



# Landlord Letter

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## Emergency Eviction Hearings & Possession Bonds

While the eviction process can be frustrating to the landlord who is without rent and waiting for the eviction to be awarded, it could be MUCH worse. In California it is normally around one month to complete the process, but if the tenant disputes the eviction it can take 2-3 months or more. Landlords in New York should plan on a minimum of 2-3 months to complete the eviction process even if the tenant doesn't dispute the eviction.



If handled correctly, evictions under Utah law commonly take a few weeks. In fact, our fastest evictions (which are uncommon) take only 8 calendar days from the time we filed the case until the constable was changing the locks. Our average

eviction takes 2-3 weeks from filing to lockout.

How does Utah law allow for such prompt evictions? If the tenant does not fight the eviction, the landlord is awarded a "default eviction." A default eviction commonly takes around two weeks and gives the landlord: (1) an eviction order and (2) a judgment for the amount owed.

Even if the tenant fights the eviction, Utah law allows the landlord an expedited eviction process. Under Utah law, all evictions have to have a trial within 60 days of the tenant's written answer to dispute the eviction. However, in order to complete an eviction in the 2-3 week timeframe, Utah law also allows for an emergency eviction hearing within 10 days. There are at least

*(Continued on page 2)*



## Courtroom Chronicles — Collecting \$48k

We often tell our clients — Collections in general are difficult, but collections after an eviction can be even more difficult. If they weren't paying the person that was putting a roof over their head, they may not have money to pay toward a judgment.

A few years ago we were able to work through an eviction which resulted in a large judgment. There was a significant balance owed and substantial damage done to the house. After the treble damage statute was applied, our base judgment was in the \$50,000 range. We gave our client a warning about the

difficulties of turning this \$50,000 in Monopoly money into anything real.

After nearly one year of waiting, we were able to locate the tenants and discovered that they had several assets (vehicles, trailers, equipment, etc.). We were able to get a court order to seize these assets. Between the sale of these assets and other payments that the tenants paid, within 30 days we were able to collect \$48,000 for our client.



This obviously happens in very rare cases, but we always strive for success for each of our clients.

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four types of evictions which grant a landlord this emergency eviction hearing: (1) tenants have not paid rent, (2) the tenant has committed a criminal nuisance, (3) post-foreclosure evictions, and (4) where the landlord posts a possession bond. Utah law also requires that the Court "expedite the proceedings, including the resolutions of motions and trial."

During an emergency eviction hearing, the Court will decide who should be awarded possession of the property during the pendency of the eviction case. Both sides will be allowed to present evidence supporting their case. If the landlord sufficiently proves they are entitled to an eviction, the judge will grant an eviction order at the hearing. The statute also states that if the remaining issues can be decided at the hearing (including the amount owed), the court may also enter judgment. However, Utah judges commonly focus on deciding the eviction issue and then decline to make a final judgment at the emergency eviction hearing (a judgment

is commonly awarded at future proceedings with the court).

Of the four categories granting an automatic emergency eviction hearing, the first three are fairly obvious. The landlord is entitled to an emergency eviction hearing if the tenant has failed to pay rent, committed a criminal nuisance, or you purchased a property at foreclosure with the prior owner residing there. If your eviction is based on another ground or is a commercial eviction, you are still entitled to an emergency eviction hearing if the landlord posts a possession bond with the court.

Utah's possession bond statute allows a landlord to an expedited (2-3 week) eviction by paying a deposit to the court (similar to the security deposit paid by the tenant under the lease). As long as the landlord is successful, the possession bond is returned to the landlord in full. If the court awards a judgment in the tenant's favor, then the tenant can collect the judgment beginning with the bond being released to the tenant. Since possession bonds are a fairly large topic, we will continue this article in the July issue.



# Know Your Notice

## •Assigning or Subletting•

**Purpose:** Used to terminate your lease if your tenant has assigned or sub leased your property in violation of the lease



*This notice is not a comply or vacate notice. Rather, compliance occurs only if the tenant vacates the property.*

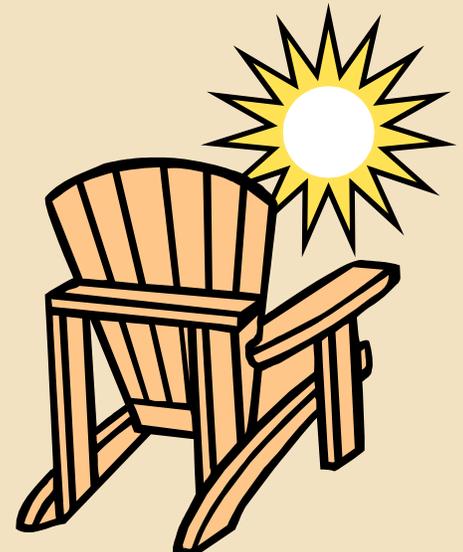


*A notice of eviction based on assigning or subletting must provide the tenant 3 calendar days to vacate the property.*

*Keep in mind, an eviction based on a notice for assigning or subletting may turn into a he-said-she-said battle. Make sure your evidence is solid.*

*Like other eviction notices, it must be served in person, posted or sent via certified mail. It cannot be given verbally, texted or emailed.*

**Evictions in Weeks, Not Months!**



A perfect summer day is when the sun is shining, the breeze is blowing, the birds are singing, and the lawn mower is broken.

~James Dent



## Dear Attorney,

**Q:** *I've got my tenant out, but they still owe money. What can I do to get that back?*

**A:** Whether you got your tenant out with a court order, or they voluntarily left after receiving an eviction notice, most likely they still have a balance owing. There are a few ways to get that amount owing paid.

First, you may be able to work out a payment arrangement with the tenant to pay back the balance. This option can save you from going through the courts. Unfortunately, if your tenant needed to be evicted, or just up and left with a balance owing, most likely they are not jumping to set up payments to you.

Your next option is to use the courts to make you whole. If you have evicted your tenant al-

ready through the court, and you did not obtain a judgment, you need to continue with the court case and have a judgment entered. Often, this can be done through a motion for summary judgment.

If your tenant left without a court order, you may need to begin a debt collection lawsuit seeking a judgment for the amounts owing. Once a judgment has been entered by the court, due to an eviction case or a debt collection case, you can begin the process of garnishing wages, bank accounts or taxes. The most common form of garnishment is a wage garnishment. If you can verify employment, a wage garnishment requires the employer to withhold 25% of the employee's wages.



## DO's & DON'Ts of... Payment Plans



### DO

- DO work with your tenants if they get behind on their rent (the eviction process is the last resort).
- DO get any payment plan in WRITING with SIGNATURES so it's clear what was agreed to.
- DO hold your tenant to the payment plan.



### DON'T

- DON'T hesitate to proceed with eviction if your tenants (1) go silent, or (2) fail again to make payments.
- DON'T let your tenant get more behind. If they default on the lease, and then default on the payment plan, you should consider evicting them.

# CONTACT US



**FREE 15 Minute Landlord Consultation!**

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## Try Our Word Search

Z	N	O	T	I	C	E	L	L	Q
F	S	L	Z	B	F	C	L	E	F
O	V	A	R	T	L	O	T	V	X
L	D	W	E	E	I	M	X	I	Q
T	E	Y	N	N	U	P	J	C	R
N	P	E	T	A	X	L	U	T	T
E	O	R	O	N	S	A	D	S	H
Q	S	I	H	T	K	I	G	G	U
X	I	Q	R	P	H	N	E	B	S
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- Complaint
- Lawyer
- Deposit
- Tenant
- Judge
- Court
- Notice
- Rent
- Evict

## Parting Thoughts

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- Have an eviction question? Email it to us for a future newsletter!
- Help us build our online presence! You can "Like" our Facebook page ([www.facebook.com/utahevictionlaw](http://www.facebook.com/utahevictionlaw)).
- You can also give us a Five Star Google Review (search "Utah Eviction Law Reviews" and click on our link).



# Calendar of Events



- June 12 — UAA Good Landlord Class
- June 14 — Flag Day
- June 15 — Father's Day
- June 24 — UAA's Ogden Membership Meeting
- June 25 — UAA's Orem Membership Meeting
- June 26 — UAA's Salt Lake Membership Meeting