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AB-2847 Commercial real property: tenancy: abandonment. (2017-2018)

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Date Published: 07/16/2018 09:00 PM

Assembly Bill No. 2847

CHAPTER 104

An act to amend Sections 1946 and 1951.3 of, and to add Section 1951.35 to, the Civil Code, relating to real property.

[Approved by Governor July 16, 2018. Filed with Secretary of State July 16, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2847, Rubio. Commercial real property: tenancy: abandonment.

Existing law provides that if a lessee of real property remains in possession after the expiration of the hiring and the lessor accepts rent from the lessee, the parties are presumed to have renewed the hiring on the same terms and for the same amount of time.

This bill would make a nonsubstantive change to that provision.

Existing law provides that real property shall be deemed abandoned by a lessee and the lease shall terminate if the lessor gives notice of belief of abandonment, and authorizes a notice of belief of abandonment to be given only where rent on the property has been due and unpaid for at least 14 consecutive days and the lessor reasonably believes that the lessee has abandoned the property. Existing law authorizes a notice of belief of abandonment to be served personally or mailed.

This bill would, for commercial real property, authorize notice of belief of abandonment to be given where rent on the property has been due and unpaid for at least the number of days required for the lessee to declare a rent default under the terms of the lease, but in no case less than three days. The bill would authorize the notice of belief of abandonment of commercial real property to be sent by an overnight courier service. The bill would make conforming changes.

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

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

SECTION 1. Section 1946 of the Civil Code is amended to read:

1946. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of that party's intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding 30 days; provided, however, that as to tenancies from month to month either of the parties may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination. It shall be competent for the parties to provide by an agreement at the time the tenancy is created that a notice of the intention to terminate the same may be given at any time not less than seven days before the expiration of the term thereof. The notice herein required shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail addressed

to the other party. In addition, the lessee may give the notice by sending a copy by certified or registered mail addressed to the agent of the lessor to whom the lessee has paid the rent for the month prior to the date of the notice or by delivering a copy to the agent personally. The notice given by the lessor shall also contain, in substantially the same form, the following:

“State law permits former tenants to reclaim abandoned personal property left at the former address of the tenant, subject to certain conditions. You may or may not be able to reclaim property without incurring additional costs, depending on the cost of storing the property and the length of time before it is reclaimed. In general, these costs will be lower the sooner you contact your former landlord after being notified that property belonging to you was left behind after you moved out.”

SEC. 2. Section 1951.3 of the Civil Code is amended to read:

1951.3. (a) This section applies to real property other than commercial real property, as defined in subdivision (d) of Section 1954.26.

(b) Real property shall be deemed abandoned by the lessee, within the meaning of Section 1951.2, and the lease shall terminate if the lessor gives written notice of belief of abandonment as provided in this section and the lessee fails to give the lessor written notice, prior to the date of termination specified in the lessor's notice, stating that the lessee does not intend to abandon the real property and stating an address at which the lessee may be served by certified mail in any action for unlawful detainer of the real property.

(c) The lessor may give a notice of belief of abandonment to the lessee pursuant to this section only where the rent on the property has been due and unpaid for at least 14 consecutive days and the lessor reasonably believes that the lessee has abandoned the property. The date of termination of the lease shall be specified in the lessor's notice and shall be not less than 15 days after the notice is served personally or, if mailed, not less than 18 days after the notice is deposited in the mail.

(d) The lessor's notice of belief of abandonment shall be personally delivered to the lessee or sent by first-class mail, postage prepaid, to the lessee at the lessee's last known address and, if there is reason to believe that the notice sent to that address will not be received by the lessee, also to any other address known to the lessor where the lessee may reasonably be expected to receive the notice.

(e) The notice of belief of abandonment shall be in substantially the following form:

Notice of Belief of Abandonment

To: _____ (Name of lessee/tenant) _____
_____ (Address of lessee/tenant) _____

This notice is given pursuant to Section 1951.3 of the Civil Code concerning the real property leased by you at _____ (state location of the property by address or other sufficient description). The rent on this property has been due and unpaid for 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 will terminate on _____ (here insert a date not less than 15 days after this notice is served personally or, if mailed, not less than 18 days after this notice is deposited in the mail) unless before that date the lessor/landlord 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 of the real property.

You are required to pay the rent due and unpaid on this real property as required by the lease, and your failure to do so can lead to a court proceeding against you.

Dated: _____ (Signature of lessor/landlord)

(Type or print name of lessor/landlord)

(Address to which lessee/tenant is to send notice)

(f) The real property shall not be deemed to be abandoned pursuant to this section if the lessee proves any of the following:

(1) At the time the notice of belief of abandonment was given, the rent was not due and unpaid for 14 consecutive days.

(2) At the time the notice of belief of abandonment was given, it was not reasonable for the lessor to believe that the lessee had abandoned the real property. The fact that the lessor knew that the lessee left personal property on the real property does not, of itself, justify a finding that the lessor did not reasonably believe that the lessee had abandoned the real property.

(3) Before the date specified in the lessor's notice, the lessee gave written notice to the lessor stating the lessee's intent not to abandon the real property and stating an address at which the lessee may be served by certified mail in any action for unlawful detainer of the real property.

(4) During the period beginning 14 days before the time the notice of belief of abandonment was given and ending on the date the lease would have terminated pursuant to the notice, the lessee paid to the lessor all or a portion of the rent due and unpaid on the real property.

(g) Nothing in this section precludes the lessor or the lessee from otherwise proving that the real property has been abandoned by the lessee within the meaning of Section 1951.2.

(h) Nothing in this section precludes the lessor from serving a notice requiring the lessee to pay rent or quit as provided in Sections 1161 and 1162 of the Code of Civil Procedure at any time permitted by those sections, or affects the time and manner of giving any other notice required or permitted by law. The giving of the notice provided by this section does not satisfy the requirements of Sections 1161 and 1162 of the Code of Civil Procedure.

SEC. 3. Section 1951.35 is added to the Civil Code, immediately following Section 1951.3, to read:

1951.35. (a) This section applies only to commercial real property, as defined in subdivision (d) of Section 1954.26.

(b) Commercial real property shall be deemed abandoned by the lessee within the meaning of Section 1951.2 and the lease shall terminate if the lessor gives written notice of belief of abandonment pursuant to subdivision (c) and, prior to the date of termination specified in the lessor's notice of belief of abandonment, the lessee fails to give the lessor written notice stating that the lessee does not intend to abandon the commercial real property and provides an address at which the lessee may be served by certified mail in an action for unlawful detainer of real property.

(c) The lessor may give notice of belief of abandonment pursuant to this section only if the rent on the property has been due and unpaid for at least the number of days required for the lessor to declare a rent default under the terms of the lease, but in no case less than three days, and the lessor reasonably believes that the lessee has abandoned the property. The date of termination of the lease shall be specified in the notice and shall be not less than 15 days after the notice is served personally, sent to the lessee by an overnight courier service, or deposited in the mail.

(d) The lessor's notice of belief of abandonment shall be personally delivered to the lessee, sent by a recognized overnight carrier, or sent by first-class mail, postage prepaid, to the lessee at the lessee's last known address, and, if there is reason to believe that the notice sent to that address will not be received by the lessee, also to any other address known to the lessor where the lessee may reasonably be expected to receive the notice.

(e) The notice of belief of abandonment shall be in substantially the following form:

Notice of Belief of Abandonment

To: _____ (Name of lessee/tenant) _____
_____ (Address of lessee/tenant) _____

This notice is given pursuant to Section 1951.35 of the Civil Code concerning the real property leased by you at _____ (state location of the property by address or other sufficient description). The rent on this property has been due and unpaid for the number of days necessary to declare a rent default under your lease 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 will terminate on _____ (here insert a date not less than 15 days after this notice is served personally, sent by overnight courier service, or deposited in the mail) unless before that date the lessor/landlord receives at the address 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 of the real property.

You are required to pay the rent due and unpaid on this real property as required by the lease, and your failure to do so can lead to a court proceeding against you.

Dated: _____ (Signature of lessor/landlord)
(Type or print name of lessor/landlord)
(Address to which lessee/tenant is to send notice)

(f) The real property shall not be deemed to be abandoned pursuant to this section if the lessee provides any of the following:

(1) At the time the notice of belief of abandonment was given, the rent was not due and unpaid for the time period necessary to declare a rent default under the lessee's lease.

(2) At the time the notice of belief of abandonment was given, it was not reasonable for the lessor to believe that the lessee had abandoned the real property. The fact that the lessor knew that the lessee left personal property on the real property does not, by itself, justify a finding that the lessor did not believe that the lessee had abandoned the real property.

(3) Before the date specified in the lessor's notice, the lessee gave written notice to the lessor stating the lessee's intent not to abandon the real property and provided an address at which the lessee may be served by certified mail in an action for unlawful detainer of real property.

(4) During the period beginning at the start of the applicable rent default period and ending on the date the lease would have terminated pursuant to the notice, the lessee paid to the lessor all or a portion of the rent due and unpaid on the real property.

(g) Nothing in this section precludes the lessor or the lessee from otherwise proving that the real property has been abandoned by the lessee within the meaning of Section 1951.2.

(h) Nothing in this section precludes the lessor from serving a notice requiring the lessee to pay rent or quit as provided in Section 1161 or 1162 of the Code of Civil Procedure at any time permitted by those sections, or affects the time and manner of giving any other notice required or permitted by law. Giving notice pursuant to this section does not satisfy the requirements of Section 1161 or 1162 of the Code of Civil Procedure.