

Utah Legal Services

An Advocate's Guide to Tenant Representation at Possession Bond Hearings

Original Author (1996)
Adam Price

Updates and Supplementary Training Materials (1999)
Frank Angley, Barbara Baker, Martin Blaustein,
Margaret Ganyo and Judy Mayorga

Ken Bresin
(2005)

TABLE OF CONTENTS

INTRODUCTION2

PART I - OVERVIEW OF LANDLORD-TENANT LAW2

PART II - EVALUATING THE MERITS OF THE CASE3

I. HOW LANDLORD CREATES A CAUSE OF ACTION FOR UNLAWFUL DETAINER.....4

 A. *Service of Notice to Quit*.....4

 B. *Required Information for the Notice to Quit*4

II. FILING THE COMPLAINT5

III. ACCELERATING THE EVICTION PROCESS THROUGH A POSSESSION BOND.....5

IV. AFFIRMATIVE DEFENSES, REMEDIES, AND DAMAGES6

 A. *Warranty of Habitability*7

 B. *Retaliatory Eviction*.....8

 C. *Utah Consumer Sales Practices Act (Utah Code 13-11-1 et seq.)*9

 D. *Remedies and Damages*.....9

V. WHAT HAPPENS AFTER THE HEARING9

Appendices

1 Sample Timetable of Eviction for Nonpayment of Rent11

2 Sample Notice to Quit for Nonpayment of Rent12

3 Sample Notice to Quit for Nuisance13

4 Sample Notice to Quit for Non-Compliance with Terms of Lease14

5 Sample Notice for No-Cause Eviction.....15

6 Sample Summons (served with copy of Complaint)16

7 Sample Motion to Set Landlord’s Possession Bond.....17

8 Sample Notice of Filing of Landlord’s Possession Bond18

9 Sample Explanation of Tenant’s Rights19

10 Unlawful Detainer Statute.....20

11 Preliminary Review of Possession Bond Case Form.....26

12 Client Information Sheet..... [deleted]

13 Representation Agreement.....28

14 Special Appearance of Pro Bono Counsel for Possession Hearing29

15 Possession Bond Checklist30

16 Mediated Settlement Agreement.....31

17 ULS Client Information Sheet32

18 Rule 72, U.R.Civ.P.34

19 125% Federal Poverty Guidelines35

20 Immediate Occupancy (“Possession Bond”) Hearing flyer for tenant36

21 After the Possession Bond (“Immediate Occupancy”) Hearing flyer for tenant38

22 Request to a Peace Officer After “Lockout” flyer for tenant.....40

23 To the Landlord flyer for tenant.....41

24 Getting Help After the Possession Bond Hearing flyer for tenant.....42

25 Volunteer Attorney Report Form.....43

INTRODUCTION

This Advocate's Guide was created through the efforts of the Utah Legal Services Housing Unit. It is meant only to assist you in your understanding of the legal processes involved in the possession procedure and some of the possible defenses that may be available. This Guide should not be relied on as a substitute for competent one-on-one legal advice.

The various forms and codes cited are subject to periodic revisions as laws change and evolve. In an attempt to provide the best educational materials possible, Utah Legal Services will occasionally revise this manual to keep it current. If you have any suggestions for possible revisions, please send them to Utah Legal Services – Housing Unit, Community Legal Center, 205 North 400 West, Salt Lake City, Utah 84103.

PART I - OVERVIEW OF LANDLORD-TENANT LAW

The reality of landlord-tenant law in Utah is that it is heavily slanted in favor of landlords. For instance, tenants who wish to remain in possession of the premises during the pendency of legal proceedings open themselves to liability for treble damages if the court ultimately finds there to have been an unlawful detainer. Similarly, landlords have the option of forcing a swift decision of the occupancy question. Landlords may post a bond (in the amount of the tenants' potential damages) which would allow them to take possession of the premises prior to a hearing on the merits unless the tenant posts a counterbond.

Given tenants' generally limited resources and the risk of incurring treble liability for unlawful detainer, the requirement of a counterbond often makes the hope of a hearing on the merits illusory. Thus, tenants are often forced to relinquish their homes prior to a hearing on the merits and are discouraged from pursuing a trial for damages after the fact because the risk of treble damages is often greater than the reward in the event of a favorable verdict. The advocate is left with few opportunities to assist a tenant.

At the possession bond hearing, these possibilities deserve attention.

- **Bond** Did a judge set the amount? Has the amount been posted? If it's a property bond, the rigors of Rule 72, U.R.Civ.P., must be traversed, including the recording of the bond. If the posting is inadequate, the hearing should be stricken. The court should require the landlord to serve another notice when the problem is cured.

- **Jurisdictional issues** If the Court lacks jurisdiction to entertain an unlawful detainer action and the evidence is clear on its face (e.g., the notice attached to the complaint is obviously defective), the complaint should be dismissed. Where the tenant is being evicted from a space in a mobile home park, the Mobile Home Park Residency Act (MHPRA) has different jurisdictional requirements.
- **Negotiation to remain** If the tenant wishes to stay and the only issue is back rent, the landlord may agree to a payment plan. This often requires the tenant to pay specific amounts at specific times, recognizing that rent will continue to become due. It is often the case that a stipulation to this effect is read into the record. If the tenant fails to make a payment, the landlord gets an Order of Restitution which may be immediately enforced (no 3-day wait after service) if that is agreed by stipulation.
- **Negotiation to leave** When the tenant cannot pay the back rent or the reason for eviction is nuisance, waste, or uncured lease violation (even though the reason is disputed by the tenant) and the tenant cannot afford to post a counterbond, a landlord (especially when represented by counsel) will often agree to a move-out date at least one week in the future, thereby potentially avoiding the need to get a signed Order of Restitution and having it served. However, landlords will often require that if the tenant fails to move as agreed the Order of Restitution be “immediate,” namely there is no 3-day grace period.
- **Setting the counterbond** The last alternative is to ask the judge to set a counterbond. “The court shall approve the bond in an amount that is the probable amount of costs of suit and actual damages that may result to the plaintiff if the defendant has improperly withheld possession.” Utah Code § 78-36-8.5(2)(b) The court has discretion to set the due date but the usual rule is by 5 p.m., three (3) business days following the bond hearing.

You should also be on the lookout for the appropriate case with which to bring a challenge to the constitutionality of these statutes (denial of due process, violation of the Utah Constitution’s open courts provisions, etc, e.g., a case involving a for-cause eviction with no monetary issues, but defendant is forced to post a possession bond in order to contest the eviction).

Note that at the Matheson Courthouse, judges rotate through the “immediate occupancy” calendar on a weekly basis. Therefore, the judge assigned to the case when the complaint is filed will not often be the judge at the possession bond hearing. It goes without saying that every judge treats possession bond hearings somewhat differently.

PART II - EVALUATING THE MERITS OF THE CASE

When reading about the substantive law, be aware that Legal Services attorneys usually only meet the tenant clients near the very end of the eviction process after much that is discussed in this Guide has already transpired.

I. How Landlord Creates a Cause of Action for Unlawful Detainer

A. Service of Notice to Quit

Prior to commencing any action for unlawful detainer, the landlord must give the tenant notice to quit by an authorized method pursuant to Utah Code § 78-36-6. There are four methods of serving the Notice to Quit: (1) by hand upon the tenant, (2) by registered or certified mail upon the tenant, (3) if the tenant is absent from his residence or usual place of business, upon a person of suitable age and discretion at either location with a copy mailed to the tenant at either location, or (4) if a person of suitable age and discretion is not to be found, by posting a copy on the leased property in a conspicuous location. Strict compliance with the terms of the notice statute are required to institute an action for unlawful detainer. Van Zyverden v. Farrar, 393 P.2d 468 (1964). Although no reported case has addressed this question, it could be argued that the conditional availability of options (3) and (4) means they are disfavored methods of service or at least that the burden is on the landlord to prove that the condition precedent to their availability was met.

B. Required Information for the Notice to Quit

In order to create a cause of action for unlawful detainer, the landlord must serve the proper type of notice. The following chart summarizes the various types of notice which will suffice:

Basis for Notice to Quit	Type of Tenancy		
	<i>For Term</i>	<i>Month-to-Month</i>	<i>At Will</i>
Nonpayment of Rent	For all types of tenancy, must give 3 days notice <u>either</u> to pay rent or quit. Utah Code § 78-36-1(c). Payment of rent within 3 days prevents forfeiture of lease. Notice to quit may not be served until rent is actually due. Mobile Home Park Residency Act requires 5 day notice to pay or quit. Utah Code § 57-16-5(1)(d)		
Nuisance or Waste	For all types of tenancy, must give 3 days notice to quit. Utah Code § 78-36-1(d). There is no option to cure nuisance or waste.		
No-Cause [MHPRA: not available]	No notice to quit required at expiration of lease for a term unless lease says so. Utah Code § 78-36-3-1(a)	Notice to quit served 15 days prior to end of period, except where lease term requires greater time. Utah Code § 78-36-3-1(b)(i)	5 days notice to quit. Utah Code § 78-36-3-1(b) (ii)
Non-Compliance with Term of Lease	For all types of tenancy, must give 3 days notice either to cure non-compliance or quit. Utah Code § 78-36-3-1-(e). Compliance with lease prevents forfeiture of the lease. <u>Id.</u> Longer periods under MHPRA.		

A long line of Utah cases has held that failure to give the tenant the alternative of curing the default or noncompliance in the Notice to Quit, where required by law, prevents a cause of action for unlawful detainer from accruing in the landlord. See, e.g., Dang v. Cox Corp., 655 P.2d 658 (Utah 1982); Ute-Cal Land Dev. v. Intermountain Stock Exch., 628 P.2d 1278 (Utah 1981); Sovereign v. Meadows, 595 P.2d 852 (Utah 1979).

II. Filing the Complaint

Once the Notice to Quit has expired without necessary action by the tenant, the landlord may initiate the eviction proceeding by filing a Complaint with the court. If the basis for the claim of unlawful detainer is nonpayment of rent, the Complaint must state the amount of rent owed. Utah Code § 78-36-8. The court must then endorse on the Summons the amount of time in which the tenant must answer, which shall be not less than three days nor more than 20 days from the date of service of the Complaint. Id. As a matter of practice, the courts almost always require the tenant to answer within three days.

III. Accelerating the Eviction Process Through a Possession Bond

If the three day time period prior to receiving the tenant's Answer is still not fast enough for the landlord, the landlord may choose to post a bond for possession any time after (or concurrently with, as often occurs) the filing of the Complaint. Utah Code § 78-36-8.5. The landlord must then serve notice upon the tenant that a possession bond has been filed. Service shall be in the same manner as prescribed for service of Summons. Utah Code § 78-36-8.5(1). Once the tenant has been served with notice of filing of the landlord's possession bond, he or she has four options:

1. The tenant may quit the premises within 3 business days, not including the date of service. Utah Code § 78-36-8.5(3).
2. If the eviction is for nonpayment of rent, the tenant may have the action dismissed by paying, within three days of service of Notice of the Possession Bond, accrued rent, utility charges, any late fees, and other costs, including attorney's fees if so required by the rental agreement. Utah Code § 78-36-8.5(2)(a).

3. Within three days of service of notice of the possession bond, the tenant may file a counterbond in an amount to be determined by the court. If the tenant does file a counterbond, he or she may remain in possession of the property until trial. Utah Code § 78-36-8.5(2)(b). The amount must be determined by a judge, *ex parte*. As a practical matter, this never happens.

4. A tenant may demand a hearing to be held prior to the expiration of the three days from the date the tenant is served with notice of the filing of the landlord's possession bond. Utah Code § 78-36-8.5(2)(c). Presumably this option is intended to allow the tenant an accelerated hearing on the merits without the necessity of posting a counterbond. Unfortunately, Utah Code §78-36-8.5(4) elides whatever utility this option may have had for tenants by providing that “[I]f at the hearing the court allows the defendant to remain in possession and further issues remain to be adjudicated between the parties, the court shall require the defendant to post a [counterbond].” In practice, the courts interpret this language to mean that if a landlord is not ready for a summary trial, and the landlord can always claim they are not ready for such a proceeding, then “issues remain[ing] to be adjudicated” between the parties and a counterbond is required for the tenant to remain in possession until the full trial. Thus, what in theory was intended to be a trial on the merits without the necessity of a counterbond, in reality becomes a hearing to determine the amount of the counterbond.

Practice Note: It is at the possession bond hearing that you will first meet the tenants who you may assist through the project. This often is their first opportunity to seek legal advice. Thus, you need to meet with each tenant who can be identified, make a quick evaluation of the merits of the case, and in short order determine what action is most appropriate: not to represent the tenant, to provide limited representation to the tenant in pre-hearing negotiations and mediation with the landlord, or to offer full representation to the tenant at the bond hearing. After the hearing, if appropriate, please refer the tenant to Utah Legal Services to determine if an attorney will represent the tenant at trial. Be sure to file a Special Appearance with the court so that you are not associated with the tenant for the duration of the litigation.

IV. Affirmative Defenses, Remedies, and Damages

In addition to the more traditional common law defenses such as waiver, laches, and insufficiency of service, the Utah Supreme Court has recognized two additional defenses for tenants in the last few years:

violation of the implied warranty of habitability and retaliatory eviction. See, Wade v. Jobe, 818 P.2d 1006 (Utah 1991); Building Monitoring Systems, Inc. v. Paxton, 905 P.2d 1215 (Utah 1995).

A. Warranty of Habitability

Though there is little case law to guide the application of the new affirmative defense of violation of the implied warranty of habitability, the Utah Supreme Court has provided some guidance as to its scope. Substantial compliance with applicable housing codes will generally serve as evidence of the fulfillment of a landlord's duty to provide habitable premises. Evidence of violations of the code involving health or safety, by contrast, will often sustain a tenant's claim for relief. Wade, 818 P.2d at 1010-11. The Supreme Court was quite explicit, however, that a code violation is not necessary to establish a breach so long as the claimed defect has an impact on the health or safety of the tenant. Id.

Clearly, failure to provide heat or hot water is a breach of the warranty of habitability. Id. Just as clearly, a broken Venetian blind is not a breach. Id. Whether any intermediate harms will create a breach is a question that has not been decided yet by the Utah courts, nor have the Utah courts addressed the question whether the cumulation of minor defects may collectively create a breach even where no individual problem would be sufficient to support such a claim. The Salt Lake City Fit Premises Ordinance identifies the following items as **critical**: inoperable toilet, lack of heat or electricity, disconnection of utility services caused by the property owner, broken or leaking plumbing causing an imminent threat to health or safety. The same ordinance identifies the following items as **necessary, but not critical**: lack of hot or cold water, inoperable kitchen or bathroom drains, inoperable refrigerator, range or stove, broken exterior locks, broken stair or balustrade, inoperable smoke detector if required by code. South Salt Lake has a similar ordinance, as do West Valley City and Murray.

As to the measure of damages for breach, the court held that where a landlord failed to provide the "bare requirements of living" the tenant could claim that the resulting diminution in value of the premises should be used as an offset against rent owed by the tenant. Id. If the amount of money owed by the landlord as a result of percentage diminution in value of the property is greater than the amount owed by the tenant, then the landlord owes damages to the tenant and the tenant maintains possession of property. Id. at 1011. In

calculating damages, the court specifically opted for the “percentage diminution,” whereby the tenant’s recovery reflects the percentage by which the tenant’s use and enjoyment of the property has been diminished by the uninhabitable conditions. Id. at 1012-3. The court chose this method of determining damages over those used in other jurisdictions because it does not require expert testimony and is within the capacity of the trier of fact to determine. Id.

Unless both parties are prepared to put on evidence regarding habitability, the judge may simply defer consideration of the issues to the assigned judge for future trial. However, if the current problems are compelling, the judge may reduce the counterbond as a result.

B. Retaliatory Eviction

In 1995, the Utah Supreme Court added “retaliatory eviction” to the short list of affirmative defenses available to tenants. Basically, the Court was concerned that if landlords were allowed to use their privilege under Utah law to “evict for any reason at all” to evict tenants who reported housing code violations, tenants would be deterred from providing the private enforcement that is necessary to the success of housing codes. Paxton, 905 P.2d at 916-17. Thus, the Court held that the defense of retaliatory eviction is available whenever: 1) there is a protective housing statute embodying a public purpose, 2) the landlord is in the business of renting residential property, 3) the tenant is not materially in default of his or her obligations under the lease, 4) the landlord is primarily motivated to evict the tenant because the tenant has joined a tenant’s union, reported a violation of the housing code or exercised a related legal right, and 5) the tenant’s complaint was made in good faith. Id. at 1218. Once these conditions have been met, the landlord may not exercise his or her right to “evict for any reason at all” until the necessary repairs have been made and the tenant has been allowed a generous amount of time to find other suitable housing. Id. at 1219. Because any subsequent unlawful detainer action by the landlord may still be tainted by an unlawful motive, “the burden is on the landlord to show that he has given the tenant reasonable opportunity to procure other housing.” Id.

C. Utah Consumer Sales Practices Act (Utah Code 13-11-1 et seq.)

The Utah Supreme Court has ruled in Woodhaven Apts. v. Washington, 942 P.2d 918 (Utah 1977), as well as in Carlie v. Morgan, 922 P.2d 1 (Utah 1976), that the U.C.S.P.A. pertains to “unconscionable terms” contained in a residential rental contract or lease.

There is, of course, a difference between unfair or one-sided and “unconscionable.” While some terms or provisions can be blatantly “unconscionable” (i.e. a \$20.00 per day late fee), other terms are not so obvious. It is ultimately the burden of the tenant to show that the term or clause in question is unconscionable.

D. Remedies and Damages

If the tenant loses at trial, the results are rather severe. The tenant forfeits the lease, Utah Code § 78-36-10(1), and must vacate the premises pursuant to an Order of Restitution within three (3) business days of service unless that period is varied by the court for cause, Utah Code § 78-36-10.5(1). Judgment is entered against the tenant, where appropriate, for the amount of rent due, abatement of nuisance by eviction, and treble damages for unlawful detainer and/or waste of premises during the defendant’s tenancy if the complaint alleges waste and it is proved at trial. Utah Code § 78-36-10(2)-(3).

If the tenant prevails at trial, she will be entitled to equitable relief. The tenant will not be evicted from the premises and the tenant **may** be entitled to attorney’s fees and costs incurred for defending the action brought against her.

If it is proven in court that the tenant was wrongfully dispossessed from the premises, the tenant **may** be entitled to the costs and damages that she suffered as a result of the wrongful dispossession. If the landlord was found to have violated the U.C.S.P.A., the tenant **may** be entitled to her actual damages or \$2,000, whichever is greater. If the tenant filed a counterclaim for habitability issues and proved them at trial, she **may** be entitled to a rebate of previously paid rents.

V. What Happens After the Hearing

If the tenant posts the counterbond (cash, money order, cashier’s check) by the due date and time, the tenant remains in the premises. It is likely that the tenant will be required to pay the usual rent as it becomes due but some judges believe that this issue should be left to the discretion of the assigned judge. A hearing on the

underlying merits of the case will occur according to the trial schedule of the assigned judge. If the tenant has lodged a counterclaim, the tenant can move the case forward. Otherwise, the landlord moves the case forward.

If the tenant fails to post the counterbond, the landlord can get an Order of Restitution resulting in a Writ that is served by the sheriff or constable, ordering the tenant to leave. Unless changed by the judge, the tenant has 3 business days following service of the Writ to actually vacate before the landlord can change the locks and the sheriff can physically remove the tenant.

Where the landlord and tenant stipulated to a move-out date, the landlord often gets an “immediate” Writ of Restitution; the tenant does NOT have 3 days after service before being physically removed. In any case, the tenant must be notified of his right to request a hearing on the manner in which service of the Writ is effected.

When the tenant leaves property on the premises, the landlord must securely store that property for 30 days. The tenant can be required to pay the *reasonable* costs of removal and storage in order to secure its return. After 30 days, the landlord can sell the property or donate it to charity, whichever is reasonable.

Whether a judgment will ever be entered against a tenant depends on the landlord, unless the tenant has filed a counterclaim. Because the tenant answered the complaint, he can no longer be defaulted. If the landlord wishes to get a judgment, the landlord must start the process by certifying readiness for trial, requesting a pre-trial conference, or moving for summary judgment. In any of these cases, the tenant should get notice *if* the tenant has given a forwarding address to the court (and/or post office) and updates the address if it changes. Otherwise, any notice will be sent to the last known mailing address and may fail to reach the tenant.

Many landlords do not pursue a judgment against a tenant who can't pay the rent since the judgment will likely be uncollectible anyway. This is especially true of landlords represented by counsel since most attorneys require their landlord-clients to pay for their work up front.

If the tenant has filed a counterclaim, the tenant can move the case forward by requesting a trial or pre-trial date or moving for summary judgment. The tenant should use caution in pressing counterclaims by weighing the possibility that the landlord's judgment will be larger than the tenant's judgment.

Appendix 1 Sample Timetable for Nonpayment Eviction

HYPOTHETICAL MONTH

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 *Rent is due on first of month.	2 *Rent is past due. *Notice to Quit served on tenant giving her 3 calendar days to quit or pay rent.
3	4	5 *Last day for tenant to cure by paying rent.	6 *LL files Complaint for Unlawful Detainer and serves it on tenant. *LL posts possession bond. *LL serves Notice of Bond on tenant.	7	8	9 DON'T COUNT WEEKEND
10 DON'T COUNT WEEKEND	11 *Tenant's Answer due. *By today tenant must either: 1)quit premises; 2)pay rent & atty fees; 3)post counter-bond; or 4)request & attend hearing on merits (currently treated as bond hearing)	12	13 *If hearing requested, it will likely occur today.	14	15	16
17	18 *If counterbond ordered, it's likely due today by 5:00 p.m.	19 *If counterbond not posted as ordered, Writ of Restitution may be served today.	20	21	22 *Sheriff can physically removed tenant after midnight.	23
24/31	25	26	27	28	29	30

Appendix 2 Sample Notice To Quit For Nonpayment Of Rent

THREE DAY NOTICE TO PAY RENT OR VACATE

(Tenant in possession)
(Address)
(City) (State) (Zip)

You are hereby notified that you are in default for non-payment of rent for the premises occupied by you at the address shown above.

You are further notified that you are to do one of the following:

1) WITHIN THREE DAYS after service of this notice upon you, you are hereby required to pay in full, the rent now owing on the premises at the above address, which you now occupy. The total rent due is \$... being rent for the period(s) commencing... and ending..., payable monthly in advance, computed at the rate of \$... per month, plus a late fee of \$... per month, amounting to the sum of \$..., less \$... paid on account to date. OR

2) YOU ARE REQUIRED TO VACATE SAID PREMISES WITHIN THREE DAYS and surrender possession of said premises with keys to the undersigned Owner or his duly authorized agent.

IN THE EVENT of your failure to pay the said rent or to vacate the said premises within such period of THREE DAYS, you will be unlawfully detaining possession of said premises. In accordance with the provisions of Section 78-36-10, Utah Code Annotated, 1953, you will be liable for treble damages for such unlawful detainer, and action will be commenced against you to evict you from said premises and to take judgment against you for the rent accrued plus damages of three times the rent for the period you are unlawfully detaining possession of said premises, together with any damages to said premises, court costs, and attorney's fees. If a judicial proceeding for eviction is instituted, you may present a defense in that proceeding..

Please immediately notify the undersigned of your intentions.

DATED this ___ day of ___, 20__.

Owner or Managing Agent's Signature
Address
City State Zip

Municipal Ordinances Provide:

It shall be unlawful for any person, upon vacating or removing from dwellings, store rooms, or any other building to fail to remove all garbage, rubbish, and ashes from such building and premises and also be the ground appertaining thereto, or to fail to place same in a thoroughly sanitary condition 24 hours after said premises shall be vacated.

RETURN OF SERVICE

I certify that service of this notice was completed in accordance with the provisions of Section 78-36-5 and Section 78-36-6, Utah Code Annotated, 1953, on (date) ___ at (place)___ by:

- Delivering a copy to the tenant personally, OR
Sending a copy through certified or registered mail, addressed to the tenant at his place of residence, OR
Leaving a copy with ___, a person of suitable age and discretion at the tenant's residence or place of business, and by mailing a second copy to the tenant at said residence or place of business, OR
Affixing a copy in a conspicuous place on the rented premises, after failing to find anyone there.

Signature of Server

Subscribed and sworn to before me on this ___ day of ___, 20__, ___ residing at

Notary Public
My commission expire _____

Appendix 3 - Sample Notice to Quit (Nuisance)
THREE-DAY NOTICE TO VACATE (NUISANCE)

(Tenant in possession)

(Address)

(City) (State) (Zip)

WITHIN THREE DAYS after having been served this notice, you are requested to vacate the premises at the above address, which premises you now occupy as tenant of the undersigned for the reason that you have permitted, suffered, allowed or maintained a NUISANCE on or about the said premises, to-wit:

If you fail to vacate the said premises within such period of THREE DAYS, you will be deemed guilty of an unlawful detainer and legal action will be initiated against you for restitution of the premises and for damages of THREE times the rent for the period you are unlawfully detaining possession of the premises in accordance with the provisions of Section 78-36-10, Utah Code Annotated, 1953, together with any attorney's fees and/or court costs.

DATED this ____ day of _____, 20__

From: _____
(Owner or Managing Agent's Signature)

(Address)

(City) (State) (Zip Code)

Municipal Ordinances Provide:

It shall be unlawful for any person, upon vacating or removing from dwellings, store rooms, or any other building to fail to remove all garbage, rubbish, and ashes from such building and premises and also the ground appertaining thereto, or to fail to place same in a thoroughly sanitary condition 24 hours after said premises shall be vacated.

RETURN OF SERVICE

I certify that service of this notice was completed in accordance with the provisions of Section 78-36-5 and Section 78-36-6, Utah Code Annotated, 1953, on (date) _____ at (place) _____ by:
__ Delivering a copy to the tenant personally, OR
__ Sending a copy through certified or registered mail, addressed to the tenant at his place of residence, OR
__ Leaving a copy with _____ Person of suitable age and discretion at the tenant's residence or place of business, and by mailing a second copy to the tenant at said residence or place of business, OR
__ Affixing a copy in a conspicuous place on the rented premises, after failing to find anyone there.

Signature of Server

Subscribed and sworn to before me on this ____ day of _____, 20__.
_____ residing at _____
Notary Public
My commission expires _____

Appendix 4 Sample Notice to Cure or Quit (Noncompliance With Lease)

THREE-DAY NOTICE TO CONFORM WITH TERMS OF LEASE OR QUIT

(Tenant in possession)
(Address)
(City) (State) (Zip)

You are hereby notified that you are in default for violating the terms of your rental agreement for the premises occupied by you at the address shown above, to-wit:

You are further notified that you are to do one of the following:

- 1. WITHIN THREE DAYS after service of this notice upon you; you are hereby required to remedy the violations described above and come into full compliance with the terms of your rental agreement. OR
2. YOU ARE REQUIRED TO VACATE SAID PREMISES WITHIN THREE DAYS and surrender possession of said premises with keys to the undersigned Owner or his duly authorized agent.

IN THE EVENT of your failure to pay the said rent or to vacate the said premises within such period of THREE DAYS, you will be unlawfully detaining possession of said premises. In accordance with the provisions of Section 78-36-10, Utah Code Annotated, 1953, you will be liable for treble damages for such unlawful detainer, and action will be commenced against you to evict you from said premises and to take judgment against you for the rent accrued plus damages of three times the rent for the period you are unlawfully detaining possession of said premises, together with any damages to said premises, court costs, and attorney's fees. If a judicial proceeding for eviction is instituted, you may present a defense in that proceeding.

Please immediately notify the undersigned of your intentions.

DATED this ___ day of _____, 20___

(Owner or Managing Agent's Signature)
(Address)
(City) (State) (Zip Code)

Municipal Ordinances Provide:

It shall be unlawful for any person, upon vacating or removing from dwellings, store rooms, or any other building to fail to remove all garbage, rubbish, and ashes from such building and premises and also the ground appertaining thereto, or to fail to place same in a thoroughly sanitary condition 24 hours after said premises shall be vacated.

RETURN OF SERVICE

I certify that service of this notice was completed in accordance with the provisions of Section 78-36-5 and Section 78-36-6, Utah Code Annotated, 1953, on (date) _____ at (place) _____ by:
___ Delivering a copy to the tenant personally, OR
___ Sending a copy through certified or registered mail, addressed to the tenant at his place of residence, OR
___ Leaving a copy with _____ Person of suitable age and discretion at the tenant's residence or place of business, and by mailing a second copy to the tenant at said residence or place of business, OR
___ Affixing a copy in a conspicuous place on the rented premises, after failing to find anyone there.

Signature of Server
Subscribed and sworn to before me on this ___ day of _____, 20___,
residing at _____
Notary Public My commission expires _____

Appendix 5 Sample Notice to Evict (No Cause)

FIFTEEN DAY NOTICE TO VACATE

(Tenant in possession)

(Address)

(City) (State) (Zip)

PLEASE NOTE: as of _____, _____, the end of the current rental period, your right to occupy the premises at the above address, which premises you now occupy as tenant of the undersigned, will be terminated and you are hereby required to vacate said premises on or before said date and deliver possession thereof to the undersigned or his/her agent.

If you fail to vacate the said premises within such period, you will be deemed guilty of an unlawful detainer and legal action will be initiated against you for restitution of the premises and for damages of THREE times the rent for the period you are unlawfully detaining possession of the premises in accordance with the provisions of Section 78-36-10, Utah Code Annotated, 1953, together with any attorney's fees and/or court costs.

DATED this ____ day of _____, 20____

From: _____
(Owner or Managing Agent's Signature)

(Address)

(City) (State) (Zip Code)

Municipal Ordinances Provide:

It shall be unlawful for any person, upon vacating or removing from dwellings, store rooms, or any other building to fail to remove all garbage, rubbish, and ashes from such building and premises and also the ground appertaining thereto, or to fail to place same in a thoroughly sanitary condition 24 hours after said premises shall be vacated.

RETURN OF SERVICE

I certify that service of this notice was completed in accordance with the provisions of Section 78-36-5 and Section 78-36-6, Utah Code Annotated, 1953, on (date) _____ at (place) _____ by:

- Delivering a copy to the tenant personally, OR
- Sending a copy through certified or registered mail, addressed to the tenant at his place of residence, OR
- Leaving a copy with _____ Person of suitable age and discretion at the tenant's residence or place of business, and by mailing a second copy to the tenant at said residence or place of business, OR
- Affixing a copy in a conspicuous place on the rented premises, after failing to find anyone there.

Signature of Server

Subscribed and sworn to before me on this ____ day of _____, 20____.
_____ residing at _____

Notary Public
My commission expires _____

Appendix 6 Sample Summons (served with copy of Complaint)

Able Bodied Attorney #0000
Attorney for Plaintiff
000 East 000 South, Suite 000
Salt Lake City, Utah 84111
Telephone: (801) 000-0000

Serve defendants at:
000 South 000 West
Salt Lake City, Utah 84000

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

LANDLORDS	:	SUMMONS
	:	(Three Day)
	:	
Plaintiffs,	:	
	:	Civil No. 00000000
vs.	:	
	:	Judge WHOEVER
	:	
TENANTS	:	
	:	
Defendants.	:	
	:	

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby summoned and required to file with the Clerk of the above-entitled Court at 450 South State Street, Salt Lake City, Utah, a written answer to the attached Complaint, AND to serve upon or mail to the plaintiff's attorney, at the address shown above, a copy of your Answer within THREE days after service of this Summons upon you.

If you fail to answer, Judgment by Default will be taken against you for the relief demanded in the Complaint which has been filed with the Clerk of the above Court and a copy of which is attached and served upon you.

Dated this ____ day of _____, _____.

ABLE BODIED ATTORNEY
Attorney for Plaintiff

This is an action in unlawful detainer and good cause appearing, therefore, and upon motion of Plaintiff's attorney, NOW, THEREFORE, IT IS HEREBY ORDERED that the time for the defendant(s) to answer or otherwise plead to the action herein is reduced to THREE DAYS.

Dated this ____ day of _____, _____.

DISTRICT COURT JUDGE

Appendix 7 Sample Motion To Set Landlord's Possession Bond

Able Bodied Attorney #0000
 Attorney for Plaintiff
 000 East 000 South, Suite 000
 Salt Lake City, Utah 84111
 Telephone: (801) 000-0000

Serve defendants at:
 000 South 000 West
 Salt Lake City, Utah 84000

IN THE THIRD JUDICIAL DISTRICT COURT
 SALT LAKE COUNTY, STATE OF UTAH

LANDLORDS	:	
	:	OWNER'S MOTION TO SET AMOUNT FOR BOND
Plaintiffs,	:	
	:	
vs.	:	Civil No. 00000000
	:	
TENANTS	:	Judge WHOEVER
	:	
Defendants.	:	

The LESSOR has filed an eviction complaint in the Court against the RENTER(S), named above, and asks for possession of the premises (including storerooms) at this address:
 000 South 000 West, Salt Lake City, 84000, Salt Lake County, State of Utah.

According to Utah Law (UCA 78-36-8.5), if the LESSOR posts a bond he then has a right to take possession of the premises while awaiting the outcome of this case. The Bond must be in an amount large enough to pay the RENTER(S) court costs and damages for loss of possession, if the Court finally decides this case in RENTER(S) favor.

The LESSOR wants possession of the premises, and asks that the Judge set the amount of the Bond. The information below is supplied to help in deciding what a fair amount would be:

- 1. Monthly rental _____
- 2. Rent currently past due _____
- 3. Treble rentals from _____ to _____ _____
- 4. Other: _____ _____

Dated this ____ day of _____, ____.

 ABLE BODIED ATTORNEY
 Attorney for Plaintiff

ORDER SETTING BOND

The amount of this Bond has been fixed by the Court in the sum of \$_____.

Dated this ____ day of _____, ____.

 DISTRICT COURT JUDGE

Appendix 8 Sample Notice of Filing of Landlord's Possession Bond

NOTICE TO RENTER(S)

The OWNER has filed with the Court a Blanket Cash Bond per a court order which will permit the OWNER to take possession of the premises which you are now occupying.

At this point, you as RENTER(S), have certain rights, or alternative courses of action, any of which must be accomplished within three (3) days from service of this Notice, which may be summarized as follows:

1. Vacate the premises;
2. Pay the back rent, attorney's fees, court costs and stay;
3. File counterbond; or
4. Demand a hearing.

These alternatives are explained more fully on the attached page. You may also wish to consult an attorney to advise you.

ABLE BODIED ATTORNEY
Attorney for Plaintiff

Appendix 9 Sample Explanation Of Tenant's Rights Provided By Some LL Attorneys

NOTICE TO RENTERS AND EXPLANATION OF RENTER'S RIGHTS AND ALTERNATIVES

1. If the RENTER does nothing for three days after he has been served with the Notice of Bond, the OWNER has the right under the law to have the sheriff forcibly move the RENTER and his property out of the premises. Therefore, if the RENTER does not intend to contest the action, he should consider vacating the premises voluntarily within the three day period.

2. If the eviction action is based only on non-payment of rent, the RENTER may pay the back rent in full to the OWNER within three days, along with any late fees, attorney fees and court costs, and this will reinstate the rental agreement. This means the RENTER may stay in the premises on the same arrangement as before the eviction lawsuit was filed. However, if the eviction is based on some other violation of the rental agreement such as doing damage to the premises, then this remedy will not apply.

3. If the RENTER wants to keep possession of the premises, and does not agree with the OWNER's complaint that he, the RENTER, violated the rental agreement, he can keep possession by filing a counterbond within three days from the date he received the Notice. The procedure for filing this bond is to first fill out the form called "RENTER'S MOTION TO SET AMOUNT FOR COUNTERBOND" and submit it to the Clerk of the Court. The clerk will tell you where you can obtain the proper forms. The judge will set an amount for bond. He will base it on his estimate of the OWNER's costs of suit and damages for being deprived of possession, in the event the OWNER wins the case. Any prepaid rent will be considered as a portion of the total amount of the counterbond.

4. The RENTER may file a form demanding a hearing to be held during the three day period which began when he was served with the Notice to RENTER. This may be done instead of posting a counterbond. At the hearing the judge will decide who should have possession of the premises. If the judge decides in the OWNER's favor, the sheriff will promptly be sent to evict the RENTER. If the judge decides to leave the RENTER in possession, but further questions remain to be decided in a later trial, he may require the RENTER to post a counterbond.

The three day period does not count Saturday, Sunday, legal holidays, or the day of service. For example, if the RENTER is served on Monday, March 6, he will have until 5:00 p.m. on Thursday, March 9, to take action. (Civil Rule 6, U.R.C.P.)

The procedures described above are set out in Utah Code Annotated 78-36-8.5. If you have questions about how they apply in your case, you should consult an attorney. The clerk or judge can explain court procedures, but cannot give legal advice.

Appendix 10 Unlawful Detainer Statute

UTAH CODE, 1953
TITLE 78. JUDICIAL CODE
PART IV. Particular Proceedings
CHAPTER 36. FORCIBLE ENTRY AND DETAINER
[Current as of 9/2005]
[<http://www.le.state.ut.us/~code/TITLE78/>]

78-36-1. "Forcible entry" defined.

Every person is guilty of a forcible entry, who either:

- (1) by breaking open doors, windows or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstances of terror, enters upon or into any real property; or,
- (2) after entering peaceably upon real property, turns out by force, threats or menacing conduct the party in actual possession.

78-36-2. "Forcible detainer" defined.

Every person is guilty of a forcible detainer who either:

- (1) by force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or,
- (2) in the nighttime, or during the absence of the occupants of any real property, unlawfully enters thereon, and, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to such former occupant. The occupant of real property within the meaning of this subdivision is one who within five days preceding such unlawful entry was in the peaceable and undisturbed possession of such lands.

78-36-3. Unlawful detainer by tenant for term less than life.

(1) A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

- (a) when he continues in possession, in person or by subtenant, of the property or any part of it, after the expiration of the specified term or period for which it is let to him, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;
- (b) when, having leased real property for an indefinite time with monthly or other periodic rent reserved:
 - (i) he continues in possession of it in person or by subtenant after the end of any month or period, in cases where the owner, his designated agent, or any successor in estate of the owner, 15 days or more prior to the end of that month or period, has served notice requiring him to quit the premises at the expiration of that month or period; or
 - (ii) in cases of tenancies at will, where he remains in possession of the premises after the expiration of a notice of not less than five days;
- (c) when he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, has remained uncomplied with for a period of three days after service, which notice may be served at any time after the rent becomes due;
- (d) when he assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises, or when he sets up or carries on any unlawful business on or in the premises, or when he suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section **78-38-9**, and remains in possession after service upon him of a three days' notice to quit; or
- (e) when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon him and upon any subtenant in actual occupation of the premises remains uncomplied with for three days after service. Within three days after the service of the notice, the

tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, then no notice need be given.

(2) Unlawful detainer by an owner resident of a mobile home is determined under Title 57, Chapter 16, Mobile Home Park Residency Act.

(3) The notice provisions for nuisance in Subsection **78-36-3** (1)(d) are not applicable to nuisance actions provided in Sections **78-38-9** through **78-38-16** only.

78-36-4. Right of tenant of agricultural lands to hold over.

In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of his term without any demand of possession or notice to quit by the owner, his designated agent, or his successor in estate, he shall be deemed to be held by permission of the owner, his designated agent, or his successor in estate, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year; and the holding over for the 60-day period shall be taken and construed as a consent on the part of the tenant to hold for another year.

78-36-5. Remedies available to tenant against undertenant.

A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of his unlawful detention of the premises underlet to him.

78-36-6. Definitions -- Notice to quit -- How served.

(1) For purposes of this section:

(a) "Commercial tenant" means any tenant who may be a body politic and corporate, partnership, association, or company.

(b) "Tenant" means any natural person and any individual other than a commercial tenant.

(2) The notices required by Title 78, Chapter 36, Forcible Entry and Detainer, may be served:

(a) by delivering a copy to the tenant personally or, if the tenant is a commercial tenant, by delivering a copy to the commercial tenant's usual place of business by leaving a copy of the notice with a person of suitable age and discretion;

(b) by sending a copy through registered or certified mail addressed to the tenant at his place of residence or, if the tenant is a commercial tenant, by sending a copy through registered or certified mail addressed to the commercial tenant's usual place of business;

(c) if he is absent from his place of residence or from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at the address of his place of residence or place of business;

(d) if a person of suitable age or discretion cannot be found at the place of residence, then by affixing a copy in a conspicuous place on the leased property; or

(e) if an order of abatement by eviction of the nuisance is issued by the court as provided in Section **78-38-11**, when issued, the parties present shall be on notice that the abatement by eviction order is issued and immediately effective or as to any absent party, notice shall be given as provided in Subsections (2)(a) through (e).

(3) Service upon a subtenant may be made in the same manner as provided in Subsection (2).

78-36-7. Necessary parties defendant.

(1) No person other than the tenant of the premises, and subtenant if there is one in the actual occupation of the premises when the action is commenced, shall be made a party defendant in the proceeding, except as provided in Section **78-38-13**, nor shall any proceeding abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made a party defendant; but when it appears that any of the parties served with process or appearing in the proceedings are guilty, judgment shall be rendered against those parties.

(2) If a person has become subtenant of the premises in controversy after the service of any notice as provided in this chapter, the fact that such notice was not served on the subtenant is not a defense to the action. All persons who enter under the tenant after the commencement of the action shall be bound by the judgment the same as if they had been made parties to the action.

(3) A landlord, owner, or designated agent is a necessary party defendant only in an abatement by eviction action for an unlawful drug house as provided in Section **78-38-13**.

78-36-8. Allegations permitted in complaint -- Time for appearance -- Service of summons.

The plaintiff in his complaint, in addition to setting forth the facts on which he seeks to recover, may set forth any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor or compensation for the occupation of the premises, or both. If the unlawful detainer charged is after default in the payment of rent, the complaint shall state the amount of rent due. The court shall indorse on the summons the number of days within which the defendant is required to appear and defend the action, which shall not be less than three or more than 20 days from the date of service. The court may authorize service by publication or mail for cause shown. Service by publication is complete one week after publication. Service by mail is complete three days after mailing. The summons shall be changed in form to conform to the time of service as ordered, and shall be served as in other cases.

78-36-8.5. Possession bond of plaintiff -- Alternative remedies.

(1) At any time between the filing of his complaint and the entry of final judgment, the plaintiff may execute and file a possession bond. The bond may be in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action. The court shall approve the bond in an amount that is the probable amount of costs of suit and damages which may result to the defendant if the suit has been improperly instituted. The bond shall be payable to the clerk of the court for the benefit of the defendant for all costs and damages actually adjudged against the plaintiff. The plaintiff shall notify the defendant that he has filed a possession bond. This notice shall be served in the same manner as service of summons and shall inform the defendant of all of the alternative remedies and procedures under Subsection (2).

(2) The following are alternative remedies and procedures applicable to an action if the plaintiff files a possession bond under Subsection (1):

(a) With respect to an unlawful detainer action based solely upon nonpayment of rent or utilities, the existing contract shall remain in force and the complaint shall be dismissed if the defendant, within three days of the service of the notice of the possession bond, pays accrued rent, utility charges, any late fee, and other costs, including attorney's fees, as provided in the rental agreement.

(b) The defendant may remain in possession if he executes and files a counter bond in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action. The form of the bond is at the defendant's option. The bond shall be payable to the clerk of the court. The defendant shall file the bond prior to the expiration of three days from the date he is served with notice of the filing of plaintiff's possession bond. The court shall approve the bond in an amount that is the probable amount of costs of suit and actual damages that may result to the plaintiff if the defendant has improperly withheld possession. The court shall consider prepaid rent to the owner as a portion of the defendant's total bond.

(c) The defendant, upon demand, shall be granted a hearing to be held prior to the expiration of three days from the date the defendant is served with notice of the filing of plaintiff's possession bond.

(3) If the defendant does not elect and comply with a remedy under Subsection (2) within the required time, the plaintiff, upon ex parte motion, shall be granted an order of restitution. The constable of the precinct or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff promptly.

(4) If the defendant demands a hearing under Subsection (2) (c), and if the court rules after the hearing that the plaintiff is entitled to possession of the property, the constable or sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the court allows the defendant to remain in possession and further issues remain to be adjudicated between the parties, the court shall require the defendant to post a bond as required in Subsection (2) (b). If at the hearing the court rules that all issues between the parties can be adjudicated without further court proceedings, the court shall, upon adjudicating those issues, enter judgment on the merits.

78-36-9. Proof required of plaintiff -- Defense.

On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to

show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, had been in the quiet possession thereof for the space of one whole year continuously next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

78-36-10. Judgment for restitution, damages, and rent -- Immediate enforcement -- Treble damages.

(1) A judgment may be entered upon the merits or upon default. A judgment entered in favor of the plaintiff shall include an order for the restitution of the premises as provided in Section **78-36-10.5**. If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:

- (a) forcible entry;
- (b) forcible or unlawful detainer;
- (c) waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial;
- (d) the amount of rent due, if the alleged unlawful detainer is after default in the payment of rent; and
- (e) the abatement of the nuisance by eviction as provided in Sections **78-38-9** through **78-38-16**.

(3) The judgment shall be entered against the defendant for the rent, for three times the amount of the damages assessed under Subsections (2) (a) through (2) (c), and for reasonable attorneys' fees, if they are provided for in the lease or agreement.

(4) If the proceeding is for unlawful detainer after default in the payment of the rent, execution upon the judgment shall be issued immediately after the entry of the judgment. In all cases, the judgment may be issued and enforced immediately.

78-36-10.5. Order of restitution -- Service -- Enforcement -- Disposition of personal property -- Hearing.

(1) Each order of restitution shall:

- (a) direct the defendant to vacate the premises, remove his personal property, and restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or constable;
- (b) advise the defendant of the time limit set by the court for the defendant to vacate the premises, which shall be three business days following service of the order, unless the court determines that a longer or shorter period is appropriate under the circumstances; and
- (c) advise the defendant of the defendant's right to a hearing to contest the manner of its enforcement.

(2) (a) A copy of the order of restitution and a form for the defendant to request a hearing as listed on the form shall be served in accordance with Section **78-36-6** by a person authorized to serve process pursuant to Subsection **78-12a-2**(1). If personal service is impossible or impracticable, service may be made by:

(i) mailing a copy of the order and the form to the defendant's last-known address and posting a copy of the order and the form at a conspicuous place on the premises; or

(ii) mailing a copy of the order and the form to the commercial tenant defendant's last-known place of business and posting a copy of the order and the form at a conspicuous place on the business premises.

(b) A request for hearing by the defendant may not stay enforcement of the restitution order unless:

- (i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property bond to the clerk of the court in an amount approved by the court according to the formula set forth in Subsection **78-36-8.5**(2)(b); and
- (ii) the court orders that the restitution order be stayed.

(c) The date of service, the name, title, signature, and telephone number of the person serving the order and the form shall be legibly endorsed on the copy of the order and the form served on the defendant.

(d) Within ten days of service, the person serving the order and the form shall file proof of service in accordance with Rule 4(e), Utah Rules of Civil Procedure.

(3) (a) If the defendant fails to comply with the order within the time prescribed by the court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the least destructive means possible

to remove the defendant.

(b) Any personal property of the defendant may be removed from the premises by the sheriff or constable and transported to a suitable location for safe storage. The sheriff or constable may delegate responsibility for storage to the plaintiff, who shall store the personal property in a suitable place and in a reasonable manner.

(c) The personal property removed and stored shall be inventoried by the sheriff or constable or the plaintiff who shall keep the original inventory and personally deliver or mail the defendant a copy of the inventory immediately after the personal property is removed.

(4) (a) After demand made by the defendant within 30 days of removal of personal property from the premises, the sheriff or constable or the plaintiff shall promptly return all of the defendant's personal property upon payment of the reasonable costs incurred for its removal and storage.

(b) The person storing the personal property may sell the property remaining in storage at a public sale if:

(i) the defendant does not request a hearing or demand return of the personal property within 30 days of its removal from the premises; or

(ii) the defendant fails to pay the reasonable costs incurred for the removal and storage of the personal property.

(c) In advance of the sale, the person storing the personal property shall mail to the defendant's last-known address a written notice of the time and place of the sale.

(d) If the defendant is present at the sale, he may specify the order in which the personal property shall be sold, and only so much personal property shall be sold as to satisfy the costs of removal, storage, advertising, and conducting the sale. The remainder of the personal property, if any, shall be released to the defendant. If the defendant is not present at the sale, the proceeds, after deduction of the costs of removal, storage, advertising, and conducting the sale shall be paid to the plaintiff up to the amount of any judgment the plaintiff obtained against the defendant. Any surplus shall be paid to the defendant, if the defendant's whereabouts are known. If the defendant's whereabouts are not known, any surplus shall be disposed of in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

(e) The plaintiff may donate the property to charity if:

(i) the defendant does not request a hearing or demand return of the personal property within 30 days of its removal from the premises; or

(ii) the defendant fails to pay the reasonable costs incurred for the removal and storage of the personal property; and

(iii) donation is a commercially reasonable alternative.

(f) If the property belonging to a person who is not a defendant is removed and stored in accordance with this section, that person may claim the property by delivering a written demand for its release to the sheriff or constable or the plaintiff. If the claimant provides proper identification and evidence of ownership, the sheriff or constable or the plaintiff shall promptly release the property at no cost to the claimant.

(5) In the event of a dispute concerning the manner of enforcement of the restitution order, the defendant or any person claiming to own stored personal property may file a request for a hearing. The court shall set the matter for hearing within ten days from the filing of the request, or as soon thereafter as practicable, and shall mail notice of the hearing to the parties.

(6) The Judicial Council shall draft the forms necessary to implement this section.

78-36-11. Time for appeal.

(1) Except as provided in Subsection (2), either party may, within ten days, appeal from the judgment rendered.

(2) In a nuisance action under Sections **78-38-9** through **78-38-16**, any party may appeal from the judgment rendered within three days.

78-36-12. Exclusion of tenant without judicial process prohibited -- Abandoned premises excepted.

It is unlawful for an owner to willfully exclude a tenant from the tenant's premises in any manner except by judicial process, provided, an owner or his agent shall not be prevented from removing the contents of the

leased premises under Subsection **78-36-12.6(2)** and retaking the premises and attempting to rent them at a fair rental value when the tenant has abandoned the premises.

78-36-12.3. Definitions.

(1) "Willful exclusion" means preventing the tenant from entering into the premises with intent to deprive the tenant of such entry.

(2) "Owner" means the actual owner of the premises and shall also have the same meaning as landlord under common law and the statutes of this state.

(3) "Abandonment" is presumed in either of the following situations:

(a) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent within 15 days after the due date, and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the premises; or

(b) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent when due and the tenant's personal property has been removed from the dwelling unit and there is no reasonable evidence that the tenant is occupying the premises.

78-36-12.6. Abandoned premises -- Retaking and rerenting by owner -- Liability of tenant -- Personal property of tenant left on premises.

(1) In the event of abandonment, the owner may retake the premises and attempt to rent them at a fair rental value and the tenant who abandoned the premises shall be liable:

(a) for the entire rent due for the remainder of the term; or

(b) for rent accrued during the period necessary to rerent the premises at a fair rental value, plus the difference between the fair rental value and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises and the costs, if any, necessary to restore the rental unit to its condition when rented by the tenant less normal wear and tear. This subsection applies, if less than Subsection (a), notwithstanding that the owner did not rerent the premises.

(2) (a) If the tenant has abandoned the premises and has left personal property on the premises, the owner is entitled to remove the property from the dwelling, store it for the tenant, and recover actual moving and storage costs from the tenant.

(b) (i) The owner shall make reasonable efforts to notify the tenant of the location of the personal property.

(ii) If the property has been in storage for over 30 days and the tenant has made no reasonable effort to recover it, the owner may:

(A) sell the property and apply the proceeds toward any amount the tenant owes; or

(B) donate the property to charity if the donation is a commercially reasonable alternative.

(c) Any money left over from the sale of the property shall be handled as specified in Title 67, Chapter 4a, Part 2, Standards for Determining When Property is Abandoned or Unclaimed.

(d) Nothing contained in this act shall be in derogation of or alter the owner's rights under Title 38, Chapter 3, Lessors' Liens.

Appendix 11

Utah Legal Services

PRELIMINARY REVIEW OF POSSESSION BOND CASE

Today's Date _____ Opposing Counsel _____
 Plaintiff _____
 Defendant _____

Is housing subsidized? Yes No
 Number of months/years at current residence: _____

Monthly Rent _____
 Date Rent Due _____
 Amount of Delinquent Rent _____
 Amount of Penalties (late fees)* _____
 (*Are these liquidated damages? Are they exorbitant?)
 Amount of Costs _____
 Amount of Attorneys Fees _____
Total Amount Landlord Seeks _____

Type of Tenancy
 Term of _____
 that expires _____
 Month To Month
 At Will

Notes to attorney: _____

<i>1st Day Action Is Possible</i>	<i>Actual Date of Action</i>	<i>Action</i>
Day 1		Date rent is due
Day 2		Date of Notice
Type of Notice		
<input type="checkbox"/> Pay or Quit (3 day) <input type="checkbox"/> Non-Compliance with Terms of Lease (3 day) <input type="checkbox"/> No-Cause (15 day) <input type="checkbox"/> Nuisance (3 day) Describe alleged non-compliance or nuisance: _____ _____		
Type of Service		
<input type="checkbox"/> Personal service at residence or work <input type="checkbox"/> Left with person of suitable age at residence or work & mailed copy (registered or certified) <input type="checkbox"/> Affixed copy to door of residence in conspicuous place & mailed copy (registered or certified) <input type="checkbox"/> Mailed by registered or certified mail		
Day 5		Date LL filed Complaint
Day 5		Date LL posted bond in amount of _____
Day 5		Date tenant served with Summons & Complaint
Day 5		Date tenant served with Notice of LL's Possession Bond
Day ____		Date tenant filed Answer & requested counterbond hearing or posted counterbond
Day 5		Date LL filed Complaint
Day 8		Deadline tenant must: <input type="checkbox"/> Vacate; <input type="checkbox"/> Pay rent and attorney fees; <input type="checkbox"/> Post counterbond; or <input type="checkbox"/> Request & attend hearing on merits (conterbond) hearing.
Day 9		Sheriff could evict on Order of Restitution unless tenant attended counterbond hearing and posted a counterbond or was given a period of time to move out (generally 3 days from date of hearing)

NOTES REGARDING THE COUNTING OF DAYS

1. Never count the day of service of process of hearing (with a **court** pleading or notice).
2. Unlawful detainer cannot begin until after the 3 day Notice to Quit has expires.
3. Never count weekends or legal holidays for Summons or Compliant; make same argument for response period on Notice (with a **court**) pleading or notice.

POTENTIAL DEFENSES

1. LL's Complaint for nonpayment of rent does not state accurate amount of rent owed.
2. Tenant conformed (paid) prior to LL's filing of Complaint.
3. Premature Complaint (LL can't file Complaint or post bond until 3 day Notice to Quit expires)
4. Waiver
5. Laches
6. Insufficiency of service
7. Warranty of Habitability
 - A. Is there evidence of violations of the applicable housing codes involving health or safety issues? (A code violation is not necessary, but it strengthens the claim.)
 - B. Salt Lake City **CRITICAL ITEMS**: heat, operable toilet, electricity (when disconnection of utility services is caused by the property owners), broken or leaking plumbing causing an imminent threat to health or safety.
 - C. Salt Lake City **NECESSARY ITEMS**: hot & cold running water, operable kitchen and bathroom drains, operable refrigerator, operable range or stove, functional exterior locks, unbroken windows without missing glass, operable electrical fixtures, operable exterior lighting, non-broken stairs or handrails, operable smoke detector.
8. Retaliatory eviction
 - A. Did tenant report a violation of the housing code that embodies a public purpose;
 - B. Landlord is in a business of renting residential property;
 - C. Tenant is not materially in default of her obligations under the lease;
 - D. Landlord motivated to evict tenant primarily because tenant has joined tenants' union, reported a violation of the housing code or exercised a related right; **and**
 - E. Tenant's complaint was made in good faith.
9. Subsidized housing
 - A Has landlord received the monthly rental payment from the Housing Authority?
 - B Has landlord breached her contract with the Housing Authority (HA)?
 - C Has landlord/plaintiff disclosed the existence of her contract with the HA?
10. Utah Consumer Sales Practices Act (U.C.S.P.A.)
 - A. Is there a breach of a term of the lease agreement?
 - B. Is the landlord attempting to enforce a penalty/late fee provision of the lease agreement?
 - C. Does the lease agreement term/provision appear to be "unconscionable?"

Appendix 13 Sample Representation Agreement

Utah Legal Services
Possession Bond Hearing Representation Agreement

I, _____, request and authorize _____, a volunteer lawyer with the Utah Legal Services Possession Bond Project, to represent me at the possession bond hearing.

I understand that the Utah Legal Services Possession Bond Project does not charge legal fees for work performed. I further understand that the lawyer who assists me is a volunteer lawyer who will represent me for the purposes of the possession bond hearing only.

The possession bond hearing volunteer lawyer has explained to me that there may be other legal issues not dealt with at this hearing and possible defenses to my eviction beyond the scope of his or her representation of me at the possession bond hearing. My volunteer lawyer has encouraged me to seek additional legal counsel if there are such issues in my case.

Dated this _____ day of _____, _____.

SIGNATURE

ADDRESS

CITY, STATE, ZIP

TELEPHONE

Appendix 14 Sample Appearance of Pro Bono Counsel

Pro Bono Attorney
Attorney for Defendant(s)

Address

City, State, Zip

Telephone

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

Plaintiff(s),
vs.

Defendant(s).

:
:
: **SPECIAL APPEARANCE OF PRO**
: **BONO COUNSEL FOR**
: **POSSESSION BOND HEARING**
:
: Civil No. _____
:
: Judge _____
:

Comes now _____, Attorney at Law, and hereby enters his/her appearance as Pro Bono Counsel on behalf of the above-designated Defendant(s) for the Possession Bond hearing only. This appearance shall not be construed as a general appearance obligating counsel to appear for any subsequent proceedings.

DATED this ____ day of _____, ____.

Attorney at Law

Utah Legal Services
Appendix 15
Possession Bond Checklist

1. Pick up docket from court clerk (it is usually preprinted and waiting for you) or go to www.utcourts.gov and click on “Court Calendars”;
2. Go to courtroom listed on docket and wait in the hallway outside courtroom;
3. Josie or another mediator should already be there. Speak with the mediators to determine whether any of the cases on the docket have already been settled or mediated;
4. Approach persons who arrive for court and determine if they are plaintiffs or defendants (using their names off the docket) and if they are defendants, introduce yourself and offer your services:

Hi, my name is _____. Are you represented by counsel today? If not, I may be able to represent you for the purposes of today's hearing if you give me some information. There is no charge for this service.

5. Go into a private meeting room off the main hallway to talk. Complete the Client Information Sheet, Possession Bond Hearing Representation Agreement and Preliminary Review of Possession Bond Case forms with the client. Review any documents that the client has with her and briefly get her side of the controversy. Determine what the client's wishes are, i.e. has no money but needs a couple extra days to move out, wants to remain but needs time to get the delinquent monies, etc.
6. Determine if the parties are willing/able to mediate. If so, arrange it with the mediators. Generally mediation will not work if there is “bad blood” between the parties because the parties deal directly with each other in mediation. If mediation is not an option, determine if your client has any defenses that can be raised. (Sometimes the tenant will not want to use a technical defense because they wish to remain in the residence and they are afraid of causing more trouble.)
7. Speak to the plaintiff's attorney (or plaintiff if he is Pro Se) and determine his position. Explain the plaintiff's position to your client: Determine whether she wants to/should contest the eviction or “cut a deal.” Explain all the pros and cons to her alternatives.

If the client's choice is to “contest,” prepare to request that the judge hear the case on its merits and/or to argue that a low counter-bond be set for the tenant to post with the court.

If the choice is to “deal,” determine whether the client's goal is to stay or vacate and what their financial capabilities are for any kind of payment agreement (or for moving if they intend/must vacate). Make the best deal you can to meet your client's needs, i.e., get late fees waived, freeze back due amount and keep rent current with an extra amount each month dedicated to retiring the back rent owed, make a token payment in order to remain until end of month, etc.
8. Complete the Volunteer Attorney Report Form.

IN THE THIRD JUDICIAL DISTRICT COURT OF SALE LAKE COUNTY
STATE OF UTAH

Plaintiff,

vs.

Defendant.

MEDIATED SETTLEMENT AGREEMENT;
JOINT MOTION; AND ORDER

Civil No. _____

In the above matter, the parties agree and jointly move the court for an order as follows:

OBLIGATIONS OF DEFENDANT:

1. Pay past due rent in the amount of \$_____ on or before _____.
2. Vacate the premises at _____ on or before _____
_____ at _____ o'clock.
3. Other: _____

OBLIGATIONS OF PLAINTIFF:

1. Make the following repairs to the premises on or before _____
Repairs to be completed: _____

2. Modify the existing lease with defendant as follows: _____

3. Other: _____

A DEFAULT BY DEFENDANT, when verified by affidavit, will result in entry of an order, at plaintiff's request of: _____

A DEFAULT BY PLAINTIFF, when verified by affidavit, will result in entry of an order, at defendant's request of: _____

Dated: _____

_____ PLAINTIFF

_____ DEFENDANT

_____ PLAINTIFF'S COUNSEL

_____ COUNSEL

_____ MEDIATOR

IT IS SO ORDERED

BY THE COURT

District Court Judge

CLIENT INFORMATION for Utah Legal Services

NAME			OTHER NAMES USED		
ADDRESS					
CITY	STATE	ZIP	GENDER F M		
HOME PHONE		WORK PHONE	OTHER PHONE		
SOCIAL SECURITY #		BIRTH DATE	RACE	MARITAL STATUS	

CITIZENSHIP ATTESTATION: By signing below, I declare that I am a citizen of the United States. (If you are not a citizen, we must have copies of your immigration papers. We cannot represent undocumented persons.)

SIGNATURE:	DATE:
-------------------	--------------

INSTRUCTIONS FOR INCOME AND ASSET ELIGIBILITY PORTION: In the sections below, please give us information about every person in your household who has income or assets. "Household" means everyone living in one place who share expenses. If you need space for more than 3 people, please use the back of this form.

NUMBER OF ADULTS (18+) IN MY HOUSEHOLD: _____ NUMBER OF CHILDREN: _____

PERSONAL, INCOME AND ASSET INFORMATION	YOU	PERSON #2	PERSON #3
NAME – please name all other household members who have income or assets	(as above)		
RELATIONSHIP TO YOU	(self)		
BIRTH DATE	(as above)		
WORK INCOME – average monthly amount during the last 12 months before taxes	\$	\$	\$
DISABILITY and RETIREMENT INCOME – monthly amount	\$	\$	\$
WELFARE and UNEMPLOYMENT BENEFITS – do NOT include Food Stamps	\$	\$	\$
CHILD / SPOUSAL SUPPORT RECEIVED – monthly amount	\$	\$	\$
EQUITY IN HOUSE OR LAND – do not count the home you live in. Equity means what would be left if you sold the property and paid off all the debts.	\$	\$	\$
2nd or more VEHICLES – exclude one car per household ; write the equity value (amount from sale after debts are paid) of all other vehicles	\$	\$	\$
SAVINGS / CHECKING / CASH ON HAND – for every person in your household who has a bank account or has cash, we need to know the amount	\$	\$	\$
STOCKS / BONDS / CERTIFICATES OF DEPOSIT – current amounts	\$	\$	\$
CASH VALUE OF LIFE INSURANCE	\$	\$	\$
RETIREMENT ACCOUNTS	\$	\$	\$
PERSONAL PROPERTY – value of anything worth more than \$500	\$	\$	\$
ANY OTHER ASSETS OF EXTRAORDINARY VALUE – total amount	\$	\$	\$

OPPOSING PARTY: Please provide information about the person or entity with whom you are having a problem and the name of any attorney representing that person or entity.

NAME			OTHER NAMES USED		
ADDRESS					
CITY	STATE	ZIP	GENDER F M		
PHONE #s		BIRTH DATE			
SOCIAL SECURITY #		ATTORNEY'S NAME			

APPLICATION FOR SERVICES: By signing below, I am applying for legal assistance. I verify that this information is true & complete. I will **immediately inform ULS of any changes**. I understand that ULS will keep this information confidential, except required disclosures to its funding sources and I authorize the release of information for this limited purpose.

SIGNATURE:	DATE:
-------------------	--------------

If we cannot contact you, please give us a **NAME** and **PHONE** for someone who will always be able to contact you:

MORE HOUSEHOLD MEMBERS: You can add information about 3 more household members here.

<i>PERSONAL, INCOME AND ASSET INFORMATION</i>	PERSON #4	PERSON #5	PERSON #6
NAME – please name all other household members who have income or assets			
RELATIONSHIP TO YOU			
BIRTH DATE			
WORK INCOME – average monthly amount during the last 12 months before taxes	\$	\$	\$
DISABILITY and RETIREMENT INCOME – monthly amount	\$	\$	\$
WELFARE and UNEMPLOYMENT BENEFITS – do NOT include Food Stamps	\$	\$	\$
CHILD / SPOUSAL SUPPORT RECEIVED – monthly amount	\$	\$	\$
EQUITY IN HOUSE OR LAND – do not count the home you live in. Equity means what would be left if you sold the property and paid off all the debts.	\$	\$	\$
VEHICLES – exclude one car per household; write the equity value (amount from sale after debts are paid) of all other vehicles	\$	\$	\$
SAVINGS / CHECKING / CASH ON HAND – for every person in your household who has a bank account or has cash, we need to know the amount	\$	\$	\$
STOCKS / BONDS / CERTIFICATES OF DEPOSIT – current amounts	\$	\$	\$
CASH VALUE OF LIFE INSURANCE	\$	\$	\$
RETIREMENT ACCOUNTS	\$	\$	\$
PERSONAL PROPERTY – value of anything worth more than \$500	\$	\$	\$
ANY OTHER ASSETS OF EXTRAORDINARY VALUE – total amount	\$	\$	\$

▼▼▼ OPTIONAL INFORMATION ** FILL THIS PORTION OUT ONLY IF SPECIFICALLY REQUESTED ▼▼▼

WAIVER OF FILING FEES: This is the legal form that may be accepted by a judge in order to avoid having to pay filing fees and court costs, such as the cost of having a sheriff serve court papers. You need not fill out this information unless a Utah Legal Services staff member asks you to do so.

RENT / MORTGAGE PAYMENT - monthly	\$	FOOD – monthly	\$
CHILD CARE EXPENSE – monthly	\$	INSURANCE (health, car) – monthly	\$
UNREIMBURSED MEDICAL EXPENSES – monthly	\$	AUTOMOBILE (gas, maint., payments) – monthly	\$
TELEPHONE – monthly	\$	OTHER UTILITIES (gas, electric, water) – monthly	\$
OTHER EXPENSES – monthly	\$	DEBTS OWED TO ME - total due & payable	\$

ASSETS OWNED: If you own a home, any real property (such as farm land), or any valuable personal property, please describe it on the lines below and state your equity value (sale price minus outstanding debt and costs of sale) in it.

INTEREST IN A BUSINESS: Do you have an interest in any business or commercial venture? YES NO
If you circled YES, please describe the interest(s) below.

UTAH LEGAL SERVICES

205 North 400 West Salt Lake City 84103 (801) 328-8891 1-800-662-4245	893 24 th Street, Suite 300 Ogden 84401 (801) 394-9431 1-800-662-2538	455 North University, #100 Provo 84601 (801) 374-6766 1-800-662-1563	965 South Main, Suite 3 Cedar City 84720 (435) 586-2571 1-800-662-1772
--	---	---	---

Rule 72. Property bonds.

(a) A real property bond posted with the court shall:

(a)(1) be signed by all owners of record;

(a)(2) contain the complete legal description of the property and the property tax identification number;

(a)(3) be acknowledged before a notary public;

(a)(4) be accompanied by a copy of the document vesting title in the owners;

(a)(5) be accompanied by a copy of the property tax statement for the current or previous year;

(a)(6) be accompanied by a current title report, a current foreclosure report, or such other information as required by the court; and

(a)(7) be accompanied by a written statement from each lien holder stating:

(a)(7)(A) the current balance of the lien;

(a)(7)(B) the date the most recent payment was made;

(a)(7)(C) that the debt is not in default; and

(a)(7)(D) that the lien holder will notify the court if a default occurs or if a foreclosure process is commenced during the period the property bond is in effect.

(b) The bond is not effective until recorded with the county recorder of the county in which the property is located. Proof of recording shall be filed with the court.

(c) Upon exoneration of the bond, the property owner shall present a release of property bond to the court for approval.

125% Federal Poverty Guidelines

effective March 2006

Household Size	Hourly (FT)	Weekly	Monthly	Yearly
1	5.89	236	1,021	12,250
2	7.93	317	1,375	16,500
3	9.98	399	1,729	20,750
4	12.02	481	2,083	25,000
5	14.06	563	2,438	29,250
6	16.11	644	2,792	33,500
7	18.15	726	3,146	37,750
8	20.19	808	3,500	42,000
Each additional	2.04	82	354	4,250

45 C.F.R. 1611.2

(i) **“Income” means actual current annual total cash receipts before taxes** of all persons who are resident members and contribute to the support of an applicant’s household, as that term is defined by the recipient.

Total cash receipts include, but are not limited to, wages and salaries before any deduction; income from self-employment after deductions for business or farm expenses; regular payments from governmental programs for low income persons or persons with disabilities; social security payments; unemployment and worker’s compensation payments; strike benefits from union funds; veterans benefits; training stipends; alimony; child support payments; military family allotments; public or private employee pension benefits; regular insurance or annuity payments; income from dividends, interest, rents, royalties or from estates and trusts; and other regular or recurring sources of financial support that are currently and actually available to the applicant.

Total cash receipts do NOT include the value of food or rent received by the applicant in lieu of wages; money withdrawn from a bank; tax refunds; gifts; compensation and/or one-time insurance payments for injuries sustained; non-cash benefits; and up to \$2,000 per year of funds received by individual Native Americans that is derived from Indian trust income or other distributions exempt by statute.

Immediate Occupancy (“Possession Bond”) Hearing

Today’s court hearing is to determine who will have possession of the premises (apartment, house, duplex). Utah law allows a landlord to file a bond in an amount that a judge believes will cover your (the tenant’s) costs in the event the landlord was wrong in trying to evict you. Your landlord has posted such a bond. Under the law, once the bond is posted the landlord can ask for a hearing right away.

Likely outcomes of this hearing:

In most cases, one of two things occurs. Either the judge orders you (the tenant) to post a counterbond or you agree with the landlord on a move-out date.

If you want to stay in the rental unit, then the judge will require you to post a bond. The bond is paid to the court clerk. The amount of the bond will be whatever the judge believes would pay off the landlord in the event the landlord was correct to evict you. Normally, you would have to pay this bond amount by 5:00 p.m. within 3 business days following the court date (today) but a judge can order the amount be paid sooner or later than that. Also, the judge will order that you pay the rent on time as it becomes due in the future, until such time as all the arguments on both sides are heard at a trial (or through extensive legal paperwork called a Motion for Summary Judgment).

If the reason you are being evicted is because you didn’t pay some or all of the rent for one or more months, then the *minimum* bond amount will be the amount you admit is owing, even if you believe the rent should be reduced because of problems with the rental (like a stove that doesn’t work or mold in the bathroom or an oral agreement to work off part of the rent). These defenses will not be heard today; only the issue of possession will be considered.

If you are ordered to pay a counterbond and do not pay it, the landlord can get an Order of Restitution the day after the counterbond was due. The Order tells the sheriff or constable to forcibly remove you from the premises.

If you pay the counterbond, you will get it back only if you win the case against the landlord or the landlord agrees to a dismissal of the case. In other words, paying the counterbond only guarantees your continued right to live where you’re living. It does not guarantee that you will ever get the bond money back. And you must continue to pay the agreed-upon rent until the trial date.

If you agree to move, most landlords will give you one week to vacate. Landlords who are represented by an attorney usually will not give more than a week. By agreeing to move out, you are *not* giving up your defenses or counterclaims. If you agree to a move-out date, nothing will happen unless you do not move by the time agreed. If you don’t move out on time, the landlord can get an Order of Restitution immediately after the agreed upon date and time. The Order tells the sheriff or constable to forcibly remove you.

A repayment agreement is another possible outcome. The landlord and tenant can agree to a schedule for payment of the back rent and any late fees and attorneys fees. Ongoing rent must be paid as well. In such a case, if the repayment schedule is met, the landlord agrees to dismiss the

eviction action. If not, the landlord will ask for an Order of Restitution as soon as the first payment is missed.

An eviction action can be dismissed at today's hearing if there is clear evidence that the complaint is invalid or that the tenant has a complete defense. This almost never happens. A complaint is invalid if, for instance, the landlord gave you a notice to leave because you did not pay the rent but did not give you three days to pay the rent that was due. Or the landlord may have given you a notice to pay up or leave, but you have irrefutable proof that the landlord actually received the disputed amount. (Your own testimony that you gave the landlord the money is not enough to get the case dismissed today.)

Utah Legal Services, Inc.
205 North 400 West
Salt Lake City, Utah 84103
328-8891 or 1-800-662-4245 toll free

New client calls: 9 a.m. - 2 p.m., Monday thru Friday

After the Possession Bond (“Immediate Occupancy”) Hearing

If you agreed to a move-out date:

Day/date: _____ by _____ (time). If you leave the premises in good condition, it is less likely that the landlord will pursue a judgment against you. If you are not out by this date and time, the landlord can get an Order directing the sheriff (or constable) to tell you to leave.

A standard Order of Restitution (telling you to remove your personal property and vacate the premises) gives you 3 (three) business days after it is served upon you to leave. (Business days means days the courts are open. The day you are served does not count.) If you are not there when the sheriff shows up to serve you, the sheriff can leave a copy posted on your door. If you are still there after 3 days, the sheriff can forcibly remove you. The landlord can then change the locks and remove whatever personal possessions you’ve left behind. You must also get an explanation of your right to request a hearing if you disagree with the way in which this order is carried out.

An “immediate” Order of Restitution (telling you to remove your personal property and vacate the premises) can be enforced as soon as the sheriff or constable serves you (or posts it to your door if you are not there). With this kind of order, the landlord can change the locks and remove your personal property as soon as the sheriff or constable arrives to serve you or posts it to the door, even if you are not there.

If you were ordered to post a counterbond:

By 5:00 p.m. on _____, pay \$_____ by cash, cashier’s check or money order to the Clerk of the Court at the courthouse. If you want to keep possession of the premises until the trial of your case, you must pay this amount. And you will be required to pay the rent that’s due each month hereafter, either to the landlord (get a receipt!) or to the court.

If you do not pay the required counterbond amount by the time it is due, the landlord can get an Order of Restitution as early as the following day. The Order is served by the sheriff or constable. If you are not present when the sheriff comes, the sheriff can post the Order to your door. Normally, the Order tells you that you have 3 (three) business days to remove your possessions and vacate the premises. (Business days means days when the courts are open. The day you are served does not count.) If you are not out within 3 days, the sheriff can physically remove you. The landlord can then change the locks. And if you have left personal property, the landlord can remove and store it. ***If you are served with an “immediate” Writ of Restitution requiring you to vacate the premises right away, without having 3 days to pack up, please call us.***

It is possible for a Judge to shorten or lengthen the 3 day period before forcible removal. If the Judge so orders, that must appear in the Order of Restitution. It is generally enough that the Order uses the word “immediate” to describe the time for enforcement. An immediate Order allows the landlord to change the locks and remove your belongings as soon as the sheriff serves the Order. See “*an ‘immediate’ Order of Restitution*” above.

If your property is stored by the landlord: First, try calling the landlord to set a time when you can come pick up your property. Most landlords agree to this. You can ask for a hearing before a judge if you believe your property should not have been taken by the landlord for storage and the landlord refuses to give it back to you without charge. The hearing form must be attached to the Order of Restitution you were given (or was posted to your door). You might also ask for a hearing if, for instance, the constable served the Order giving you 3

business days to remove your property and get out but the landlord took your property before the end of that 3-business day period. Utah Legal Services cannot assist you at this hearing.

You have 30 days from the time the landlord began storing your property to demand that it be returned to you. But you must pay the costs associated with the removal and storage of your property. The costs must be *reasonable*, but what is reasonable will depend on all the circumstances. If you do not claim your property (and pay the removal and storage costs) within 30 days, the landlord can sell it or donate it to charity.

A judgment may be entered against you: The response (called your “Answer”) you filed with the Court after you were served with the eviction complaint means that the landlord cannot automatically get a judgment against you. The landlord must give you some notice in the future about a trial or a motion to enter judgment against you. The landlord must ask the Court for a hearing date on the claims against you, such as for overdue rent. Or the landlord can ask the Court to enter judgment without a trial, based on all the documents in the file. In either case, there must be some attempt to contact you. The landlord may never pursue you or ask that the Court enter a judgment against you. But if the landlord tries to get a judgment and the landlord or the court does not know how to get in touch with you, the Court may order that you be told by mail at your last known address about the future court date or motion for a judgment. If you did not give a forwarding address to the post office or to the Court or to your landlord, that notice will not get to you. The Court will enter a default judgment against you in whatever amount the landlord has requested. If you wish to get notice before any judgment can be entered against you, send your new address to the Court Clerk. Make sure you include the case number and the landlord’s name as both appear on the complaint for eviction.

Defenses and counterclaims:

In your response (“Answer”) to the complaint, you may have listed some defenses. For example, you may have said that the landlord failed to repair the stove or allowed mold to grow in the basement. These may have been the reasons why you decided not to pay the rent. A judge might find that the problems require a reduction in the rent but usually not a complete abatement (cancellation) of the rent. In other words, even with the problems, some rent will still be owing as long as you continued to live there. If you moved out because you could not live with the problems, then you may have a complete defense to the rent. However, you cannot proceed with these claims on your own. You will have the opportunity to explain these defenses only if the landlord tries to get a judgment against you.

If you made a counterclaim against the landlord (such as for entering your residence without warning or for shutting off a utility), you can ask for a hearing on the counterclaim. If you ask for a hearing, the landlord will also go forward with the eviction complaint. Whether you have defenses or counterclaims, it is not likely that Utah Legal Services will be able to help you at the trial.

**Utah Legal Services, Inc.
205 North 400 West
Salt Lake City, Utah 84103
(801) 328-8891 or 1-800-662-4245 toll free**

REQUEST TO A PEACE OFFICER AFTER “LOCKOUT”

Utah Code §78-36-12 prohibits a landlord from excluding a tenant from the tenant’s premises except by judicial process. The only exception is “abandonment,” which has a precise statutory definition. The burden is on the landlord to prove abandonment.

A landlord may not lock a tenant out of the premises even if the tenant has not paid rent after having received a notice to pay or vacate. Nor may the tenant be locked out after the landlord alleges lease violations or nuisance or waste, except by judicial process. Judicial process requires a Writ of Restitution issued by a District Court ordering the removal of the tenant from the premises.

This tenant has been locked out of the premises. Please ask the landlord to show you the Order of Restitution signed by a District Court judge or the Writ of Restitution issued by the clerk and directed to a sheriff or constable to evict this tenant. Absent such a document, the tenant must be allowed to reenter the premises without further interference from the landlord until such time as the landlord has followed the law.

Like landlords, tenants have rights too. A tenant has the right to contest the landlord’s eviction notices and give an answer to the landlord’s eviction complaint. Like a landlord, a tenant has a right to his day in court. Please do not deprive this tenant of that right by ignoring the landlord’s use of an unlawful self-help remedy. Please ask the landlord to let the tenant back in. At this moment, you are the only one who can help this tenant.

Thank you for your assistance in enforcing the law.

Utah Legal Services, Inc.
Civil legal assistance for low-income Utahns
205 N 400 West
Salt Lake City, Utah 84103
(801) 328-8891 or 1-800-662-4245 toll free

Additional offices in Ogden, Provo and Cedar City

To the Landlord

Utah Code sec. 78-36-1 et seq. and hundreds of Utah court decisions require that you use only lawful procedures to evict a tenant. Landlords often attempt to speed up the process of eviction. Most such methods are unlawful.

Until you have a court order, you may not:

- Change the locks on the doors
- Shut off any utility, such as water, electricity, or gas
- Take possession of any property belonging to the tenant
- Enter the rental unit without advance notice to the tenant, except in case a true emergency exists
- Harass, intimidate, or threaten the tenant or the tenant's guests
- Inhibit the tenant's right to freely enter and leave the premises

You must not engage in any of these activities **even** if the tenant has not paid rent or has repeatedly violated written rules. You **must** use the legal process to evict. There is no place for self-help remedies.

Utah Legal Services is the law firm representing poor Utahns who have legal problems, including landlord/tenant disputes. In the appropriate case, we will take legal action against a landlord who violates a tenant's rights by engaging in any of the conduct listed above and prohibited by law, even if the tenant has not paid rent or has repeatedly violated written rules.

Utah Legal Services, Inc.
205 North Fourth West
Salt Lake City, Utah 84103
(801) 328-8891 or 800-662-4245 toll free

Additional offices in Ogden, Provo, and Cedar City

GETTING HELP AFTER THE POSSESSION BOND HEARING

Please follow these instructions

A volunteer lawyer assisted you at the possession bond hearing. If you need more help with your eviction, please do not contact this lawyer. Instead, call Utah Legal Services. ULS may be able to assist you if either of the following circumstances applies to you:

- *You are still living in the premises because you complied with the court's order entered at the possession bond hearing, such as by posting a counterbond, or*
- *Your housing subsidy, such as a section 8 voucher, may be terminated as a result of this eviction action against you*

In either case, please call us at 328-8891. If you called ULS before your possession bond hearing, you will already have the name and extension of a housing advocate (lawyer or paralegal). Otherwise, call us Monday through Friday between 9 a.m. and 2 p.m. When the recording answers, press "1" and then "9" and wait for the next available intake worker. When your call is answered, tell our staff member that you were represented at a possession bond hearing by a volunteer lawyer. The intake worker will find your case if it has already been entered or else ask you a number of questions in order to open a record for you. Your call will then be transferred to a housing advocate at which time you can discuss your case with that advocate.

When we cannot help

The landlord may pursue a judgment against you for unpaid rent and/or alleged damage to the premises. In either case, it is unlikely that we will be able to assist you. We will consider the merits of your defenses only if you are still living in the premises or your housing subsidy is threatened. If you have already moved to a new home, we cannot help you when the landlord pursues you in court. You should make sure the court and the opposing counsel/party have a valid mailing address for you so that you will receive notice of any court proceedings.

Call "211"

If you need help finding another place to live or assistance with moving, call the statewide information and referral service by dialing 211. Local Community Action Programs (CAP) are often a good resource but other assistance may be available.

**Utah Legal Services, Inc.
205 North 400 West
Salt Lake City, Utah 84103
(801) 328-8891 or 800-662-4245 statewide toll free**

Volunteer Attorney Report Form

Name or Bar #: _____

Date: _____

Client Name: _____

Civil No.: _____

Judge: _____

Fill in/circle whatever applies:

Stipulated move-out date of _____ by _____ (am) (pm) followed by
(immediate) (3-day) (_____) Writ of Restitution; all other issues reserved.

Counterbond set at \$ _____ payable by _____ pm on _____
followed by (immediate) (3-day) (_____) Writ of Restitution

(Repayment agreement) (Other result): _____

Please attach/include a completed **Client Information Sheet** and **Representation Agreement**.
Drop in Utah Legal Services' folder in clerk's office at Matheson Courthouse or fax/mail/scan to
Brenda Teig at Utah Legal Services. Voice: 924-3376 Fax: 328-8898; BTeig@andjusticeforall.org;
205 N 400 W SLC 84103