

7 Cal. Real Est. § 19:195 (3d ed.)

Miller and Starr California Real Estate 3D

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Chapter 19. Landlord and Tenant

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J. Possession, Use, and Maintenance of Premises

6. Surrender and Abandonment

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§ 19:195. Abandonment

**West's Key Number Digest**

**West's Key Number Digest, Landlord and Tenant** 🔑110(1), (2)

**Abandonment defined.** Abandonment is the voluntary relinquishment of property by a person because he or she no longer desires to possess it or to assert any right or dominion over it; he or she is entirely indifferent as to what may become of it or as to who may possess it thereafter.<sup>1</sup> It is accomplished by the tenant vacating the premises with an intent not to perform the future obligations of the lease.<sup>2</sup> An abandonment requires both an intention to abandon, and an act by which that intent is carried into effect.<sup>3</sup>

**The lease does not terminate on abandonment.** When the tenant abandons the premises, it is an offer to surrender the leasehold estate. The landlord may either accept or reject the offer. If it is accepted, there is a surrender, and the lease is terminated.<sup>4</sup>

If there is no acceptance by the landlord, the tenant remains liable for the rent as it accrues.<sup>5</sup>

**Question of fact.** Whether the elements of an abandonment exist is a question of fact in each case.<sup>6</sup>

**Effect of nonuse by the tenant.** Mere nonuse of the property by the tenant is not sufficient to constitute abandonment.<sup>7</sup>

There must be facts and circumstances showing an intention to relinquish all rights in the premises.<sup>8</sup>

Therefore, the mere delivery of the keys to the landlord and a relinquishment of possession usually is not sufficient to constitute an abandonment.<sup>9</sup>

**Case Example:**

The court held that the conduct of a "retirement sale" by a commercial tenant after he had vacated the premises and the giving of the keys to the landlord's agent did not constitute abandonment when viewed in light of other circumstances.<sup>10</sup>

Therefore, when the tenant vacates the premises, the landlord must be careful that the acts of the tenant amount to an abandonment of the premises. If there is no abandonment, a landlord who takes possession of the premises may be liable for damages for the wrongful eviction of the tenant.<sup>11</sup>

It also may be liable for a conversion of the tenant's personal property located in the premises.<sup>12</sup>

**Case Example:**

The lease provided that a subletting without the landlord's consent was void and that the landlord had the option to terminate the lease. The tenant sublet the premises in breach of the lease. The landlord thereafter refused the rent, posted a notice on the door that he was retaking possession and would relet the premises for the account of the tenant, and then physically removed the subtenant occupying the premises. The court held that the only

remedy for the landlord upon the tenant's breach is an unlawful detainer proceeding after proper notice<sup>13</sup> and that he was guilty of a forcible entry and detainer.<sup>14</sup>

**Landlord's notice of belief of abandonment.** A landlord who is uncertain whether the tenant has abandoned the premises but believes in good faith that there has been an abandonment, and rent has remained unpaid for at least 14 days, may give a notice to the tenant that he or she believes that the tenant has abandoned the premises. The notice must contain a date of termination that is at least 15 days after the notice is personally served on the tenant, or at least 18 days after the notice is deposited in the mail. If the tenant fails to respond to the landlord that there has been no abandonment prior to the specified date of termination, the leasehold premises are deemed abandoned by the tenant.<sup>15</sup> The statute sets forth the form of written "Notice of Belief of Abandonment" to be given to the tenant.

**The notice does not preclude other remedies of the landlord.** The procedure for giving a notice of a belief of abandonment does not preclude the landlord from giving any other notice to quit or other notice permitted by law, or otherwise commencing eviction proceedings. However, if the tenant gives the landlord the appropriate written notice within the prescribed time that it does not intend to abandon the premises, the landlord may serve the tenant with an unlawful detainer complaint by certified mail if it is mailed within 60 days after the tenant's notice.<sup>16</sup>

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#### Footnotes

1 *Martin v. Cassidy*, 149 Cal. App. 2d 106, 110, 307 P.2d 981 (3d Dist. 1957).

§ 19:196 (surrender).

2 § 19:196 (surrender).

3 *Pickens v. Johnson*, 107 Cal. App. 2d 778, 787, 238 P.2d 40 (3d Dist. 1951).

#### A.L.R. Library

What constitutes abandonment of residential or commercial lease—modern cases, 84 A.L.R. 4th 183.

4 §§ 19:196 to 19:198 (surrender).

5 § 19:210 (continuation of the lease; landlord's recovery of rent or damages).

6 *Boral v. Caldwell*, 223 Cal. App. 2d 157, 162, 35 Cal. Rptr. 689 (2d Dist. 1963); *Flynn v. Mikelian*, 208 Cal. App. 2d 305, 311, 25 Cal. Rptr. 138 (2d Dist. 1962); *Wiese v. Steinauer*, 201 Cal. App. 2d 651, 656, 20 Cal. Rptr. 295 (2d Dist. 1962).

7 *Kulawitz v. Pacific Woodenware & Paper Co.*, 25 Cal. 2d 664, 670-671, 155 P.2d 24 (1944); *Berry v. Kelly*, 90 Cal. App. 2d 486, 489, 203 P.2d 80 (4th Dist. 1949); *Swigert v. Stafford*, 85 Cal. App. 2d 469, 472, 193 P.2d 106 (2d Dist. 1948).

8 *Kulawitz v. Pacific Woodenware & Paper Co.*, 25 Cal. 2d 664, 670-671, 155 P.2d 24 (1944); *Wiese v. Steinauer*, 201 Cal. App. 2d 651, 656-660, 20 Cal. Rptr. 295 (2d Dist. 1962); *Berry v. Kelly*, 90 Cal. App. 2d 486, 489, 203 P.2d 80 (4th Dist. 1949); *Swigert v. Stafford*, 85 Cal. App. 2d 469, 472, 193 P.2d 106 (2d Dist. 1948).

#### Trial Strategy

Proof of Tenant's Abandonment of Real Property Lease, 70 Am. Jur. Proof of Facts 3d 1.

9 *Riner v. Vernon*, 132 Cal. App. 178, 183-184, 22 P.2d 255 (3d Dist. 1933).

10 *Kulawitz v. Pacific Woodenware & Paper Co.*, 25 Cal. 2d 664, 670-671, 155 P.2d 24 (1944).

11 *Saferian v. Baer*, 105 Cal. App. 238, 243, 287 P. 142 (4th Dist. 1930).

§ 19:157 (wrongful act or constructive eviction).

12 *Gruber v. Pacific States Savings & Loan Co.*, 13 Cal. 2d 144, 147, 88 P.2d 137 (1939).

§ 19:233 (tenant's personal property).

13 §§ 19:214 to 19:217 (nature of the remedy).

14 *Kassan v. Stout*, 9 Cal. 3d 39, 43-44, 106 Cal. Rptr. 783, 507 P.2d 87 (1973).

§§ 19:161 to 19:168 (forcible entry and detainer proceedings).

15 Civ. Code, § 1951.3.

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