



Landlord Letter

Free Forms & Notices — www.utahevictionlaw.com
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Foreclosures & Evictions

Utah law provides about 8-10 different eviction notices a landlord may use depending on what is applicable to the situation. Most eviction notices in Utah only provide a tenant three calendar days to fix the problems or move from the property (i.e. three day pay or quit, three day nuisance, three day lease violations, etc.). However, an eviction following a foreclosure is a little different.

When an investor purchases a property through foreclosure at the county courthouse, the foreclosure sale typically terminates, or wipes out, any outstanding leases and liens. The foreclosure sale eliminates the prior owner's rights, subjecting them to an eviction by making them a "tenant at will" since they no longer have any legal right to occupy the property.



We received a lot of phone calls where the owner mistakenly believes they have a tenant at will. A tenant at will is someone that does not have any legal right to occupy the property. One of the most common situations of a tenant at will is a squatter, where a tenant allows a friend or family member to live in the property without signing a lease or without getting permission from the owner.

If you think you have a tenant at will, you should ask a few main questions: (1) have you ever given permission (in writing or verbally) for the tenant to reside in the property? If yes, then you probably don't have a tenant at will. (2) Have you ever accepted rent from the tenant? If yes, then you probably don't

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Evictions in Weeks, Not Months!

Landlord Laughs

In a recent eviction, the tenant refused to leave after being served a 30 day notice. The case went to an eviction hearing where we asked the judge to decide the case. The landlord was fine granting additional time (up to 30 more days), but the tenant wouldn't agree to anything.

During the hearing, the tenant's main argument was that they had no written lease agreement in place and therefore, the lease termination notice was not proper. The tenant argued that they were tenants at will instead. Although the argument was not supported by the law, it appeared



that the judge may be considering it. After asking a few questions, the judge explained to the tenant that if they were a tenant at will, as the tenant was arguing, they needed to leave in 5 days, instead of the 30 days offered by the landlord.

The tenant quickly changed their argument and said they would comply with the 30 day eviction order. They dodged a bullet when the judge went back to giving them 30 days to leave. The tenant learned a valuable lesson, be careful what you wish for when you're in front of a judge.

DOs & DON'Ts of... Courtroom Testimony



DO

- Tell the truth (even if it might damage your case). It's usually best to quickly admit facts that may be harmful and move on.
- Stay calm. Your credibility may go downhill if you get aggravated.
- Make sure you understand the question being asked, feel free to ask for the question to be clarified or repeated.



DON'T

- Get frustrated. The opposing attorney's job is to ruffle your feathers.
- Talk too much. Answer the question and call it good.

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have a tenant at will. And (3) How long have you known that the tenant has lived in the property? If you've known they've lived there for long enough and haven't taken any action, they're probably not a tenant at will. However, if you've purchased a property at foreclosure and don't waste time, you should be dealing with a tenant at will.

Recently the law changed due to the expiration of the "Protecting Tenants at Foreclosure Act" or PTFA. In the middle of the real estate bubble bursting, Congress passed the PTFA to protect tenants whose landlords allowed their properties to go into foreclosure. The idea is that a tenant shouldn't be subject to an expedited eviction caused by the landlord so long as they were in compliance with their bona fide lease.

The PTFA meant that the lease would survive the foreclosure, forcing the new owner to honor the remaining terms of the lease. While well intentioned, its application often created significant burdens on the new owner as well as opportunities for abuse and litigation caused by the tenant.

The good news is that PTFA was set to expire on December 31, 2014. There was some discussion about removing the sunset provision in order to make the PTFA permanent, but no extension was ever finalized.

With the expiration of the PTFA, legally it doesn't matter whether the occupants are the prior owners or tenants of the prior owners. Following foreclosure the prior owner no longer has any right to occupy the property. The first step in the eviction process is to serve an eviction notice. Utah law requires that the new owner serve the tenant at will a five calendar day notice to vacate.

If the tenant at will fails to vacate the property within five calendar days, the new owner can file an eviction with the court to get them out. Utah law specifically states a few evictions that are automatically

on an eviction fast track. In a post-foreclosure eviction, the new owner is automatically entitled to an emergency eviction hearing if the tenant at will disputes the eviction and refuses to vacate the property. On average, a typical post-foreclosure eviction should take 2-3 weeks. Call us for a free consultation if you think you have a tenant at will.

**Call us for a
FREE
consultation if
you think you
have a tenant
at will!**



Confused about evictions?

**FREE 15 minute
landlord consultation!**

E: info@utahevictionlaw.com

P: 801-610-9879



Dear Attorney,



Q:

My tenant paid a \$1,000 deposit, but the tenant has damaged the property and owes some late fees. Can I use the deposit for these?

A:

The short answer is probably “Yes”, but you will want to first check with your lease. Hopefully the lease specifically states what the deposit can and cannot be used for. If the lease is silent, the deposit can normally be used for charges related to the lease or the property and incurred by the tenant. For example, if the tenant caused \$300 in damage by breaking some windows, the deposit should be able to be used since damage occurred on the property and would need to be repaid by the tenant anyway.

However, the tenant cannot force the landlord

to use the deposit for fees if the landlord won’t agree to it. For example, a common situation we deal with is a tenant that tries to force the landlord to use the deposit for the last month rent. At the end of a lease, a tenant may realize that they have significant expenses coming up (moving, first month rent, deposit, etc.) and would like to use the deposit for the last month rent. But without the consent of the landlord the tenant cannot force this situation.

Again, the best option is to use a lease that clearly defines what you can and cannot use the deposit for.

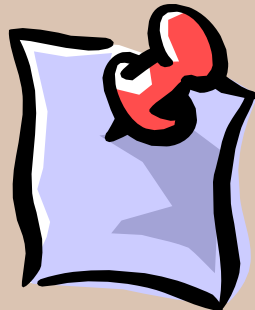


Know Your Notice

•Three Day Notice for Criminal Acts•

Purpose: Allows landlords to evict where their tenants have committed crimes on the property.

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



This can become a he said she said battle, so document any criminal acts. Witnesses and/or police reports are critical in proving the grounds for eviction.

Based on the seriousness of the actions, the tenant may not have an opportunity to cure the problems. They must vacate the property in 3 days or they will be guilty of unlawful detainer.

Use this notice if your tenants have committed criminal actson the property that cause risk of health, sanitation, or damage to your property, other tenants or neighbors.



I say luck is when an opportunity comes along and you’re prepared for it.

~Denzel Washington



Our motto is
“Eviction in
 Weeks, Not
 Months”!
 for a reason...

Contact us now for a **FREE** 15 minute
 landlord consultation!

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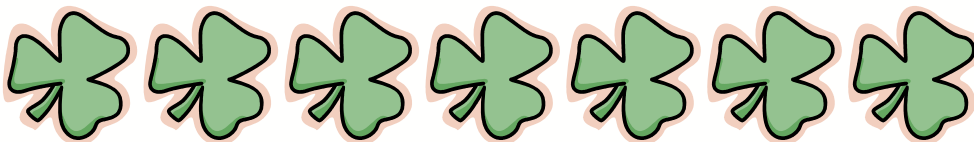


Make sure to set
 your clocks
 forward one hour
 on March 8, 2015!

Calendar of Events



- March 8 — Day Light Savings Begins
- March 17 — St. Patrick’s Day
- March 24 — Ogden’s UAA Membership Meeting
- March 26 — Orem UAA Membership Meeting
- March 27 — SLC UAA Membership Meeting



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).
- You can also give us a Five Star Google Review (search “Utah Eviction Law Reviews” and click on our link).

