Law Offices of Jeremy M. Shorts, LLC

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Landlord Letter

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Utah's Collection and Garnishment Laws

Our cases typically focus on two goals: (1) regaining possession of the property, and (2) attempting to recover the balance owed by the tenant. This month, let's focus on important factors to collect on a judgment after the eviction is complete.

We tell clients all the time – Evictions are a sprint (usually 3-4 weeks), Collections are a marathon (can take months or years). Under Utah law, judgments are good for eight years, and you can renew the judgment for an additional eight years. During that time, you have several options and strategies that can help collect what is owed.

The best strategy for collections is to do what you can to avoid being in a collection situation at all. Make sure you use a detailed rental application, a strong lease agreement, and you inspect the property periodically to keep on top of potential problems. If your tenant is in default, take care of the problems and enforce the lease. Filing an eviction isn't fun, but it's much better to file an eviction earlier before the tenant builds up a substantial balance covering months of rent.

Even if you do everything right, you still might need to evict, and then collect. After a judgment is entered, here are some of the more successful ways to collect on your judgment.

Garnishments – One of the best, and most common, options for collections are garnishments of wages or bank accounts. Utah law permits you to seize 25% of their take-home wages (after taxes and legal deductions are removed). Wage garnishment usually last for at least four months, but can continue for up to one year.

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Bank garnishments are a one-time, single seizure of what is in their bank account.

Writ of Execution – If you're aware of other assets the tenant/defendant have, you can request a court order to seize personal property or cash. This option is effective if the tenant has valuable items (i.e. multiple vehicles that are paid off, motorhomes, trailers, etc.).

Judgment Liens – While these are uncommon following evictions, if you later learn that they own real estate, a judgment lien is a great option. Under Utah law, a judgment entered by the court becomes a lien against any real property owned by the tenant/debtor, but only if the judgment lien is recorded in the county recorder's office. Once recorded, the property cannot be transferred unless the lien is paid. If payment is not made, foreclosure of the lien is another option.

It's important to realize that collecting on a judgment is NOT guaranteed, but don't give up. Again, judgments are good for eight years, and you can renew your judgment for an additional eight years. Continue to be persistent and don't be surprised when you get a bit lucky. with the process and hopefully you'll see success.

Quick Tips on Eviction Notices

- If applicable, serve multiple eviction notices to strengthen your case (we don't have to prove ALL of the notices, just ONE).
- Include enough detail to clearly explain why they're being evicted.
- Make sure it's filled out and served properly.
- Keep a copy for yourself in case you end up filing an eviction.

Dear Attorney,

Q: ***I have two tenants – One filed bankruptcy, but the other one did not. Can I still move forward with an eviction?***

A: A tenant's bankruptcy filing generally creates an automatic stay that prevents the landlord from starting or continuing an eviction against that tenant. However, the stay ordinarily does not automatically protect a co-tenant merely because they live with, or are married to, the tenant who filed bankruptcy.

Having said that, proceeding with an eviction can be risky. You should not take action that would remove the tenant in bankruptcy or terminate their rights under the lease without first determining whether the automatic stay applies or obtaining relief from the bankruptcy court.

Several factors may affect the analysis, including:

- Whether both tenants signed the same lease;
- Whether the eviction is based on unpaid rent;
- Whether the bankruptcy was filed under Chapter 7 or Chapter 13; and
- Whether an eviction judgment was entered before the bankruptcy filing.

In some situations, the landlord may be able to pursue an eviction. However, evicting only one tenant may not give you possession of the unit and could create a risk of violating the automatic stay.

The safest approach is to have an attorney review your case to make sure you're complying with the bankruptcy rules so you do not violate the automatic stay. If you want to pursue an eviction, you may need to seek to remove the automatic stay before proceeding against both tenants.

Google REVIEWS

See what people are saying about US!!!

"Jeremy and his team were awesome handling an eviction case that I had. Great communication throughout the process. Very professional and top notch service."

Courtroom Chronicles — Smell it!!

If we can get a judge to connect with our client, that's a recipe for success. We had a case where the tenant had done significant damage to the property. There were holes in the walls, garbage left everywhere, and the tenants had unauthorized pets that had used the bathroom all over the carpet.

The landlord had taken several pictures that showed the damage, but the landlord wanted to do even more to show the judge the problems that the tenant had created. At the hearing with the judge, the landlord brought a large plastic bag filled with a piece of carpet. When the judge asked the landlord what was in the bag, the landlord said, "You've seen the pictures, but you need to smell the carpet to see what I mean."

Despite the landlord's insistence, the judge politely declined the invitation to smell the carpet. The landlord said, "Your Honor, please smell it!!!" The judge again declined, but still ruled in our favor on the damage claims.

Parting Thoughts

- We're working to build our readership, tell your friends to subscribe to this FREE newsletter. Send us an email at info@utahevictionlaw.com.
- 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 "Jeremy Shorts Reviews" and click on our link).

Evictions in Weeks, Not Months!