



Landlord Letter

July 2024

Common Legal Problems in Real Estate, Asset Protection and Taxation

Rustin Diehl is a fellow attorney that we work with. His law firm, Allegis Law, focuses on business law, estates, trusts, and asset protection. Landlords and property managers should have a Rustin on their team to make sure they're setup correctly and running smoothly. We asked Rustin to talk about the most common problems he sees for landlords in real estate and taxation. Here is his list:

1. **Ownership Risk:** Creating an LLC provides liability protection to you personally, but an even better owner of an LLC is a trust. Listing yourself personally as the owner of an LLC leaves you vulnerable to attack by personal creditors. While the LLC will protect you from the tenants (as an outside liability risk), if the LLC is owned by a person directly and you personally are sued and lose,

then your creditors can take the LLC (creating inside liability risk). Creating a trust helps to solve this problem.

2. **Holding Risk:** Holding many properties in a single LLC subjects all of the properties in that LLC to cross-liability risk. A problem with one property will impact all properties. Consider creating separate LLCs for rentals to provide separate protections if there are problems.

3. **Real Estate Non-Deduction Risk:** Real estate holding LLCs must be set up so that the LLC owner is a qualified real estate professional that materially participates in the property management. Otherwise, the owner will be disallowed from lawfully deducting the property depreciation

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Know Your Notice Pay or Quit

Purpose: Assists the landlord in re-taking possession when a tenant has "rent or other amounts due".

Landlords are NOT required to accept a partial payment, but if partial payment is accepted, the pay or quit is cancelled. The landlord must serve a new notice showing the new balance.

*The three days stated in the notice are **business** days — excluding weekends and holidays. Do not count the day it was served. Day #1 begins the following day (For example — if served on Wednesday, the 3 days are Thursday, Friday & Monday).*

A landlord cannot modify the pay or quit to become a "pay AND quit" or a "notice to quit". It MUST allow the tenant to either pay OR quit in order to comply with the eviction notice statutes.

A Pay or Quit requires the tenant to do just that: (1) pay entire balance owed, or (2) vacate within three days. Those are the only two ways for a tenant to comply with this notice and avoid an eviction.

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to offset the rental income under Internal Revenue Code (“IRC”) §469.

4. Real Estate Rents Cannot be Reinvested without Reporting the Rents as Taxable Income:

Before you reinvest rents in an LLC by repaying the mortgage, you must first report the gross rents as taxable income. After paying any applicable taxes on the rental income, the owner can then use the after-tax money to pay the mortgage. Expenses to operate the property, deductions, or depreciation could offset the obligation to pay taxes. However, mortgage payments are not deductible expenses. Unless there are other expenses or the real estate owner qualifies to take property depreciation, the mortgage will need to be paid with after-tax rents (which would be very difficult in most situations).

5. S-Corp Holding Real Estate Issues: It is a rare situation where an S-Corp should hold real estate because deductions for business-level debt are difficult, and S-Corps cannot later distribute the real estate out of the S-Corp or reorganize easily without an immediate depreciation recapture risk under IRC §1250.

Thanks for helping out, Rustin! If you have any questions or want to talk to Rustin about setting up a trust, estate, or a business entity, go to his website (www.allegislaw.com) or give his office a call (801-938-4035).

-Attorney Jeremy Shorts



2024 Property Managers Conferences

We're excited to announce our
2024 Property Managers Conference dates!

Sandy

Tuesday, August 6

230 W Towne Ridge Pkwy
(Realtor's Building)

Orem

Thursday, September 19

998 North 1200 West
(Keller Williams Building)

We'll have 6 updated and new classes throughout the day and over lunch.

Visit our website - www.utahevicitionlaw.com/Conference

or [Click Here](#) to Register

Dear Attorney,



Q: *I have two tenants on the same lease that ended up in a disagreement and are no longer friends. One of the tenants wrote her own letter claiming she is disabled and requested an immediate released from the lease so she can receive live-in care. What should I do?*

A: *Landlords are required to grant a reasonable accommodation for a disability that is not known or apparent as long as the request is supported by reliable documentation that establishes (1) a disability and (2) a disability-related need for the request. Typically, that reliable documentation comes from a health care provider who is able to establish those two elements.*

In this situation, it's a problem that the tenant is self-authenticating both the disability as well as the disability-related need. The reliable documentation should come from a third party and is typically a doctor or therapist. For that reason, the letter directly from the tenant is probably not considered reliable documentation.

Even if the letter came from a legitimate health care provider and met the required elements, the

landlord is only required to grant a "reasonable accommodation". A request for a complete release from a lease agreement is probably not reasonable, especially an immediate release. In addition, this request only impacts one tenant, burdening the remaining tenant that is still on the lease.

Based on this, the request would likely be denied. But it is best to enter into an interactive dialogue with the tenant to discuss your concerns and see what other solutions may work. A reasonable request would possibly be to (1) allow the tenant to have a live-in aide, allowing her to remain in the property, or (2) be flexible with her to either locate a replacement tenant or end the lease for all parties down the road to minimize losses for both sides.

DOs & DON'Ts of Rent, Ledgers & Cash



DO

- Document each payment (tracking the date, amount, cash/check, and description for each payment).
- Communicate clearly with your tenant about payments and balances.



DON'T

- Accept cash without providing a receipt (documenting EVERY payment is critical).
- Rely on your memory for payments (memory fades and is easily challenged in court).

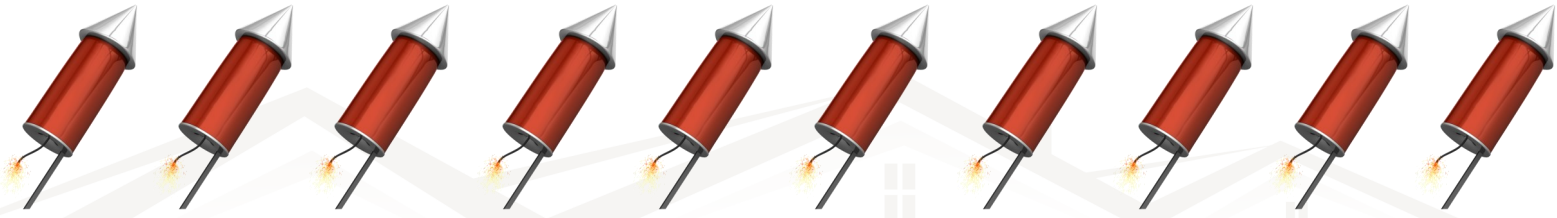
Courtroom Chronicles – I'm with Stupid

We always tell our clients to watch what they wear to court. It's best to dress up to show respect to the court and the judge. We aren't talking super fancy, but you want the judge to know you thought about what to wear to court.

A while ago we were watching other cases while we waited for our case to be called. As the judge called another case and the parties took their seats at the tables, the defendant basically ran to the table on the left side of the courtroom. He moved so

quickly that it was a little odd... But when the judge saw the defendant's shirt, it all made sense.

The defendant was wearing a t-shirt that said "I'm with stupid" that had an arrow pointing to the other table on the right. He had sprinted to that left table to make sure the arrow was pointing to the other party. The judge couldn't let this pass without commenting and said "It says you're with stupid, but you're by yourself?!?" Hopefully he has a better wardrobe choice next time he's in court.



**Evictions in
Weeks, Not
Months!**

Calendar of Events

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 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 Google Reviews" and click on our Google Plus link).

- July 4 – Independence Day
- July 24 – Pioneer Day

