

# Kimball, Tirey & St. John LLP

## Abandoned Personal Property Left by a Former Commercial Tenant

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**Updated November, 2018**

Sometimes commercial tenants leave personal property behind when they vacate. To avoid potential claims that the landlord wrongfully disposed of the abandoned personal property, commercial landlords should follow the steps described in California Civil Code §1993 et. seq..

The process described in California Civil Code §1993 et. seq. is not mandatory. Commercial landlords can use other reasonable means to dispose of the abandoned property. However, the procedure described in California Civil Code §1993 et. seq. establishes a “safe harbor”. California Civil Code §1993 et. seq. requires that the commercial landlord serve a notice to the former tenant and anyone else they reasonably believe has an ownership interest in the property. The notice must state that they can retrieve the property within 18 days from the date the notice is mailed, or 15 days if hand-delivered. If the property is not retrieved within the prescribed time frame, depending upon the value of the property left behind, the landlord may either hold a public auction, or dispose of it in another manner.

If the tenant or owner claims the property within the prescribed time frame, the landlord can condition return of the property on receipt of reasonable storage costs beginning when the tenant vacates the commercial space. The landlord cannot require that the tenant pay any other amounts (such as rents due from a time period before the tenant vacated the premises, nor future rent).

Therefore, the first requirement is to determine who the landlord “reasonably believes” may have an ownership interest in the abandoned property. “Reasonable belief” is generally the actual knowledge or belief a prudent person would have without making an investigation. However, if the landlord has specific information indicating that an investigation would more probably than not reveal pertinent information, and the cost of an investigation would be reasonable in relation to the probable value of the property involved, then “reasonable belief” includes the actual knowledge or belief a prudent person would have if an investigation were made. (For example, a commercial landlord discovers that some of the furniture abandoned by the former tenant has a sticker on it from “XYZ Furniture Rentals”, the landlord should make an investigation by contacting “XYZ” to determine if they have an ownership interest entitling them to a notice of abandonment.) This means that unless the landlord has reason to believe that the personal property is encumbered, the landlord isn’t obligated to search UCC-1 records.

A lienholder may contact the landlord to request access to the property to allow the lienholder to pick up the items in which it has a security interest. While a landlord has no obligation to allow a lienholder access, many landlords will provide access to lienholder after the landlord has verified that the lienholder has a valid lien (generally by reviewing the lienholder’s UCC-1). Unless the landlord has waived its rights, the landlord can require that the lienholder pay the reasonable storage value. (The landlord should look for a waiver either in the lease, or in a document signed by the landlord at about the time the lienholder’s UCC-1 was recorded.) If the landlord has not waived the right to charge the reasonable storage value, it can be charged from the time that the notice of abandonment is sent. It is unclear whether it can be charged for an

even longer period of time (i.e. from the date the landlord recovered possession of the premises).

The notice served by the landlord must describe the abandoned property. A detailed list of the abandoned property is advisable, as a landlord is shielded from liability only for listed items unless the items not described were in a container that is locked or otherwise tied in a manner that deters immediate access to its contents.

Commercial landlords must assess the total value of the abandoned personal property. If it is worth less than \$2,500, or an amount equal to one month's rent for the premises occupied by the former tenant, (whichever is greater), the property may be kept, sold, or destroyed if the former tenant fails to reclaim it within 18 days from the date the notice of abandonment was served to the former tenant. If the abandoned property is worth \$2,500, or more than an amount equal to one month's rent for the premises occupied by the former tenant, whichever is greater, then the property must be sold through public auction.

To avoid potential liability for conversion, it is important for the landlord to properly assess the value. When the value is not known, a landlord can request an estimate of value from an auctioneer or other knowledgeable person. Conservative landlords auction property unless they are certain that the value of the property is below the threshold value.

The language of California Civil Code §1993.07 references "one month's rent." This language could create uncertainty in triple net leases, as it isn't clear whether "one month's rent" refers to only base rent or would also include additional rent. A cautious landlord would use only base rent to calculate the threshold, although if the lease has an "additional rents" clause, arguably both base rent and additional rent would determine the value limit.

Sometimes business records with private customer information (such as medical records or financial records) are abandoned. Until recently, the landlord's obligations regarding these abandoned business records were not clear; should the landlord contact the customer (which could be very cumbersome procedure), destroy the records, or auction them off? California law now provides that the tenant is the presumed owner of the business records. Therefore, abandoned business records should be listed on the notice of abandonment given to the tenant. The law defined "business records" as any material (regardless of the physical form), on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed or electromagnetically transmitted (but excluding any publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address or telephone number). If the tenant does not claim the business records containing the private information, the landlord must destroy the records in a secure manner.

If the personal property left behind is an abandoned vehicle, the California Vehicle Code should be followed. If certain steps are followed, the landlord can contact a towing company who will tow the abandoned vehicle and contact the owner. If the vehicle owner does not claim the vehicle, it can be sold to satisfy the towing and storage costs. Landlords should use a licensed towing company familiar with the law regarding abandoned vehicles. For more information about

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towing vehicles, see the Kimball, Tirey & St. John LLP article, *Towing Vehicles from Private Property*.

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