



Landlord Letter

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Fair Housing Act and Exemptions

The Fair Housing Act is designed to protect disabled individuals and provide them with an equal opportunity to enjoy housing. The Act defines a disabled tenant to include (1) tenants with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment. While there are obvious examples of disabilities, today many tenants may attempt to take advantage of these benefits provided to the disabled. It is important to handle each tenant with the proper respect and evaluate fair housing claims with the respect they deserve.

While requests made by disabled tenants do NOT have to be in writing, it is best to request that they be

submitted in writing in order to clearly understand the situation and what is being requested. Is it not unreasonable or uncommon for a landlord to ask a tenant to put their request in writing with details of what they are asking in terms of an accommodation or modification. Doing so will avoid any miscommunication between the landlord and tenant.



Under Utah state and federal law, no matter the size of the landlord's business, their experience or profession, a landlord cannot discriminate against a person who belongs to a protected class (i.e. cannot make rental decisions based on a person's race, color, religion, sex, national origin, familial status, source of income

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Courtroom Chronicles — Las Vegas

There are never any guarantees whenever you go to court. We often tell our clients "Every time you step in front of a judge there's a little bit of Las Vegas." We recently attended an eviction hearing where, before anyone addressed the court, the judge said "Counsel, I'd like to let you know that I am familiar with the tenants and have dealt with them in the past." I looked at the tenant and they nodded in agreement that they knew the judge.

At first I was nervous. Maybe they were related? High school buddies? They were old friends? I started to wonder if the judge would side with the tenant because he

knows them? If the judge is recused, what delays will that cause to the case while we find a new judge?

All of my concerns were calmed when the judge explained that they knew each other from the tenant's prior felony charges which had apparently resulted in multiple appearances in front of the judge. Knowing that was the potential conflict, I was fine proceeding and the tenant didn't object. After explaining why we felt we were entitled to an eviction, the judge granted our eviction as well as a full judgment. It turned out well in the end, but the beginning of the hearing definitely felt like Las Vegas.



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or disability). Doing so can create potential liability for the landlord.

However, under the Utah Fair Housing Act (Utah Code Ann. § 57-21-3), there are a few exemptions listed related to reasonable accommodation or modification requests. If a landlord falls under one of these circumstances, they may be exempt from the Fair Housing Act. The most common exemption is listed in paragraph (1), which requires that a landlord satisfy ALL of these five elements:

- (1) The owner is not a business entity (no Corporations, LLCs, etc.),
 - (2) The owner has 3 or fewer single-family homes for sale/lease at the same time,
 - (3) During a 2 year period the owner doesn't sell two or more single-family homes where the owner was not residing or was not the most recent resident at the time of sale,
 - (4) The owner doesn't use the services of a real estate broker or salesperson, AND
 - (5) The owner doesn't discriminate (as outlined in 57-21-5(2)) while selling or renting the home.
- Notice that the statute connects each of these five paragraphs with the "AND" at the end of paragraph 4.



Proving 4 of the 5 elements means that the landlord will still have to comply with the exemptions. To claim they are exempt from the Fair Housing Act, the landlord must satisfy ALL of these FIVE elements.

However, we realize that the legal system is not usually the first or best option. Even though the law may legally give you an exemption from complying with the Fair Housing Act, it is often better to consider practical solutions that do not involve attorneys or judges. If the landlord and tenant are reasonable, it would likely be the best option to talk and work through the problems in a way that would create a workable modification to both sides.

The practical solution allows a prompt resolution to the case that may turn out better than the options before the judge. Even if the landlord can prevail in court and prove they are not subject to the Fair Housing Act, if they end up in court and are forced to present their defense to the judge, they've already lost. When faced with a Fair Housing Act issue, it may be easier to simply comply with the Act as a practical matter as opposed to exposing themselves to potential liability.

Attorney Jeremy Shorts



DOs & DON'Ts of Lease Agreements



DO

- Put your agreement in writing.
- Be careful with lease options. Get an attorney involved if you are not comfortable with them.
- Be clear on the consequences of a default and be clear on the notices required in the event of a default.
- Get advice from an attorney if you are unclear on about a term to include or exclude from a lease.



DON'T

- Be ambiguous with your terms. If you don't want dogs on the property, be very specific. It could cost you down the road.
- Just assume the parties are in agreement on something that is not written in the lease.
- Be intimidated of getting a Lease Agreement in place. A decent tenant will be willing to review, ask questions and sign the Lease with you.

***Evictions in Weeks,
Not Months!***



Dear Attorney,

Q: *I served a 3 Day Pay or Quit notice. I just want them out and don't want them to pay. Do I have to accept the payment or can I just tell them to leave?*

A: Unfortunately, if your tenant is served with a 3 Day Notice to Pay or Quit and they come to you within the 3 days with the full amount owed, you do have to accept the payment. If they only come to you with partial payment, you can reject that and continue with the eviction process. One question to ask is whether or not your tenant is on a month to month agreement, or if

there is still more than a month left on your lease term. If they are on a month to month agreement, in addition to the 3 Day Notice to Pay or Quit, you should serve them with a No Cause Notice to Vacate by the end of the rental period. Utah law requires you to give them 15 days notice prior to the end of the rental period, but check what your lease says. Most leases will require 30 day notice.

Know Your Notice

• **Declaration of Abandonment** •

Purpose: Assists the landlord in re-taking possession when a tenant has abandoned the property.



The Declaration of Abandonment serves two purposes: (1) it declares the real property abandoned before the landlord re-takes possession, and (2) sets up the sale/donation of any abandoned personal property the tenant left behind.

There is no notice requirement in order to declare a property abandoned, but prior to selling or disposing of any personal property the landlord must give a Declaration of Abandonment and store the items for a minimum of 15 days.

Once the 15 days has expired, the landlord may sell/donate the items. However, the landlord must give written notice of the sale at least five (5) days before the sale.

Be cautious... A Declaration of Abandonment is a necessary and useful tool, but if a judge later determines the property was NOT abandoned, the landlord may be responsible for treble damages.



Dealing with tough tenants?

You deserve a break...

Contact us for a **free** landlord consultation

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We'll take care of the rest.



FAST FACTS : Month of June



June in the Northern Hemisphere is similar to the month of December in the Southern Hemisphere



June's birthstones are Alexandrite, Moonstone & Pearl. The birth flower for June is the rose.



June has the Summer Solstice (the longest day of the year), typically June 21.



The zodiac signs for June are Gemini (May 21 — June 20) & Cancer (June 21 — July 22).



June is known for National Candy Month, National Dairy Month & National Seafood Month.



Flag Day (June 14) is the day in 1777 when the Continental Congress adopted the Stars & Stripes as our flag.

Parting Thoughts

- We're working to build our readership, tell your friends to subscribe to this FREE newsletter. Send us an email at info@utahevictionlaw.com.
- Have an eviction question? Email it to us for a future newsletter!
- Help us build our online presence! You can "Like" our Facebook page (www.facebook.com/utahevictionlaw).
- You can also give us a Five Star Google Review (search "Utah Eviction Law Reviews" and click on our link).

Calendar of Events



- June 12 — UAA Good Landlord Class
- June 14 — Flag Day
- June 21 — Father's Day
- June 21 — Summer Solstice
- June 23 — UAA's Ogden Membership Meeting
- June 24 — UAA's Orem Membership Meeting
- June 25 — UAA's SLC Membership Meeting

