about any charges, particularly if you didn't incur any out-of-pocket expenses. It's just not worth it to get in fights over \$75 worth of used books, records and old clothes. If you insist on too high a storage charge, and the tenant refuses to pay it, you will end up having to keep or sell the tenant's property. As a result, the tenant may sue you, raising the possibility that a judge may hold you liable for the entire value of the property because your storage charge wasn't reasonable in the first place. Under state law (CC § 1965), a landlord who fails to promptly return a tenant's belongings may be liable for the value of the property plus \$250 and the tenant's attorney fees.

The process by which a tenant demands his property is supposed to work this way:

- The tenant moves out, leaving personal belongings behind.
- Within 18 days, the tenant writes the landlord demanding the return of his property.



- Within five days after receiving the tenant's demand, the landlord must either return the tenant's property or notify her by letter (addressed to the tenant at the return address specified in her demand letter) Itemizing in detail the amount of moving and/or storage charges, which the landlord demands as a condition of returning the tenant's property. (As stated above, however, we think it's less hassle to simply return the property without insisting on moving or storage charges.)
- The tenant then has three days to pay the landlord's moving and storage charges (if any) and reclaim the property.

If the tenant does not reclaim the property after all this, the landlord will not be liable under state law. However, the landlord will then have to proceed as described in the following section.

2. If the Tenant Doesn't Demand His Property

A tenant truly interested in keeping his belongings usually won't leave anything behind. (Even tenants evicted by the sheriff or marshal usually manage to move themselves and their belongings out a day or two before the scheduled eviction date.) So, when a tenant leaves personal property, it's usually junk that has been intentionally left behind. Unfortunately, you can face serious liability for disposing of the junk, unless you use a Notice of Right to Reclaim Abandoned Property, as shown below (See CC §§ 1980-1991.)

If after a tenant has left, you discover property in addition to obvious trash or garbage, follow these steps:

Step 1. Take an inventory of the abandoned property and write down a list of everything you find. An objective witness (tenant or neighbor) is valuable here if you want to protect yourself from any charge that you have not done this honestly. Don't open locked trunks or suitcases or tied boxes; just list the unopened container. You may, however, open other containers to check items for value, since your method of disposing of the property depends on its total value.

Step 2. Decide whether the value of all the property---what you could get for it at a well-attended flea market or garage sale---is more than \$700.

Step 3. You must then send the tenant a Notice of Right to Reclaim Abandoned Property. There is no time limit for doing this, but you may not legally dispose of the property until you begin the process with this notice. A sample is shown below, and a blank form is included in the Appendix of this book.

On the Notice of Right to Reclaim Abandoned Property, you list:

1. The name of the tenant (and any other person you believe has an interest in the property).
2. The address of the premises.
3. A description of the property. If there are too many items of property to list on the form, you can list them on a separate sheet of paper labeled "Attachment A. "The property must be described "in a manner reasonably adequate to permit the owner of the property to identify it" (CC § 1983(b).) Merely describing it as "household goods" is insufficient.
4. A place where the property may be claimed.
5. The value of the property, by checking the appropriate box on the form as to whether the property, in your opinion, is worth more or less than \$700.
6. Your signature and date the Notice was mailed.

Note on fixtures. If a tenant attached something more or less permanently to the wall, such as bookshelves bolted or nailed in, it is called a "fixture." The general rule, in the absence of a lease provision otherwise, is that a fixture installed by the tenant becomes a part of the premises, which belongs to the landlord. That means a tenant who attached bookshelves to a wall, using bolts, nails or other fasteners that can't be removed without leaving unsightly marks or more serious damage, such as large holes, is legally required to leave the shelves in place when she leaves. Fixtures are the landlord's property, and do not have to be returned to the tenant. Mail the notice to the tenant's last known residence, which will, of course, usually be the address of your residential rental property. The postal service will forward the notice if the tenant has left a forwarding address. You must surrender the property if the tenant contacts you within 18 days after you mailed the notice. If you haven't mailed a notice, you must surrender the property within 18 days after the tenant has left. Again, before returning the tenant's property, you have the right to charge moving and storage costs (not exceeding the prorated daily rental value for keeping the property on your premises), and/or any out-of-pocket costs you incur for renting storage space. However, as we mentioned, it may not be worth the hassle and risk to insist on these charges.



Don't demand more than moving and storage charges

Even if the tenant owes you a substantial sum for back rent or damages, you may not insist on payment of that amount as a condition of returning the tenant's property, even if you've obtained a court judgment. In order to properly keep the property to have it sold and applied against such a judgment, you must have the sheriff seize the property and auction it off. The costs of doing this may exceed the value of the property, however.

a. Property Worth Less Than \$700

If your former tenant or other owner of the property left behind doesn't contact you within 18 days of mailing the Notice of Right to Reclaim Abandoned Property, you may keep, sell, give away, use or do anything else you wish with the property, if it is all worth less than \$700. (CC § 188.) In other words, it's yours. To recover from you for wrongfully disposing of the property, the tenant would have to convince a probably skeptical judge that the property was worth over \$700 and that your belief that it was worth less was unreasonable.

Several landlords we know routinely put all the material left behind by the tenant, when the total value obviously does not exceed \$700, in large plastic bags, which they tag and keep in their own storage room for six months or so. A few times a year, they give everything that hasn't been claimed to Goodwill Industries, the Salvation Army or some other non-profit organization that operates second-hand stores.

b. Property Worth More Than \$700

Very seldom will a departing tenant leave behind personal effects worth more than \$700. Indeed, one management company that handles several thousand units, and has done so for 30 years, tells us that they have only had this occur once. In the rare event this does occur, you must arrange for the property to be sold at a public auction and then publish a notice in the newspaper announcing the auction. (CC § 1988.)

The ad must be published after the 18-day period for the tenant to claim her belongings has expired, and at least five days before the date of the auction. Although your estimate of value can be based on flea market or garage sale values, actually holding a flea market or garage sale does not comply with the law, which requires a "public sale by competitive bidding." You must hire a licensed and bonded public auctioneer. (See the "Auctioneer" listings in the Yellow Pages of your telephone directory.)

Place your ad in the legal section of a local newspaper. The newspaper must be one of "general circulation" that has paid subscribers in the county. Most daily newspapers qualify; weekly "throwaway" newspapers delivered free of charge and which depend on advertising for all their revenue do not. (See Government Code § 6066, and CC § 1988(b) and (c) for how to advertise and handle the proceeds of a public sale.) Basically, the ad must describe the property in the same way you described it in the Notice of Right to Reclaim Abandoned Property. Proceeds from the sale go first to pay your reasonable costs of storage, advertising and sale. You must pay the balance to the county within 30 days of the sale, unless you have a judgment for unpaid rent, in which instance you can keep the amount necessary to pay the judgment. (To do this, however, you will have to take the judgment and a "Writ of Execution," available from the court clerk, to the sheriff or marshal and give them the appropriate fee and written instructions to "levy" on the funds in the county's control. Ask the sheriff's or marshal's office for details.) In the unlikely event that money is left over, ask the county clerk for details, including a form to account for the sale proceeds. The county gets to keep the money if the tenant or other owner of the property doesn't claim it within a year.

Why should you go to all this trouble? After all, no law enforcement agency will prosecute you for failing to comply with this law. But following this procedure will protect you from any liability in the event the tenant or other owner of the property left behind shows up later and sues you for unlawful "conversion" of her property (CC § 1989(c).) Also, if the property is worth a lot more than \$700, there may be enough money left over from the proceeds of the sale, after subtracting your costs for storage, advertising and conducting the auction, to apply to any judgment you have against the tenant.

EXAMPLE

After Donna went to court and obtained a judgment for eviction and \$1,000 back rent against her tenant, Abbie, Abbie simply took off for parts unknown. Strangely enough, Abbie left behind a good-quality color TV, a piano and a starving Persian cat. Donna then advertised and arranged a public auction, which brought in \$750. Donna applied the auction proceeds as follows: \$100 storage charges, including care and feeding of the cat and prorated rental value for the days Abbie's property was on the premises; \$100 for the cost of running the legal ad; and the auctioneer's \$200 fee. This left \$350 for Donna to have the sheriff apply against her \$1,000 judgment.



Be careful how you use action proceeds.

If the tenant owes you money – even for back rent – you can't use the proceeds of the sale to pay the tenant's debt unless you have a court judgment. This is because the proceeds, after subtracting cost of storage, advertising and sale, are still the tenant's property. You are not allowed to take someone else's property except to pay off a judgment.

In the above example, Donna, to enforce her judgment, should instruct the auctioneer to hold the fund in Abbie's name. Donna should then have the clerk of the court that issued the judgment issue a Writ of Execution, which Donna would, in turn, take to the local sheriff or marshal, with appropriate instructions to levy on the funds held by the auctioneer. As a practical matter, if Donna did simply take the excess auction proceeds and apply them toward the judgment (and account for it properly to the tenant if and when Abbie showed up later), it's unlikely a judge would penalize Donna, assuming her accounting was honest. And even if a judge did rule Donna's action was improper, Donna still would have the right to offset her judgment against the tenant's claims for any wrongful disposition of the property.

B. Motor Vehicles

Occasionally, a departing tenant will leave an inoperable "junker" automobile in the parking lot or garage. Unfortunately, motor vehicles are a special category of personal property to which the procedures listed in Section A above do not apply. If the tenant has used the street in front of your property, or the property itself, as a junkyard, you should call the local police, giving the vehicle's license number, make and model, and indicate where it's parked. If the car is parked on the street, the police will arrange to have it towed away 72 hours later, placing a notice to that effect on the windshield. (Vehicle Code § 22651(k).)

If the vehicle is parked on your property, you can arrange to have it towed away within 24 hours after notifying the police, if the vehicle "lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment." (Vehicle Code § 22658(a)(3).) Otherwise, the police may still arrange for the vehicle's removal after an officer determines it is abandoned and tags it. (Vehicle Code §§ 22523(b) and 22669.)

Cities have slightly different ordinances to cover this situation. In some, there is a small charge, but in many others, the city recovers towing and storage costs from the sale of the car. Several landlords have reported that the police are slow to pick up motor vehicles abandoned on private property and try to tell landlords that it's their responsibility to do a lien sale through the Department of Motor Vehicles. If a car is worth a fair amount, this is a variable alternative, as you can use the money you get from the sale to satisfy any judgment you have against the tenant. But it involves a fair amount of paperwork and is often more trouble than it's worth.

Your best approach is usually to insist that the police help you. Get a copy of the local abandoned property ordinance and refer to it if the police resist.

