

CRIMINAL TRESPASS BY LONG-TERM GUEST TO A RESIDENCE

Utah Code §76-6-206.4

This is the name of a new Utah law effective since May 2017. It aims to help homeowners and apartment renters get rid of an invitee (non-paying guest) who won't go when asked to leave. It allows the police or sheriff to arrest a "long-term guest" as a criminal trespasser. The guest is evicted without a court order. This is a class B misdemeanor.

Q: Who is a "long-term guest"?

A: An individual who is not a tenant but who is given express or implied permission by the primary occupant or someone with apparent authority to act for the primary occupant to live in the residence for at least 48 hours AND who neither pays rent nor provides labor or services under an agreement with the owner or primary occupant.

Q: Who is a "tenant"?

A: Someone who has the right to occupy a residence under a rental agreement or lease or has a tenancy by operation of law. In Utah, rental contracts need NOT be in writing; oral agreements are permitted. The main difference between a "tenant" and a "guest" is compensation. A tenant gives something of value (money or labor) in exchange for the right to live in the place by agreement with the owner or primary occupant.

Q: Must the owner or primary occupant ask the long-term guest to leave before calling the police?

A: Yes. The law requires that the long-term guest receive a "personal communication" to leave from the owner or primary occupant or "someone with apparent authority to act for the primary occupant."

Q: Must this notice to leave (the "personal communication") be in writing?

A: No. The law does not specify the method by which this notice must be delivered. It could be oral.

Q: What happens if the guest does not leave after getting notice?

A: The person who has the right to possess ("live in") the residence can call the police to arrest the guest. The police must give the guest time to collect his or her possessions before removing him or her.

Q: What can I do if the police try to arrest me as a long-term guest?

A: Show the police a written rental agreement even if you have not paid the rent. Try to prove that an oral agreement exists. Or prove that the primary occupant accepted money or labor in exchange for your tenancy. (Helping out once with household expenses, like groceries, may not be enough but a pattern or practice of contributing that occurs over a longer period of time may convince an officer that a legal relationship exists.) Try to convince the police that this is a "civil matter", namely that the person who wants you out should be required to use Utah's landlord/tenant eviction process to remove you. That

process requires written notice and some days to leave followed by the filing of an eviction lawsuit the results in a court order (“Order of Restitution”) before forced eviction occurs.

Q: What situations might result in the use of this criminal trespass law?

A: When the relationship between unmarried persons ends and one of the individuals in that relationship isn’t an owner of the property or “on the lease” and has not contributed to the cost of maintaining the residence (e.g., mortgage, rent).

When the primary occupant has invited another person to stay in the residence for free but then asks that other person to leave.

When outsiders (“squatters”) invade a residence without express permission but live in the place for some time believing they have “implied permission” to remain.

It does NOT allow a landlord to have the police evict a tenant for nonpayment.

Q: Can the owner of a rented apartment or the manager of a mobile home park evict a tenant’s (or mobile home owner’s) guest using this law?

A: No. The law only allows the person who has the right to possess the premises to have a long-term guest arrested for criminal trespass. The owner who has rented out the apartment or mobile home space cannot interfere in the legal tenant’s power to decide who lives in the premises. HOWEVER, the owner still has the right to enforce the rental agreement (and the number of residents) using Utah’s landlord/tenant laws against the legal tenant. A legal tenant can be evicted if she fails to follow the rental agreement after sufficient notice (e.g., a three-day written notice to get rid of a long-term guest or quit the premises). If the legal tenant is evicted, all others who are living in the place will also be evicted.

Q: Am I guilty of criminal trespass if I am arrested?

A: No. Even if the police arrest someone for criminal trespass, a prosecutor (e.g., city or county attorney) must agree to bring that charge before a judge. Then a court (judge or jury) must decide guilt or innocence. But eviction occurs as a result of the arrest. A person falsely arrested could have a claim against the primary occupant who called the police.

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