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AB-2173 Commercial real property: termination of tenancy: disposition of personal property. (2017-2018)

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Assembly Bill No. 2173

CHAPTER 74

An act to amend Sections 1993.04 and 1993.07 of the Civil Code, relating to personal property.

[Approved by Governor July 09, 2018. Filed with Secretary of State July 09, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2173, Santiago. Commercial real property: termination of tenancy: disposition of personal property.

Existing law provides an optional procedure for the disposition of personal property remaining on the premises at the termination of a commercial tenancy, as specified. Existing law requires a landlord to give written notice to the tenant if personal property remains after the end of a tenancy. Existing law authorizes property described in the notice to be sold at public sale except if the landlord reasonably believes that the total resale value of the personal property is the lesser of \$750 or \$1 per square foot of the premises occupied by the tenant, the landlord is authorized to retain the property for his or her own use or dispose of it in any manner.

This bill would change the calculation of the total resale value of the personal property, for purposes of these provisions, to either \$2,500 or an amount equal to one month's rent for the premises the tenant occupied, whichever is greater.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Existing law recognizes that the disposition of abandoned property in commercial real estate is treated separately from that in residential real estate because commercial tenants are differently situated than residential tenants.

(b) Unlike residential tenants, commercial tenants may make a deliberate business decision to abandon unwanted inventory, office equipment, or unwieldy fixtures on the premises, thereby generating higher removal and storage costs than would be expected for a residential tenant. In addition, commercial tenants are generally more likely than residential tenants to have the resources to collect and remove all their property before vacating the rental premises.

(c) Accordingly, special circumstances that apply to commercial tenancy, but not necessarily to residential tenancy, may justify setting a higher threshold amount for property abandoned on commercial real estate, as compared to the corresponding threshold amount for property abandoned on residential real estate.

SEC. 2. Section 1993.04 of the Civil Code is amended to read:

1993.04. (a) A notice given to the former tenant that is in substantially the following form satisfies the requirements of Section 1993.03:

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, if any)

the following personal property remained:

(Insert description of the 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, and take possession of the 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 Section 1993.07 of the Civil Code.

(Insert here the statement required by subdivision (b) of this section)

Dated:

(Signature of landlord)

(Type or print name of landlord)

(Telephone number of landlord)

(Address of landlord)

(b) The notice set forth in subdivision (a) shall also contain one of the following statements:

(1) "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."

(2) "Because you were a commercial tenant and this property is believed to be worth less than either two thousand five hundred dollars (\$2,500) or an amount equal to one month's rent for the premises you occupied, whichever is greater, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated above."

SEC. 3. Section 1993.07 of the Civil Code is amended to read:

1993.07. (a) (1) The property described in the notice that is not released pursuant to Section 1987 shall be sold at public sale by competitive bidding except that, if the landlord reasonably believes that the total resale value of the property is less than the threshold amount, the landlord may retain the property for his or her own use or dispose of it in any manner.

(2) For the purposes of this section, "threshold amount" means either two thousand five hundred dollars (\$2,500) or an amount equal to one month's rent for the premises occupied by the tenant, whichever is greater.

(b) (1) Notice of the time and place of the public sale shall be given by publication pursuant to Section 6066 of the Government Code in a newspaper of general circulation published in the county where the sale is to be held.

(2) The last publication shall be not less than five days before the sale is to be held.

(3) The notice of the sale shall not be published before the last of the dates specified for taking possession of the property in any notice given pursuant to Section 1993.03.

(4) The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it.

(5) The notice may describe all or a portion of the property, but the limitation of liability provided by Section 1993.08 does not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, safe, vault, or other container that is locked, fastened, or tied in a manner that deters immediate access to its contents may be described as such without describing its contents.

(c) (1) After deduction of the costs of storage, advertising, and sale, any balance of the proceeds of the sale that is not claimed by the former tenant or an owner other than the tenant shall be paid into the treasury of the county in which the sale took place not later than 30 days after the date of sale.

(2) The former tenant or other owner may claim the balance within one year from the date of payment to the county by making application to the county treasurer or other official designated by the county.

(3) If the county pays the balance or any part thereof to a claimant, neither the county nor any officer or employee thereof shall be liable to any other claimant as to the amount paid.

(d) Nothing in this section precludes a landlord or tenant from bidding on the property at the public sale.