



# Landlord Letter

November 2021

## *Selling Your Rental Property*

With the increase in home values, coupled with the increased regulations on landlords, we have seen several clients sell their properties. With that transaction several questions arise about how selling a rental property impacts the lease. Let's talk about some legal considerations as well as some best practices to help make a smooth transition.

Before selling the property, the landlord should check the lease to confirm that there are not any restrictions on selling the property or assigning the lease. Under Utah law leases can normally be assigned freely (meaning the owner can assign the lease to a buyer). This means that, unless there is a specific provision in the lease to the contrary, an owner can sell the property and then assign the lease

to the buyer.

Selling the property and assigning the lease usually only changes who the rent is paid to and does not usually change the terms of the lease. Some leases may have a sale clause that allows the buyer to terminate the lease if the property is sold, but generally the buyer takes the property "subject to" the lease, meaning the buyer steps into the exact same set of shoes of the seller and needs to live out the current lease.

Communication is always key in a situation like this. The landlord would want to notify tenants anytime there's a change in landlord. Permission from the tenant usually is not required, but we recommend

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

This is my first experience with the eviction process. I contacted Utah Eviction Law and was given clear detailed and helpful information.

*~S. T. —Google Review*



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giving written notice to the tenant of the sale and assignment of the lease. In this situation, a joint letter from all involved (seller, buyer, former manager, new manager, etc.) that states what is being changed and outlines any necessary information (where are rents paid, how are maintenance requests handled, etc.).

If only the ownership has changed but the same property manager is used, the tenant usually is not notified of this change. In this situation, nothing has really changed that the tenant would notice. Changing ownership but keeping the same management company does modify or assign the lease usually and nothing has really changed for the tenant.

Again, a sale of property or an assignment of a lease does not usually impact the tenant. This sale or assignment does NOTHING to change the lease. The new owner or management company CANNOT usually increase rent, shorten/lengthen the term of the lease or change the terms of the lease. Again, the new

owner or manager only steps into the exact shoes that the seller had and is taking the property subject to the existing lease.

We have repeatedly seen how excellent communication and planning can help make a transition smooth. On the reverse, failing to plan or communicate may magnify and create problems that can develop into a potential lawsuit. If you'll consult legal counsel and be cautious and clear in your communications, you can help to avoid problems.

*Attorney Jeremy Shorts*



## DOs & DON'Ts Inspections

✓ Communicate with your tenants and give them 24 hours notice.

✓ Take pictures to verify anything that you see or need to work on.

✗ Show up unannounced.

✗ Over-inspect – Your tenant is entitled to quiet enjoyment of the property.

# Know Your Notice

## • Five Day Tenant At Will Notice •

**Purpose:** Give a squatter notice that they don't have a lease and must leave.

*A Tenant at Will Notice gives the tenant five calendar days to vacate the property.*



*Even without a written lease, a tenant might not be a tenant at will if the landlord has given verbal permission for the tenant to live there.*

*The only option for a tenant to comply with a Tenant at Will Notice is to vacate the property. There is no other cure.*

*Like other eviction notices, it must be served in person, posted or sent via certified mail. It cannot be given verbally, texted or emailed.*



## Dear Attorney,

I've heard that some landlords are exempt from fair housing laws, how do I know if I qualify for an exemption?

You should always consult an attorney anytime a fair housing issue arises, but under state and federal law certain small landlords are exempt from fair housing laws, but you need to make sure that you qualify for the exemption. There are two main exemptions to the fair housing act: (1) Small Landlord Exemption and (2) Mrs. Murphy's Rule.

For a small landlord to qualify for the exemption, they must meet five elements: (1) the owner is NOT a business entity (Title held in personal name), (2) the owner owns three or fewer rental units (no 4-plexes or higher), (3) the owner has not sold two or more rentals in the last 24 months, (4) the owner does not retain or use a real estate broker or agent, AND (5) the owner CANNOT advertise in a discriminatory way. If the owner meets ALL FIVE of these elements, they are exempt from fair housing laws.

Who is "Mrs. Murphy"? She is the hypothetical elderly widow who converted part of her home into a rental to supplement her limited income. Even if Mrs. Murphy doesn't meet all five of the elements for the small landlord exemption, she may still qualify for the exemption IF: (1) the rental property MUST be four or fewer units, (2) the owner MUST reside in one of the units, AND (3) the owner still CANNOT advertise in a discriminatory way.



## Courtroom Chronicles — Showering and a Sandwich

After an eviction lockout is complete by the sheriff or constable, Utah law requires the landlord to store any personal items left behind for 15 days. As a practical matter, depending on the circumstances, it often makes sense for the landlord to waive their claim for removal and storage fees (which are allowed under the statute) if the tenant will simply remove their own items themselves.

We recently had a case where the landlord finished the eviction and at the time of the lockout the tenant hadn't moved hardly anything, so the lockout was per-

formed and the house was secured with everything in the house. The landlord set up a time with the tenant to allow the tenant to retrieve their personal items.

What was surprising is that the tenant didn't come back for much. Instead of removing everything, or even the valuables, the tenant took a shower, made a sandwich, had lunch, and then left! Leaving nearly everything in the house! The landlord finished the 15 day storage period and then followed the statute to sell, donate, or throw away what was left.

## 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](mailto: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](http://www.facebook.com/utahevictionlaw)).
- You can also give us a Five Star Google Review (search "Utah Eviction Law Google Reviews" and click on our link).

