



# Landlord Letter

## January 2020

### *HUD Requests Investigation of ESA Websites*

Emotional Support Animals (“ESA”) play a critical and necessary role for the disabled. There are many legitimate situations where a disabled tenant (through physical or mental disabilities) is dealing with unseen issues that an ESA helps to alleviate. The entire function of an ESA is to alleviate the impact(s) of the disability in order for them to have as much of a normal life as possible. However, there are other residents and businesses that abuse the laws and request an ESA under inappropriate circumstances. These abusive requests make it harder to identify and accommodate legitimate requests.

Based on this background, the State of Utah and the federal authorities (the

U.S. Department of Housing and Urban Development, or “HUD”) have taken action to crack down on abusive ESA requests. On the state level, Utah State Representative Jim Dunnigan gets this and in the 2019 legislative session was instrumental in helping to make it a misdemeanor for a resident to make a false or fraudulent statement in order to obtain an ESA. Our hope and expectation is that this law will have a chilling effect on false and fraudulent requests for an ESA so that those that truly need an ESA will be able to have one.

If you’ve been a landlord for a while you’re aware of websites and groups

*(Continued on page 2)*



**Lifesavers. Utah Eviction Law has saved us thousands of dollars. Can't recommend them enough. Jeremy knows his stuff**

*-Parker*



**What people are saying about US!!!**

*(Continued from page 1)*

that offer a prescription or recommendation for an ESA through their website or through a quick phone call. Some websites claim to maintain a registry or certification list for ESAs, which purports to maintain an official list of registered/certified ESAs. Since the state or federal government does not track or register an ESA or service animal, any such “registry” is a private list maintained by those individual businesses. This is an attempt to create credibility with their list.

On the federal level, HUD recently requested that the Federal Trade Commission (“FTC”) investigate ESA websites that may be part of the problem. HUD







stated “that certain websites may be misleading consumers with disabilities into purchasing assistance animal documentation that is unreliable and unnecessary.” There are also concerns that “the websites also may be selling assistance animal documentation to people who do not have disabilities ... enabling such people to claim that their pets are assistance animals in order to evade housing providers’ pet restrictions and pet fees.” They concluded by stating “HUD shares these concerns.”

In order to protect those who are truly disabled and in need of an ESA, and also to provide landlords with fewer frivolous claims, we are hopeful that HUD’s action will similarly lead to a chilling of fraudulent action related to ESAs.



## DOs & DON'Ts of... Courtroom Etiquette



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|---|--|
|  <p>Appear! Make sure it is on your calendar and don't rely on the court or your attorney for reminders.</p>                          |  <p>Talk over the Judge. Let the Judge ask questions and finish before you talk.</p>  |
|  <p>Dress for the occasion. You don't want the Judge to think you are the tenant being evicted for selling drugs on the property.</p> |  <p>Make facial expressions in response to the tenant's comments to show you disagree. The Judge will allow your attorney to have a chance to respond.</p>  |
|  <p>Be on time! Showing up late gives the wrong impression that your time is more important than the court's time.</p>                |  <p>Reject any discussion of an agreement. Often times you can receive a better result than the court if you can take time to work through the problem.</p> |

# Dear Attorney,



**Q:**

**My tenant has an emotional support animal (“ESA”) and allows it to relieve itself on the balcony and common areas. My tenant says I can’t do anything about it, is that right?**

**A:**

Both sides might have a point here. Even if a tenant has a legitimate ESA, a landlord may impose reasonable rules for ALL animals (not just ESAs). This can include rules concerning cleaning up after the animal, keeping them on a leash in common areas, etc.

reasonable rules in terms of monitoring the animal, identifying areas where the animal may relieve itself, and imposing rules for cleaning up after the animal.

If it is reasonable to set a rule that the animal relieve itself on a grassy area that isn’t far from the unit and that the resident has to immediately clean up after the animal, then the resident should comply. Having an ESA does not mean the resident can ignore reasonable rules on animals or violate the lease. Their failure to do so could result in an eviction, but in ANY situation that may end up in an eviction you want to (1) clearly communicate with the resident, (2) be patient, and (3) try to work toward a solution.

In this situation, the tenant is entitled by law to have an ESA, but that does not mean that you, as the landlord, don’t have any rights. Depending on the layout of your apartment, you can designate

## Calendar of Events



- January 17 — UAA’s Good Landlord Class (Sandy)
- January 20 — Martin Luther King Jr. Day
- January 28 — UAA’s Good Landlord Class (Ogden)



## Landlord Laughs – The Sailor Card

No one ever calls our office to tell us about their GREAT tenants. Even though evictions can be contentious and difficult we still try to treat every case with respect. We receive phone calls from tenants asking for a settlement that would allow them to stay and we always try to make things work.

A while ago we received one of these emotional calls where the tenant, through tears, explained that they wanted to work out a solution. We contacted the client who declined settlement and explained their side of the story (the tenant had caused significant problems and had been given multiple opportunities to comply).

When we explained that we would not be settling, that's when the tenant flipped a switch. Playing the Nice Card (with tears) didn't work, so they tried the Sailor Card (with an F-bomb sailor

vocabulary and nastiness). Unsurprisingly, the Sailor Card and swearing didn't work, so they played another Nice Card (with more tears). For several days through phone calls and emails, the roller coaster continued with alternating Nice Cards and Sailor Cards (with more and more F-bombs, hang-ups, etc.) until she cleaned out the unit and left. Lesson learned – If the Nice Card doesn't work, the Sailor Card doesn't have a prayer.



# Know Your Notices

## • An Overview of Utah Eviction Notices •

**Three Day Pay or Quit:** Written notice requiring the tenant to either vacate or pay all past due rent, late fees or other amounts owed under the lease.

**Nuisance:** Used where your tenant's actions have interfered with the quiet enjoyment of property from other tenants and/or neighbors.

**Criminal Acts:** A tenant who commits crimes that impact the property are subject to eviction.

**Assigning or Subletting:** If your tenant assigns or subleases your property in violation of your lease, they can be evicted.

**Abandonment:** Is presumed where a tenant leaves without notifying the landlord, is late on the rent, and there is no evidence they're living there.

**Lease Violations:** Used to give written notice to the tenant of any ways they are violating the lease.

**Unlawful Business:** A tenant who is unlawfully running a business on the premises may be evicted.

**Tenant At Will:** Be cautious with this notice. It is used when the individual does not have any lease (written or oral) to live in the property.

**Lease Termination:** This notice terminates the lease. Must be served at least 15 days prior to the end of the month, unless your lease requires more time.

**Waste (Damages):** A tenant that damages your property is subject to a three day eviction notice.