

“PRO SE” HOUSING PACKETS

Section 1: The Eviction Process

Section 2: Eviction Answer Packet

Section 3: Eviction Answer and Counterclaim Packet

Section 4: Possession Bond Hearing Request Packet

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SECTION 1: THE EVICTION PROCESS

Eviction is a quick legal process by which a landlord can get you out of your rental unit. The eviction process, including any court proceedings, may take as little as one week.

In cases of evictions from mobile home parks or subsidized housing, see the special sections in this packet. Being left homeless is serious business, so it is important to know how the process works.

The first and most important thing you should know about eviction is: your landlord cannot lock you out of your home, move you out of your home, or take any property from your home before going through the five-part eviction process. If you think the eviction is retaliatory, call Utah Legal Services.

Another important thing you should know is that if you are evicted, the judge may order you to pay the landlord treble damages, meaning three times the daily rent (after the expiration of the eviction notice) and property damage.

STEP ONE

The first part of the eviction process occurs when the owner gives you a written notice to leave the premises.

THERE ARE FIVE TYPES OF EVICTION NOTICES IN UTAH

1. Three-Day Alternative Notice for Non-Payment of Rent

This is the notice the owner must use if you owe rent and they want you to move out. It must say that you have a choice to either pay the amount owed OR move out within three days. The three days are three consecutive days. Start counting the day after you are served and include weekends and holidays.

Q. What happens if you pay within the time allowed?

A. You can stay. If, within three days of receiving the notice, you offer the landlord the rent amount owed, they must accept it from you and the eviction process is stopped. If you offer the full amount owed within three days but the landlord refuses to accept it, try to pay again in front of a witness you can trust. If the landlord refuses, save the money. Do not spend it. You can take it to the court once the lawsuit is filed or give it to your attorney.

If you disagree that the amount the landlord is asking you to pay is what you actually owe, the safest procedure is to pay what is asked for and then sue the landlord for the difference in Small Claims Court.

Q. What happens if you DO NOT pay what the landlord wants?

A. If you DO NOT pay the money within three days and you DO NOT move out, the landlord can go on to the second step of eviction, which is to file a lawsuit with the court.

2. Three-Day Notice to Vacate

This is the notice the landlord must use if you are disturbing your neighbors, selling illegal drugs, violating building or health codes, damaging the property or illegally subletting.

3. Three-day Notice to Comply or Quit

This is the notice the landlord must use if you have broken any part of the rental agreement other than causing a nuisance, subletting, damaging property, or being involved with drugs. This notice must give you a choice to EITHER comply with the provisions of your agreement within three days, including weekends and holidays OR leave the premises within that time. If you DO NOT COMPLY OR LEAVE, the landlord can proceed with the second step of the eviction process. (As you can see, this notice is worded differently than the one for non-payment of rent.)

4. Fifteen-Day "No Cause" Notice

This is the notice the landlord must use if, for no specific reason, the landlord simply wants you to move out. The landlord can only serve this notice if you are on a month-to-month agreement. The landlord cannot serve this notice if you have a lease that has not expired yet. Such a notice must be given to you at least fifteen days before the end of your rental period. However, if your contract indicates a 30-day notice is needed (when there is no other cause to evict), a 15-day notice would not be proper. If you do not move out by the end of the rental period, the landlord can continue with the second step of the process.

5. Five Day Notice to "Tenant-at-Will"

This notice can be used if you do not have any agreement with the landlord to live in the unit as a regular tenant. For example, if you took over someone's apartment without telling the landlord or if you stay after a lease expires, you did not make any arrangements to stay and your rent payment was not accepted. This notice to a "tenant-at-will" must notify you to leave in five days.

NOTE: NO NOTICE NEEDED AT THE END OF A LEASE

Unless you have made arrangements to hold over after the lease expires OR the lease requires a 30 day notice of termination even at the end of the term and you have not received such notice from the landlord, the lease terminates without notice. Read the lease carefully and, for good measure, talk to the landlord before the last month of the term starts so you both know where you stand.

HOW THE NOTICE IS SERVED ON YOU

There are four ways to give you an eviction notice:

1. Hand it to you or have someone hand it to you (it does not have to be a Sheriff or constable); or
2. Send a copy by registered or certified mail to your home; or
3. Leave a copy with someone of suitable age at your home or business AND mail a copy to your address (leaving a notice with a child who is not old enough to be responsible is not allowed); or
4. Post a copy on your property if you cannot be located and no one responsible is at home.

Your lawyer or Utah Legal Services can tell you whether the notice you received or the way it was served is valid.

STEP 2 LAWSUIT

If you do not comply with the notice you received, the second step of the eviction process occurs. The landlord files a complaint and a summons with the court and has someone serve these papers on you.

You must reply in writing within the time stated on the Summons (usually three BUSINESS days, counting as the first day, the day after you are served). Attached to the summons will be the complaint, which explains the landlord's side of the story. You or your attorney must file a paper with the court called an answer or you will be evicted very quickly. If you don't file your answer with the court on time, the judge will issue a default judgment in favor of your landlord, ordering the sheriff to move you out. If you file your answer and disagree with the complaint, the case will be decided later. You will have a chance to submit documents or testify before the judge decides the case.

NOTICE OF POSSESSION BOND

If you are also served with another paper that indicates that your landlord has posted a plaintiff's possession bond, the eviction process has been sped up. You could get this notice at the same time you get the summons and complaint or anytime afterwards.

You must do one of the following WITHIN THREE BUSINESS DAYS after receiving this Notice:

* If the eviction is for non-payment, pay all rent or utilities owing, late fees, attorney's fees (if provided in your rental agreement) and court costs. You can then stay; or

* File a counter bond with the court. You must do the paperwork and ask a judge to set the amount of the counter bond, then pay it into the court. You can then stay and have a trial later.

* Demand a hearing with the court in writing. The court has a form to do this. The hearing will be held as soon as possible. At this hearing, the court can make a decision about all the issues or simply decide who has the right to possession of the unit. If instead of dealing with all the issues, the court wants to postpone dealing with some of them but allows you to stay, you may have to post a counter bond in order to stay in the unit pending the rest of the procedure.

* Move out. Money issues will still need to be decided later.

NOTE: Please remember that if you fail to file the Answer or do not properly respond to the Notice of Possession Bond, you will be evicted.

STEP 3 TRIAL

If you file an Answer with the court on time and respond to the Notice of Possession Bond as explained in STEP 2 above, you will generally have a trial.

You and your landlord present witnesses and other evidence. These trials are like other non criminal cases. You have the right to a jury, if you ask.

STEP 4 JUDGMENT (JUDGE'S DECISION)

The fourth step of the eviction process occurs when the judge makes a decision. This usually happens in court while you and the landlord are both there. Then the decision is put on paper and signed by the judge.

You will receive a copy of the judgment or order. If the landlord wins, the judge will order you to move out. If you don't move out, the judge will order the sheriff to move you. The judgment will order you to pay the landlord whatever money you owe in rent plus treble ("triple") damages. You may also have to pay attorney's fees IF provided for in the rental agreement. Treble damages are figured by multiplying the daily rent by three for each day you have stayed in the apartment past the day your eviction notice expired. The judge will also order you to pay for any damage you have caused to the property and could triple that too.

If the judge decides in your favor, the judgment will order that you remain in your unit. The judge may also order the landlord to pay you some money. If you have a jury, they will decide these issues.

Remember, your landlord cannot legally lock you out of your unit or move you out of your unit. Call the police or the sheriff if the landlord tries to take such actions.

APPEALS

You or your attorney can appeal a judgment within ten days after the judge signs it. You will have to pay a filing fee or sign an affidavit. By itself, an appeal does not stop an eviction.

HOW TO FIGHT A DEFAULT JUDGMENT AGAINST YOU

If you fail to respond to the Summons and Complaint or to the Notice of Possession Bond, the court may issue a default judgment. If you want to have a default judgment undone, you must file a Motion to Set Aside and a Request for Hearing. You must have a legal reason to do so. This paper asks the judge to reopen the case. You can request the forms for these papers at Utah Legal Services.

STEP 5 ORDER OF RESTITUTION (REMOVAL FROM THE HOME)

If you lose in court at Steps 2 or 4, you will be served with an order to vacate and remove your property - Order of Restitution - within three business days from the day the judge signs the judgment.

A form to request a hearing will be attached. This is not an opportunity to fight the eviction, just to dispute the terms of the order or the way it was enforced. Requesting this hearing will not stop the order to vacate. To stop the order to vacate, go to the end of this section.

If you do not stop this order and you do not vacate and remove your property, the sheriff or constable can enter the premises to remove you and your possessions. They will make a list of what you have and put it in storage.

You will have thirty days to request a hearing or reclaim your property by paying for the moving costs and storage fees. If somebody else owns any of the property that is in storage, that person has thirty days to prove that he or she owns it and ask the sheriff or constable in writing to return it or request a hearing.

If you do not claim your property or request a hearing within thirty days, your property will be sold. They will send you notice of the sale at your last known address. If you are present at the sale, you can say in what order your property should be sold. They can sell only what is necessary to cover the costs of removal, storage and the sale and should release the rest of your property to you.

If you are not present, your property will be sold to pay for costs and for what the court decided you owe the landlord. If any money is left, they will send it to you if they know where to find you.

HOW TO FIGHT AN ORDER OF RESTITUTION (TO VACATE)

If you want to stay in your unit and you lost in court, you will have to file a Motion to Set Aside Judgment (as explained at the bottom of Step 4) a Motion to Stay AND a Request for Hearing. These papers ask the judge to stop the eviction and reopen the case.

MOBILE HOMES

Owners of mobile homes can only be evicted from the park for good cause, such as:

- * Failure to repair, maintain or build awnings, skirting, decks or sheds for 60 days after the notice to comply is served;
- * Failure to comply with any other rule within 7 days after notice;
- * Repeated failure to comply with a rule, if the original notice indicated that another violation of the same rule or another rule might result in no need to give more time to comply;
- * Bad behavior that endangers the security and health of other residents or may result in damage to park property. (No need to give an opportunity to cure);
- * Non-payment of rent, fees or service charges (after a 3-day notice to comply or move);
- * A change in the park's land use or condemnation by the authorities (after a 90 day notice).

In all cases except in cases of non-payment, after the service of a notice to comply or vacate, the resident must continue paying rent to the park until the situation is corrected, but after the resident is served with court papers, the resident must pay the rent into the court while the proceeding lasts.

COURT PAPERS IN MOBILE HOME EVICTIONS

If the eviction is for non-payment or for bad behavior, the landlord may choose to follow the regular eviction procedure explained under "The Eviction Process". For all the other causes for eviction, the landlord must serve a 20-day summons with the complaint.

PUBLIC HOUSING

EVICTED FROM GOVERNMENT ASSISTED HOUSING

The laws governing evictions from subsidized housing are complicated and undergoing changes. If you get an eviction notice, contact Utah Legal Services as soon as possible. We will assess the validity of the eviction and may set up an appointment to discuss your problem.

Make sure you pay your share of the rent on time and comply with your lease. Being evicted may result in termination of the government assistance.

SECTION 2: EVICTION ANSWER PACKET

You are not required to have an attorney represent you in court. However, we recommend that you retain or at least consult with an attorney if at all possible. Court rules, procedures and the law can be very complicated. In any event, you should file an answer with the court on time in order to preserve your rights.

If you are unable to hire an attorney, this packet contains instructions and forms to help you file your own Answer.

IMPORTANT
READ ALL OF THESE DIRECTIONS
COMPLETELY AND CAREFULLY
BEFORE
FILLING OUT THE ATTACHED FORM

If you follow the suggestions in this brochure, you should be able to get your day in court to tell the judge your side of the story.

WHERE TO GET HELP

Utah Legal Services is not representing you at this time. You can get additional help with representing yourself at various clinics held around the state of Utah. Utah Legal Services maintains a listing of these clinics that you should ask for. The clerk of the court in which you have been sued may be able to answer your questions about court dates or whether or not something has been filed. They will not give you legal advice.

If you wish to pursue your legal matter at this time with a private attorney, we encourage you to visit the Utah State Bar Referral website, which can refer you to another attorney who can handle your type of case for a fee. Their website is <http://utahbar.legalmatch.com/index.html>. If you have a disability that prevents you from using the internet, you may call 1-866-661-5342 for a referral. Please be aware that those who do not have a qualifying disability will be charged a fee for using the phone number. In addition, you may look in the "yellow pages" of your local telephone directory for names of attorneys who handle your type of case.

Finally, you may also use the Online Court Assistance Program (OCAP) at <http://www.utcourts.gov/ocap/>. OCAP is the official State of Utah website for assistance in preparing court documents if you are not able to have an attorney draft them for you. Documents can be prepared for landlord tenant cases as well as a number of other issues. You may use this program for **free**. If you file documents created by the program with the court, a \$20.00 fee in addition to any court filing fees will be charged at that time. This program is a service of the Utah Courts and State Legislature.

The program is designed to be easy to use. You simply point and click or type in your information. There are brief explanations about the law that relates to your documents and instructions on how to use the documents you prepare. At the end of each program, you will be able to print out documents that look much like those an attorney would prepare.

Not all documents required for all types of court cases can be prepared using these programs. Please read the description of each document preparation program carefully to be sure it addresses your needs.

BEING SUED AND ANSWERING THE SUMMONS AND COMPLAINT

When someone sues you, that person is called the plaintiff and you are called the defendant. The plaintiff will have you served with court papers called a Summons and a Complaint. The Summons requires you to file an

Answer in writing to the Complaint in the same court where the plaintiff filed the lawsuit. In an eviction case, you will typically be given 3-7 business days to file your Answer with the Court.

READ THE SUMMONS CAREFULLY. IT WILL TELL YOU HOW MANY DAYS YOU HAVE TO FILE YOUR ANSWER AFTER THE DAY YOU ARE SERVED.

The person serving the Summons and Complaint will write the date served on the documents. The Summons will give you a specific number of days to answer the Complaint after the date served. If the last day to answer falls on a day when the court is not open, such as a weekend or holiday, you must file your answer on the very next day the court is open. Be cautious, courts do not close for all holidays. Call the court and find out.

FILING MEANS THAT THE COURT ACTUALLY RECEIVES YOUR ANSWER, IT IS NOT SUFFICIENT TO JUST MAIL YOUR ANSWER!

Filing means the Court clerk receives the answer, which is usually indicated by a date stamp on the document, a computer entry, and of course, by the court clerk filing the document in the court file.

If you do not file a written Answer before the deadline you will lose the lawsuit by default and may never have a chance to go to court to tell your side of the story. If you need additional time to file an answer, contact the opposing attorney or the plaintiff if the plaintiff is not represented. Whichever one you talk to, if that person agrees to allow you additional time, obtain that agreement in writing. Keep a copy of the agreement for yourself. If that person does not agree to allow you additional time, you must file your answer before the time set out in the summons expires or risk being defaulted.

If your default is entered by the court prior to the time you file your answer, you should try to set the default aside. Contact any Utah Legal Services' office for a packet to assist you in setting aside the order.

HOW TO FILL OUT THESE FORMS

Check off each step as you complete it.

- Step 1:** Place the court papers which were served on you in front of you so you can copy the information you need.
- Step 2:** Turn to the Answer form in the back of this packet.
- Step 3:** Add (type if you can or hand-write) your name, address and phone number in the upper left hand corner of the Answer form.
- Step 4:** From the Complaint, copy the name of the court, the state and the county in the blanks at the top center of the Answer form. Add the plaintiff's name above the word "Plaintiff" and the defendant's name (your name) above the word "Defendant". Copy the civil case number beside "Case No." Call the court clerk to find out which judge or commissioner the case has been assigned to. Add the name of the judge or commissioner beside "Judge/Commissioner."
- Step 5:** For each numbered paragraph in the Complaint, you need to admit, deny or give an explanation about the allegations.

Admitting the truth of paragraphs where all of the allegations are true.

Add the number of any paragraph in the Complaint that is completely true behind the sentence in paragraph 1 of the Answer form which states:

1. Defendant admits the allegations contained in paragraphs:

Denying the truth of paragraphs where all of the allegations are false.

Add the number of any paragraph in the Complaint that is completely false behind the sentence in paragraph 2 of the Answer form which states:

2. Defendant denies the allegations contained in paragraphs:

[] **Responding to paragraphs that are not completely true or completely false.**

If a paragraph in the Complaint contains parts that are true, parts that are false or parts that you feel you need to explain, you may write out a much fuller answer to that paragraph which admits the true parts, denies the false parts and explains what you feel needs to be explained. Starting with paragraph 3 in the Answer form, respond in your own words to any paragraphs in the Complaint that are not either completely true or completely false. For example, if paragraph 12 of the Complaint states that you signed a lease agreement on December 6, 1992 and paid a \$300.00 deposit for the apartment, but you really signed the lease agreement on December 7, 1992 and paid a \$300.00 deposit for the apartment, you might want to answer as follows:

3. Referring to paragraph 12, Defendant admits that Defendant paid a \$300.00 deposit for the apartment, but states that the correct date that Defendant signed the lease agreement was December 7, 1992, not December 6, 1992.

Use as many numbered paragraphs as you need to answer all of the paragraphs in the Complaint. You may need to attach additional pages to the back of the second page of the Answer form for the additional paragraphs.

[] **Step 6:** If you know of any defenses you have to the Plaintiff's lawsuit, you should write them on the page we have provided labeled "DEFENSES." For each different defense use a separately numbered paragraph. For example, if a landlord failed to serve an eviction notice on you prior to filing a law suit against you, you could write:

1. Plaintiff did not serve me with an eviction notice before filing this lawsuit.

[] **Step 7:** You should ask the court for whatever relief you want the court to give you on the page we have provided labeled "PRAYER." The word prayer is used here as a legal term, not a religious term. It simply means that you are asking the court to do something for you. For example, if you want the court to dismiss the plaintiff's complaint, write:

1. Defendant asks the Court to dismiss Plaintiff's Complaint.

In addition to your other prayers, you should also always ask the court for: "Such other relief as the court finds equitable." This allows the court to give you other relief that the court finds you should have, even if you did not ask for it. We have included this additional language for you on the Answer form.

[] **Step 8:** Date and sign your Answer.

[] **Step 9:** Type the name and address of anyone who you are mailing the Answer to. You must mail a copy to the plaintiff's attorney or, if the plaintiff does not have an attorney, to the plaintiff.

[] **Step 10:** Date and sign the Mailing Certificate.

[] **Step 11:** Make enough copies so that you can have a copy and each person who you put down in the mailing certificate can be mailed a copy. Be sure the papers are clean, neat and stapled.

[] **Step 12:** File the original Answer, that is the one you typed out and signed, with the court. If you mail the Answer to the Court, be sure to allow enough time for the mail. You should also call the court clerk and

make sure the Answer has actually reached the court and been filed before the last day. If it has not reached the court, you will have to make a new original and hand deliver it to the court or obtain an extension of time to file the Answer from the opposing attorney or the opposing party (plaintiff) if they are not represented by an attorney. Even if you timely mail something, it is not filed until the court receives it and stamps it. The Answer must be at the court on or before the due date to avoid losing the lawsuit because you did not answer.

WHAT HAPPENS NEXT

After you file your Answer, the plaintiff **may** file a Possession Bond and you should be served a Notice of Possession Bond. The notice contains several options for you to choose from. You can either pay the rent owed, post your own counter bond or request a hearing. If you choose to request a hearing you should file a Request for Hearing and Notice and the clerk of the court will set up a date for the hearing. You should be prepared to present any witnesses or evidence you have at the time of the hearing. The Notice of Possession Bond may also be served upon you at the same time as the Summons and Complaint. You need to file your request for a hearing on a separate sheet of paper from your Answer. See Section 3 for help with Possession Bonds.

NAME _____

ADDRESS _____

PHONE _____

DEFENDANT, PRO SE

IN THE _____ DISTRICT COURT OF _____ COUNTY

STATE OF UTAH

_____ ,

Plaintiff,

vs.

_____ ,

Defendant.

ANSWER

Case No. _____

Judge/Commissioner _____

[INSTRUCTIONS: ADMIT, DENY OR OTHERWISE ANSWER THE ALLEGATIONS IN EACH OF THE PARAGRAPHS IN PLAINTIFF'S COMPLAINT. BE SURE TO RESPOND TO EVERY PARAGRAPH IN PLAINTIFF'S COMPLAINT. USE ADDITIONAL SHEETS IF NEEDED.]

Defendant answers Plaintiff's Complaint as follows:

1. Defendant admits all of the allegations contained in the following paragraphs in Plaintiff's

Complaint: _____.

2. Defendant denies all of the allegations contained in the following paragraphs in Plaintiff's Complaint: _____.

3. Referring to paragraph _____ in Plaintiff's Complaint, Defendant states that:

4. Referring to paragraph _____ in Plaintiff's Complaint, Defendant states that:

5. Referring to paragraph _____ in Plaintiff's Complaint, Defendant states that:

DEFENSES

[INSTRUCTIONS: IF YOU KNOW OF ANY REASON WHY THE PLAINTIFF SHOULD NOT WIN THE CASE, OTHER THAN WHAT YOU HAVE ALREADY STATED IN YOUR ANSWERS ABOVE, YOU SHOULD WRITE IT HERE.]

1. _____

_____.

2. _____

_____.

3. _____

_____.

4. _____

5.

PRAYER

[INSTRUCTIONS: NOW THAT YOU HAVE ANSWERED THE COMPLAINT, WRITE OUT WHAT YOU WANT THE COURT TO DO. FOR EXAMPLE, IF YOU WANT THE COURT TO DISMISS THE PLAINTIFF'S COMPLAINT, WRITE: "DEFENDANT ASKS THE COURT TO DISMISS PLAINTIFF'S COMPLAINT."]

1.

2.

3.

_____.

4. _____

_____.

Defendant also asks for such other relief as the Court finds equitable and just.

Dated this _____ day of _____, _____.
(day) (month) (year)

(your signature)
DEFENDANT, PRO SE

(other defendant's signature, if any)
DEFENDANT, PRO SE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing ANSWER by first class mail to:

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

postage prepaid this _____ day of _____, 2006.

(Your Signature)
DEFENDANT, PRO SE

SECTION 3: EVICTION ANSWER AND COUNTERCLAIM PACKET

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If you wish to pursue your legal matter at this time with a private attorney, we encourage you to visit the Utah State Bar Referral website, which can refer you to another attorney who can handle your type of case for a fee. Their website is <http://utahbar.legalmatch.com/index.html>. If you have a disability that prevents you from using the internet, you may call 1-866-661-5342 for a referral. Please be aware that those who do not have a qualifying disability will be charged a fee for using the phone number. In addition, you may look in the "yellow pages" of your local telephone directory for names of attorneys who handle your type of case.

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Call the court clerk to find out which judge or commissioner the case has been assigned to. Add the name of the judge or commissioner beside "Judge/Commissioner."

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2. Defendant denies the allegations contained in paragraphs:

[] **Responding to paragraphs that are not completely true or completely false.**

If a paragraph in the Complaint contains parts that are true, parts that are false or parts that you feel you need to explain, you may write out a much fuller answer to that paragraph which admits the true parts, denies the false parts and explains what you feel needs to be explained. Starting with paragraph 3 in the Answer form, respond in your own words to any paragraphs in the Complaint that are not either completely true or completely false. For example, if paragraph 12 of the Complaint states that you signed a lease agreement on December 6, 1992 and paid a \$300.00 deposit for the apartment, but you really signed the lease agreement on December 7, 1992 and paid a \$300.00 deposit for the apartment, you might want to answer as follows:

3. Referring to paragraph 12, Defendant admits that Defendant paid a \$300.00 deposit for the apartment, but states that the correct date that Defendant signed the lease agreement was December 7, 1992, not December 6, 1992.

Use as many numbered paragraphs as you need to answer all of the paragraphs in the Complaint. You may need to attach additional pages to the back of the second page of the Answer form for the additional paragraphs.

- [] **Step 6:** If you know of any defenses you have to the Plaintiff's lawsuit, you should write them on the page we have provided labeled "DEFENSES." For each different defense use a separately numbered paragraph. For example, if a landlord failed to serve an eviction notice on you prior to filing a law suit against you, you could write:

1. Plaintiff did not serve me with an eviction notice before filing this lawsuit.

- [] **Step 7:** Write down the address of the home or apartment that you are renting from the landlord in the spaces indicated in paragraphs 1 and 2 of the Counterclaim. Circle the type of agreement you and your landlord entered into (written or verbal) and the date you entered into the agreement.

- [] **Step 8:** If you know of any reasons that the Plaintiff should be ordered to pay you damages, you should write them in the space provided in paragraph 5 of the Counterclaim. For example, if your landlord was responsible to pay the water and electric bills for your home and didn't, you could write:

1. Plaintiff did not pay the January, February and March water and electric bills which were Plaintiff's responsibility under paragraph 15 of the rental contract. Defendant paid a total of \$275.38 for said bills. Copies of the bills and Defendant's payments are attached as Exhibit "A".

If you do not know of any reasons that the Plaintiff should be ordered to pay you damages, then you DO NOT have a counterclaim and should use the Answer in section 2 of this packet.

- [] **Step 9:** You should ask the court for whatever relief you want the court to give you on the page we have provided labeled "PRAYER." The word prayer is used here as a legal term, not a religious term. It simply means that you are asking the court to do something for you. For example, if you want the court to dismiss the plaintiff's complaint, write:

1. Defendant asks the Court to dismiss Plaintiff's Complaint.

In addition to your other prayers, you should also always ask the court for: "Such other relief as the court finds equitable." This allows the court to give you other relief that the court finds you should have, even if you did not ask for it. We have included this additional language for you on the Answer form.

- [] **Step 10:** Date and sign your Answer and Counterclaim.

- [] **Step 11:** Type the name and address of anyone who you are mailing the Answer and Counterclaim to. You must mail a copy to the plaintiff's attorney or, if the plaintiff does not have an attorney, to the plaintiff.

- [] **Step 12:** Date and sign the Mailing Certificate.

- [] **Step 13:** Make enough copies so that you can have a copy and each person who you put down in the mailing certificate can be mailed a copy. Be sure the papers are clean, neat and stapled.

- [] **Step 14:** File the original Answer and Counterclaim, that is the one you typed out and signed, with the court. If you mail the Answer and Counterclaim to the Court, be sure to allow enough time for the mail. You should also call the court clerk and make sure the Answer and Counterclaim has actually reached the court and been filed before the last day. If it has not reached the court, you will have to make a new original and hand deliver it to the court or obtain an extension of time to file the Answer and Counterclaim from the opposing attorney or the opposing party (plaintiff) if they are not represented by an attorney. Even if you timely mail something, it is not filed until the court receives it and stamps it. The Answer and Counterclaim must be at the court on or before the due date to avoid losing the lawsuit because you did not answer.

WHAT HAPPENS NEXT

After you file your Answer and Counterclaim, the plaintiff **may** file a Possession Bond and you should be served a Notice of Possession Bond. The notice contains several options for you to choose from. You can either pay the rent owed, post your own counter bond or request a hearing. If you choose to request a hearing you should file a Request for Hearing and Notice and the clerk of the court will set up a date for the hearing. You should be prepared to present any witnesses or evidence you have at the time of the hearing. The Notice of Possession Bond may also be served upon you at the same time as the Summons and Complaint. You need to file your request for a hearing on a separate sheet of paper from your Answer. See Section 3 for help with Possession Bonds.

NAME _____

ADDRESS _____

PHONE _____

DEFENDANT, PRO SE

IN THE _____ DISTRICT COURT OF _____ COUNTY

STATE OF UTAH

_____ ,

Plaintiff,

vs.

_____ ,

Defendant.

ANSWER AND COUNTERCLAIM

Case No. _____

Judge/Commissioner _____

[INSTRUCTIONS: ADMIT, DENY OR OTHERWISE ANSWER THE ALLEGATIONS IN EACH OF THE PARAGRAPHS IN PLAINTIFF'S COMPLAINT. BE SURE TO RESPOND TO EVERY PARAGRAPH IN PLAINTIFF'S COMPLAINT. USE ADDITIONAL SHEETS IF NEEDED.]

Defendant answers Plaintiff's Complaint as follows:

1. Defendant admits all of the allegations contained in the following paragraphs in Plaintiff's

Complaint: _____.

2. Defendant denies all of the allegations contained in the following paragraphs in Plaintiff's Complaint: _____.

3. Referring to paragraph _____ in Plaintiff's Complaint, Defendant states that:

4. Referring to paragraph _____ in Plaintiff's Complaint, Defendant states that:

5. Referring to paragraph _____ in Plaintiff's Complaint, Defendant states that:

DEFENSES

[INSTRUCTIONS: IF YOU KNOW OF ANY REASON WHY THE PLAINTIFF SHOULD NOT WIN THE CASE, OTHER THAN WHAT YOU HAVE ALREADY STATED IN YOUR ANSWERS ABOVE, YOU SHOULD WRITE IT HERE.]

1. _____

_____.

2. _____

_____.

3. _____

_____.

4. _____

_____.

5. _____

COUNTERCLAIM

[INSTRUCTIONS: IF YOU KNOW OF ANY REASON WHY THE PLAINTIFF SHOULD BE ORDERED TO PAY YOU DAMAGES, YOU SHOULD WRITE IT HERE. ATTACH AN ADDITIONAL PAGE IF NECESSARY.]

1. To the best of the knowledge and belief of Defendant(s), Plaintiff is the owner of real property located at: _____.

2. Defendant(s) reside(s) at: _____.

3. Defendant(s) and Plaintiff entered into a **[circle one]** written agreement / verbal agreement for the rental of property at the address listed above in paragraph 2 on the _____ day of _____, 20____. A copy of the written agreement, if any, is attached.

4. Defendant(s) has/have raised affirmative defenses in the Answer filed with this Counterclaim.

5. Defendant(s) believe(s) that Defendant(s) is/are entitled to an award of damages for the following reasons: _____

PRAYER

[INSTRUCTIONS: NOW THAT YOU HAVE ANSWERED THE COMPLAINT, WRITE OUT WHAT YOU WANT THE COURT TO DO.]

1. Dismiss Plaintiff's complaint and award Plaintiff nothing.

2. Award Defendant damages for any claims requested.

3. _____

_____.

4. _____

_____.

Defendant also asks for such other relief as the Court finds equitable and just.

Dated this _____ day of _____, _____.
(day) (month) (year)

(your signature)
DEFENDANT, PRO SE

(other defendant's signature, if any)
DEFENDANT, PRO SE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing ANSWER AND COUNTERCLAIM by first class mail to:

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

postage prepaid this _____ day of _____, 2006.

(Your Signature)
DEFENDANT, PRO SE

SECTION 4: POSSESSION BOND HEARING REQUEST PACKET

During a landlord tenant dispute, a landlord may notify tenants that they either owe money, have violated terms of the lease, are a nuisance or must leave for other reasons. This notice is called an eviction notice. The eviction notice must be in writing. A notice for not paying rent must give the tenant the option of paying or moving within three days. A notice for violation of the lease must give the tenant three days to "cure" the violation, that is, to start complying with the lease. A nuisance notice cannot be used to evict a person for not paying rent or for violating the lease. If the landlord does not give a tenant an eviction notice in writing, an eviction case cannot be filed with the court.

If tenants are given a proper written eviction notice and they don't pay the rent, leave or correct the problem, the landlord can file a summons and complaint with the court and serve the tenant with those papers. The tenant will then have **3 days** to file an answer with the court.

Many times the tenant will also be served with a "possession bond notice." The possession bond notice can be served along with the summons and complaint or afterward.

WHAT IS A POSSESSION BOND NOTICE?

If you have been given a notice that says the landlord has posted a possession bond, the landlord has sped up the eviction process. The bond must be signed by a judge and will state the amount the landlord has been required to post. The bond must have information attached that explains your options.

WHAT ARE YOUR OPTIONS?

If you are served with a possession bond notice, you have 5 options. **You must do one of the options within three days of service of the notice of the bond. If you do not do options 1, 2 or 3 within three days, your landlord can have the court sign an order for the sheriff to move you from the place you are renting.** (Read "What Happens if the Tenant Loses in Court.")The options are:

OPTION 1.

If the reason for eviction is based solely on non-payment of rent, you can pay the accrued rent, utility charges (if applicable), any late fees or attorney fees (if specified in the lease) and other costs (example: cost to file in court and to serve the legal papers). If you pay, that stops the lawsuit and you may remain in the place you are renting.

OPTION 2.

You can request a possession bond hearing. The hearing will determine whether the landlord can force you to move right away or whether you can stay until there is a trial.

WHERE TO GET HELP

Utah Legal Services is not representing you at this time. You can get additional help with representing yourself at various clinics held around the state of Utah. Utah Legal Services maintains a listing of these clinics that you should ask for. The clerk of the court in which you have been sued may be able to answer your questions about court dates or whether or not something has been filed. They will not give you legal advice.

If you wish to pursue your legal matter at this time with a private attorney, we encourage you to visit the Utah State Bar Referral website, which can refer you to another attorney who can handle your type of case for a fee.

Their website is <http://utahbar.legalmatch.com/index.html>. If you have a disability that prevents you from using the internet, you may call 1-866-661-5342 for a referral. Please be aware that those who do not have a qualifying disability will be charged a fee for using the phone number. In addition, you may look in the "yellow pages" of your local telephone directory for names of attorneys who handle your type of case.

Finally, you may also use the Online Court Assistance Program (OCAP) at <http://www.utcourts.gov/ocap/>. OCAP is the official State of Utah website for assistance in preparing court documents if you are not able to have an attorney draft them for you. Documents can be prepared for landlord tenant cases as well as a number of other issues. You may use this program for **free**. If you file documents created by the program with the court, a \$20.00 fee in addition to any court filing fees will be charged at that time. This program is a service of the Utah Courts and State Legislature.

The program is designed to be easy to use. You simply point and click or type in your information. There are brief explanations about the law that relates to your documents and instructions on how to use the documents you prepare. At the end of each program, you will be able to print out documents that look much like those an attorney would prepare.

Not all documents required for all types of court cases can be prepared using these programs. Please read the description of each document preparation program carefully to be sure it addresses your needs.

HOW TO FILE A REQUEST FOR A POSSESSION BOND HEARING

You may file a request for a hearing during the 3-day time period explained above. We have attached a form for you to use called "REQUEST FOR HEARING." Fill out the form, date and sign it. You need to file the original with the court and mail a copy to the landlord's attorney or to the landlord if the landlord is not represented. Keep a copy for yourself. Within 3 days from the request, the court will schedule a hearing. The court clerk should call you to let you know when the hearing will be. However, you should call the clerk to find out if you are not notified within a day. It is your responsibility to find out when the hearing is.

PREPARATION FOR THE HEARING

Bring 3 copies of your lease, any written proof for your case (rent receipts, proof of repairs, pictures). Bring witnesses who have personal knowledge of your situation and can help prove your story. Dress neatly. Many judges will not allow persons wearing shorts in the courtroom. Address the judge as "Your Honor". Practice telling your story, the judge will appreciate a short, well thought out statement from you.

NEGOTIATING BEFORE THE HEARING

Arrive at the hearing early to try to negotiate a settlement of your case. Among other things, settlements can include paying part of the rent; agreeing to make repairs; moving earlier than the lease provides; staying long enough to find another place and applying refundable deposits to money owed.

Even though a settlement is agreed to, the parties or their attorneys must still tell the court the terms of the settlement and that all parties agree with the settlement. Don't leave before telling the judge what the settlement is.

THE HEARING

If you cannot settle your case, there will be a hearing. At the hearing, one of two things will happen.

1) The first thing that can happen at the hearing is that the judge may require that you either post a counter bond or move. If you are able to post a bond, you can stay in the apartment until there is a trial.

2) The second thing that can happen at the hearing is that the judge can decide to hear the entire case. The evidence will be presented and the judge will decide if you win or lose. A hearing will probably follow the following steps:

a. Before the hearing starts, you and the landlord should give the judge's clerk a copy of all your evidence to be labeled as exhibits.

b. The hearing begins with the landlord or landlord's attorney giving an opening statement explaining why you should be evicted.

c. Next, you, or your attorney, will tell how you intend to prove your case.

d. The landlord has the first opportunity to call witnesses. You have a chance to ask questions when the landlord is done with each witness. The landlord has another chance to question each witness when you finish.

e. After the landlord's side presents their entire case, you and your witnesses can give your evidence to the judge. You can testify. The landlord can ask you questions. You can have witnesses testify on your behalf. The landlord can ask each of your witnesses questions, after which you should be allowed to question each of your witnesses one last time.

f. The hearing ends with closing statements where each side argues that they have proved their case. If you win, you can stay in your place. If you lose, the judge will tell you when to move and there may be a money judgment entered against you. If the landlord wins and you must move, a sheriff serves you a "Writ of Restitution". You must leave with all of your possessions either immediately or in the time frame the judge or sheriff allows.

WHAT HAPPENS IF THE TENANT LOSES IN COURT

The "Writ of Restitution"

If the judge decides that the tenant must move out, he may also order that the tenant vacate immediately. However, it is more likely that he will allow the procedure to follow its course, that is, the order from the court - "Writ of Restitution" - will inform the tenant that he/she has **three business days** following the date of the order to move out. He/she can remove all his/her possessions unless there is another court order ordering him/her to let the sheriff take some of it. There will be other papers attached to the "Writ of Restitution" informing the tenant of his right to a hearing to dispute the terms of the order or the manner of its enforcement. It will not be possible to try to dispute at this hearing the causes for the eviction.

If you do not vacate and remove your property, the sheriff or constable can help your landlord enter the premises to remove you and your possessions. They will make a list of what you have and put it in storage. You will have 30 days to request a hearing or reclaim your property by paying for the moving costs and storage fees. If somebody else owns any of the property that is in storage, that person has 30 days to prove that he/she owns it and ask the sheriff or constable in writing to return it or to request a hearing. If you do not claim your property or request a hearing, they can give you notice of sale and sell it. You can be present at the sale and you can say in what order your property will be sold. They can sell as much as is necessary to collect the cost of removal, storage and the sale and should release the rest of the property to you. If you are **NOT** present, they can sell everything, pay the costs and pay the landlord the amount the court determined you owed.

OPTION 3.

You can file a counter bond.

HOW TO FILE A COUNTER BOND

If you are able, you can post your own bond called a counter bond. To file a counter bond, you must first fill out a form called DEFENDANT'S MOTION TO SET AMOUNT FOR COUNTER BOND and submit it to the clerk of the court. We have attached a blank form for you to use.

The judge will set an amount for the bond based on the judge's estimate of the landlord's costs of the suit and damages, if you lose the case. The judge may have set the amount at your hearing. You must pay this amount to the court in cash or by a property bond. If you file a counter bond and a timely answer to the complaint, then you have kept the process from speeding up and you can stay in possession of your rental unit until a trial is held.

But if you lose at trial, then they will serve you with the "Writ of Restitution" as explained above.

OPTION 4.

You can vacate the place you are renting before the 3 days are over and take all your property with you.

OPTION 5.

You can decide not to do anything. Sometime after three days, the court can sign an order and a sheriff will serve you with the "Writ of Restitution" (Read above about this order.)

HOW LONG DO I HAVE TO CHOOSE FROM THE 5 OPTIONS?

The day you are served does not count as part of the 3 days. Saturdays, Sundays and legal holidays also are not counted as part of these days. Example 1: If you are served on a Monday, you will have until 5:00 p.m. on Thursday to take action. Example 2: If you are served on Friday evening and the next Monday is a holiday, you will also have until Thursday 5:00 p.m.

NAME _____

ADDRESS _____

PHONE _____

DEFENDANT, PRO SE

IN THE _____ DISTRICT COURT OF _____ COUNTY

STATE OF UTAH

_____ ,

Plaintiff,

vs.

_____ ,

Defendant.

**REQUEST FOR POSSESSION BOND
HEARING AND NOTICE**

Case No. _____

Judge/Commissioner _____

Pursuant to Utah Code Ann §78-36-8.5, Defendant(s) request(s) a hearing to determine possession of the premises Defendant now reside(s) in, to be scheduled within 3 days after service of the Notice of filing of Plaintiff's Possession Bond.

Dated this _____ day of _____, 20_____.

DEFENDANT, PRO SE

(other defendant, if any)
DEFENDANT, PRO SE

NOTICE OF HEARING

Defendant's hearing to determine possession of the premises Defendant now resides in is set for the _____ day of _____, 20____, at the above court.

BY THE COURT:

DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing REQUEST FOR POSSESSION BOND HEARING AND NOTICE by first class mail to:

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

postage prepaid this _____ day of _____, 2006.

(Your Signature)
DEFENDANT, PRO SE

NAME _____

ADDRESS _____

PHONE _____

DEFENDANT, PRO SE

IN THE _____ DISTRICT COURT OF _____ COUNTY

STATE OF UTAH

_____ ,

Petitioner,

vs.

_____ ,

Defendant.

**MOTION TO SET AMOUNT FOR
COUNTER POSSESSION BOND**

Case No. _____

Judge/Commissioner _____

Defendant(s) move(s) the Court to set an amount for a counter possession bond pursuant to Utah Code Ann. §78-36-8.5(2)(b). The bond should be in the amount that is the probable amount of costs of the suit and actual damages that may result to the Plaintiff if the Defendant(s) has/have improperly withheld possession.

Defendant(s) believe(s) that a proper amount for this bond would be \$_____. The following information is being supplied to assist the Court.

1. Monthly rent: \$_____.
2. Total unpaid rent: \$_____.
3. Date of eviction notice: _____.
4. Reason for not paying rent (e.g. explain any health or safety problems with the residence): _____

_____.

5. Other: _____

_____.

Dated this _____ day of _____, 20_____.

DEFENDANT, PRO SE

(other defendant, if any)
DEFENDANT, PRO SE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing MOTION TO SET AMOUNT FOR COUNTER POSSESSION BOND by first class mail to:

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

postage prepaid this _____ day of _____, 2006.

(Your Signature)
DEFENDANT, PRO SE

NAME _____

ADDRESS _____

PHONE _____

DEFENDANT, PRO SE

IN THE _____ DISTRICT COURT OF _____ COUNTY

STATE OF UTAH

_____ ,

Plaintiff,

vs.

_____ ,

Defendant.

**ORDER SETTING AMOUNT FOR
COUNTER POSSESSION BOND**

Case No. _____

Judge/Commissioner _____

ORDER

Based upon Defendant(s) MOTION SETTING AMOUNT FOR COUNTER POSSESSION BOND and pursuant to Utah Code Ann. §78-36-8.5(2)(b), the amount of the Counter Possession Bond is set at \$ _____.

BY THE COURT:

DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing ORDER SETTING
AMOUNT FOR COUNTER POSSESSION BOND by first class mail to:

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

postage prepaid this _____ day of _____, 2006.

(Your Signature)
DEFENDANT, PRO SE