

ENFORCEMENT OF COURT'S RESTITUTION

ORDER

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: John E. Swallow

AN ACT RELATING TO THE JUDICIAL CODE; AMENDING PROVISIONS ON
RESTITUTION ORDERS; REINSTATING **h THAT h** THE DEFENDANT SHALL BE ADVISED
OF
THE RIGHT TO CONTEST THE MANNER OF ENFORCEMENT.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

78-36-10.5, as last amended by Chapters 203 and 352, Laws of Utah 1997

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78-36-10.5** is amended to read:

78-36-10.5. Order of restitution -- Service -- Enforcement -- Disposition of personal property -- Hearing.

(1) Each order of restitution shall:

(a) direct the defendant to vacate the premises, remove his personal property, and restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or constable; [and]

(b) advise the defendant of the time limit set by the court for the defendant to vacate the premises, which shall be three business days following service of the order, unless the court determines that a longer or shorter period is appropriate under the circumstances[-]; and

(c) advise the defendant of the defendant's right to a hearing to contest the manner of its enforcement.

(2) (a) A copy of the order of restitution and a form for the defendant to request a hearing as listed on the form shall be served in accordance with Section 78-36-6 by a person authorized to serve process pursuant to Section 78-27-58. If personal service is impossible or impracticable, service may be made by:

1 (i) mailing a copy of the order and the form to the defendant's last-known address and
2 posting a copy of the order and the form at a conspicuous place on the premises; or

3 (ii) mailing a copy of the order and the form to the commercial tenant defendant's
4 last-known place of business and posting a copy of the order and the form at a conspicuous place
5 on the business premises.

6 (b) A request for hearing by the defendant may not stay enforcement of the restitution
7 order unless:

8 (i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property bond
9 to the clerk of the court in an amount approved by the court according to the formula set forth in
10 Subsection 78-36-8.5(2)(b); and

11 (ii) the court orders that the restitution order be stayed.

12 (c) The date of service, the name, title, signature, and telephone number of the person
13 serving the order and the form shall be legibly endorsed on the copy of the order and the form
14 served on the defendant.

15 (d) Within ten days of service, the person serving the order and the form shall file proof
16 of service in accordance with Rule 4(h), Utah Rules of Civil Procedure.

17 (3) (a) If the defendant fails to comply with the order within the time prescribed by the
18 court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the
19 least destructive means possible to remove the defendant.

20 (b) Any personal property of the defendant may be removed from the premises by the
21 sheriff or constable and transported to a suitable location for safe storage. The sheriff or constable
22 may delegate responsibility for storage to the plaintiff, who shall store the personal property in a
23 suitable place and in a reasonable manner.

24 (c) The personal property removed and stored shall be inventoried by the sheriff or
25 constable or the plaintiff who shall keep the original inventory and personally deliver or mail the
26 defendant a copy of the inventory immediately after the personal property is removed.

27 (4) (a) After demand made by the defendant within 30 days of removal of personal
28 property from the premises, the sheriff or constable or the plaintiff shall promptly return all of the
29 defendant's personal property upon payment of the reasonable costs incurred for its removal and
30 storage.

31 (b) The person storing the personal property may sell the property remaining in storage

1 at a public sale if:

2 (i) the defendant does not request a hearing or demand return of the personal property
3 within 30 days of its removal from the premises; or

4 (ii) the defendant fails to pay the reasonable costs incurred for the removal and storage of
5 the personal property.

6 (c) In advance of the sale, the person storing the personal property shall mail to the
7 defendant's last-known address a written notice of the time and place of the sale.

8 (d) If the defendant is present at the sale, he may specify the order in which the personal
9 property shall be sold, and only so much personal property shall be sold as to satisfy the costs of
10 removal, storage, advertising, and conducting the sale. The remainder of the personal property,
11 if any, shall be released to the defendant. If the defendant is not present at the sale, the proceeds,
12 after deduction of the costs of removal, storage, advertising, and conducting the sale shall be paid
13 to the plaintiff up to the amount of any judgment the plaintiff obtained against the defendant. Any
14 surplus shall be paid to the defendant, if the defendant's whereabouts are known. If the defendant's
15 whereabouts are not known, any surplus shall be disposed of in accordance with Title 67, Chapter
16 4a, Unclaimed Property Act.

17 (e) The plaintiff may donate the property to charity if:

18 (i) the defendant does not request a hearing or demand return of the personal property
19 within 30 days of its removal from the premises; or

20 (ii) the defendant fails to pay the reasonable costs incurred for the removal and storage of
21 the personal property; and

22 (iii) donation is a commercially reasonable alternative.

23 (f) If the property belonging to a person who is not a defendant is removed and stored in
24 accordance with this section, that person may claim the property by delivering a written demand
25 for its release to the sheriff or constable or the plaintiff. If the claimant provides proper
26 identification and evidence of ownership, the sheriff or constable or the plaintiff shall promptly
27 release the property at no cost to the claimant.

28 (5) In the event of a dispute concerning the manner of enforcement of the restitution order,
29 the defendant or any person claiming to own stored personal property may file a request for a
30 hearing. The court shall set the matter for hearing within ten days from the filing of the request,
31 or as soon thereafter as practicable, and shall mail notice of the hearing to the parties.

1 (6) The Judicial Council shall draft the forms necessary to implement this section.

Legislative Review Note
as of 5-30-97 9:29 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel