

1993

# JJBAKD, a Utah General Partnership v. Howard F. Hatch : Brief of Appellee

Utah Court of Appeals

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James R. Boud; Bradley R. Jones; Ashton, Braunberger, Poulson, and Boud.

Howard F. Hatch, pro se.

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IN THE UTAH COURT OF APPEALS

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JJBAKD, a Utah General Partnership,	)	APPELLEE'S BRIEF
	)	
Plaintiff and Appellee,	)	Case No. 930043-CA
	)	
vs.	)	Priority No. 29 (b) (15)
	)	
HOWARD F. HATCH,	)	Trial Court No. 920-2330 CV
	)	
Defendant and Appellant.	)	

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RESPONSE TO APPELLANT'S APPEAL FROM THE SUMMARY JUDGMENT  
AND ORDER OF DISMISSAL OF COUNTERCLAIM FROM THE FOURTH CIRCUIT  
COURT, PROVO DEPARTMENT, STATE OF UTAH, THE HONORABLE  
E. PATRICK MCGUIRE, PRESIDING

---

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DOCKET NO. 930043

MAY 2

## TABLE OF CONTENTS

	<u>Page</u>
JURISDICTION .....	1
STATEMENT OF THE CASE.....	1
Nature of the Case.....	1
Course of Proceedings.....	3
Disposition at Trial Court .....	6
SUMMARY OF ARGUMENT.....	6
ARGUMENT.....	7
CONCLUSION.....	9
CERTIFICATE OF MAILING.....	10
ADDENDA	
A.    Order to File Counterbond and Pay Rent	
B.    Minute Entry by Judge Sumsion	
C.    Ruling by Judge Sumsion	
D.    Order Granting Summary Judgment	
E.    Minute Entry by Judge McGuire	
F.    Mobile Home Park Residency Act	
G.    Forcible Entry and Detainer Act	
H.    Defendant's Affidavit of Impecuniosity	
I.    Utah Code of Judicial Administration, Rule 4-501(2)	

## TABLE OF AUTHORITIES

Statutes and Rules Cited:	<u>Page</u>
Utah Code Annotated Section 57-16-1 et. seq., 1953, as amended (see Addendum "F")	4, 5, 8
Utah Code Annotated Section 78-36-1 et. seq., 1953, as amended (see Addendum "G")	3
Rule 4-501(2), Utah Code of Judicial Administration (see Addendum "I")	8

## CONSTITUTIONAL PROVISIONS

This issue at hand involves no constitutional provisions in dispute.

IN THE UTAH COURT OF APPEALS

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JJBAKD, a Utah General Partnership,	)	APPELLEE'S BRIEF
	)	
Plaintiff and Appellee,	)	Case No. 930043-CA
	)	
vs.	)	
	)	
HOWARD F. HATCH,	)	Trial Court No. 920-2330 CV
	)	
Defendant and Appellant.	)	

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JURISDICTION

The Utah Court of Appeals has jurisdiction of this case pursuant to Utah Code Annotated Section 78-2A-3(2)(d) of Utah Judicial Code.

STATEMENT OF THE CASE

A. Nature of the Case. On or about July 22, 1992, Appellee filed a complaint with the Trial Court for the purpose of evicting the Appellant and his mobile home. (R. 26) Appellant's mobile home was occupying one of the lots in Appellee's mobile home park known as Crestline Estates Mobile Home Park located in Provo, Utah County, Utah. The grounds for the lawsuit included the fact that Appellant had been served a fifteen-day rule violation notice on or about May 29, 1992. Appellant thereafter was served a three-day lease termination notice for repeated failure to comply with mobile home park rules on or about July 2, 1992. The basis for the fifteen-day rule violation notice was that Appellant had failed to provide for the care of the lawns and landscaping around the subject leased premises thus creating a health and fire hazard, was

maintaining unapproved storage sheds and enclosures on the premises and was storing miscellaneous items around the premises not in proper storage, failed to provide proper skirting and coverage over the mobile home hitch/tongue and mobile home; and was maintaining an unlicensed vehicle in the park, all of which were violations of specific rules by which the Appellant was obligated to abide. The three-day lease termination notice for repeated failure to comply was served on Appellant for the identical violations set forth in the fifteen-day notice. Appellant also owed rent for July, 1992 in the amount of \$170.00 which was the fair market value of the leased premises. Appellee, therefore, sought judgment against the Appellant for termination of the lease and immediate restitution and possession of the leased premises, unpaid rent for July, 1992 and rent at the rate of \$5.48 per day until judgment was entered and restitution was granted and for costs and attorney's fees as provided for in the lease agreement.

On or about August 24, 1992, Appellant filed an answer and counterclaim. (R. 31) Appellant raised as a defense that he signed the lease agreement with the Appellee under duress. Appellant raised as an affirmative defense that he was never subject to the provisions of the lease agreement or the rules. Appellant in his counterclaim alleged that the rules and regulations of the park were unreasonable and unduly burdensome and without proper legal basis. He further alleged in the counterclaim that these rules were null and void as to him and his mobile home located in the park. Accordingly, Appellant alleged that he was

entitled to special damages and punitive damages for being required to live by the park rules.

B. Course of Proceedings. On August 31, 1992, after Appellant's answer was filed, Appellee filed a certificate of readiness for trial and request for trial setting.(R. 37) On September 1, 1992, the Court ordered that the matter be set for pre-trial conference. (R. 38) On September 11, 1992, Appellee filed a motion for the Court for a landlord's possession bond. (R. 44) The grounds for the motion was that Appellant had not paid rent for July, August, and September, 1992, and was currently in default of said rental payments. On September 14, 1992, the Court ordered that Appellee file a possession bond in the form of a cash bond in the amount of \$5,000.00 (R. 45), and a notice of the possession bond was served on Appellant. (R. 102) Appellant demanded a hearing as provided for in the Forcible Entry and Detainer Act, Utah Code Annotated Section 78-36-8.5(2) (R. 54), and the hearing was held on September 22, 1992 at the hour of 11:00 a.m. (R. 57) (For full citation of the Forcible Entry and Detainer Act, see Addendum "G".) Appellee was represented by its counsel, James R. Boud, and Appellant appeared personally at the hearing. Arguments were heard by Appellee and Appellant and the Court ordered specifically that Appellant could retain possession of the premises upon posting a counter-bond in the form of cash or a cashier's check in the amount of \$3,500.00. The Court indicated the necessity of the bond due to the reason that a counterclaim had been filed, and a jury trial had been demanded by Appellant, both



of which could be lengthy and affected Appellant's right to an expedient trial and could result in substantial fees and costs to Appellant. At said hearing Appellant acknowledged not having paid rent for July, August, and September and was therefore ordered by the Court to pay those rents into the Court as required by Utah Code Annotated Section 57-16-8. (See Order; Addendum "A".) The bond and the rents were to be paid by Appellant into Court by Friday, September 25, 1992, at 5:00 p.m. The Court ruled that if Appellant did not pay the rent into the Court, then Appellee could proceed with a motion for summary judgment pursuant to Utah Code Annotated Section 57-16-8. Similarly, if the bond was not posted timely, Appellee would be entitled to a writ of restitution immediately thereafter. (See Order; Addendum "A".)

On or about October 1, 1992, Appellant filed a motion to disqualify Judge Sumsion, the assigned judge to the case who had ruled on the September 22, 1992 hearing. The basis for Appellant's motion was that Judge Sumsion had been an attorney in the firm of Sumsion & Park with whom ". . . this defendant has had a long and bitter legal battle . . . " and also on the grounds that Judge Sumsion had made a statement at the September 22, 1992 hearing that the case would not be a simple one. Accordingly, Judge Sumsion entered a minute entry on October 6, 1992, recusing himself from the case. (See Addendum "B".) On October 9, 1992, Judge Sumsion entered a ruling on the motion stating he was recusing himself because he would soon be retiring and the case may not reach final

disposition before his retirement date in two months. (See Addendum "C".)

Appellant posted the bond timely as ordered by the Court (R. 58) but failed to pay rent as ordered by the Court. Accordingly, on October 15, 1992, Appellee filed a motion for summary judgment. (R. 73) The basis for this motion was in two parts. First, Appellant had acknowledged owing rents for July, August, and September, 1992, and that said rents had not been paid. The Court had ordered in the prior hearing of September 22, 1992, that the rents must be paid and that Appellee could proceed with a motion for summary judgment if they were not paid into Court. Second, pursuant to Utah Code Annotated Section 57-16-8, if a resident of a mobile home park elects to contest an eviction proceeding, all rents, fees, and service charges due and incurred during the pending action shall be paid into the Court. Failure to do so constitutes grounds for granting summary judgment in favor of the mobile home park. The Court entered the order granting summary judgment on October 19, 1992. (See Order; Addendum "D".)

On October 20, 1992, Appellant filed his memorandum in opposition to motion for summary judgment claiming that payment of rent was discretionary despite what the Court's earlier order had been. (R. 90) Appellant requested an oral argument. On or about November 3, 1992, Appellant filed his motion and memorandum to set aside order. (R. 94) The Court, therefore, scheduled a hearing which was held on November 18, 1992, allowing oral argument on Appellee's motion for summary judgment and on Appellant's motion to

set aside the order. (R. 103 and 104) At the hearing the Court heard arguments by both parties and ruled that summary judgment was proper for the Appellee under Utah Code Annotated Section 57-16-8 and pursuant to Appellant's failure to abide by the September 22, 1992 order. (R. 116) The Court found that summary judgment being entered, Appellant's counterclaim was moot and therefore dismissed the same. Appellant then filed this appeal.

C. Disposition at Trial Court. Summary judgment was granted in favor of the Appellee on November 18, 1992. With the filing of the summary judgment the Court found the Appellant's counterclaim moot and dismissed the same.

#### SUMMARY OF ARGUMENT

There were no improprieties or prejudices by the Trial Court judges in this case as argued by Appellant. The initial judge, Judge Sumsion, recused himself upon motion by the Appellant because he was soon to be retiring and believed the case would not be disposed of in its finality before his retirement date. (See minute entry and see ruling at Addendums "B" and "C", respectively.) This is certainly not grounds evidencing any prejudice by the Judge. In any event, the Judge granted Appellant's motion to recuse leaving nothing Appellant can point to in the record that would cause the new judge to have any presumed bias against the Appellant. Furthermore, there is nothing on the record that Appellant can identify that would show that Judge McGuire was prejudiced or violated any statutes or otherwise acted

with impropriety towards the Appellant. (See minute entry by Judge McGuire at Addendum "E".)

Summary judgment was proper in this matter based upon applicable Utah statutes giving the Court authority to grant summary judgment in favor of the landlord where the tenant, in an eviction action, elects to contest the action and fails to pay rent. Based on this statute alone, the Court had every right to grant Appellee's summary judgment when the Appellant on his own admission failed to pay rent into the Court for five months following the initiation of the lawsuit.

#### ARGUMENT

Appellee sees no reason to respond to Appellant's argument regarding Judge Sumsion's prejudice. Although Appellee disagrees there was any prejudice by Judge Sumsion, the Judge did, in fact, recuse himself without making any rulings relative to this appeal. Accordingly, the alleged issue concerning Judge Sumsion's supposed prejudice against Appellant was resolved upon recusing himself. Also, there is nothing on the record showing any prejudice by Judge McGuire. In fact, he made it very clear that he did not know Mr. Hatch and had not talked about the case with any of the other judges. (See Addendum "E".)

Appellee, in review of the record, can find nothing that would show that Judge McGuire violated any rules and regulations of the Court by entering a summary judgment as argued by Appellant. Although it appears from the record that the Court may have

inadvertently entered a ruling for judgment in favor of Appellee prior to the expiration of ten days time for a response, as required by Rule 4-501(2), Utah Code of Judicial Administration, the Court corrected that error by allowing Appellant oral argument and an opportunity to file a responsive pleading. Appellant did file a written response setting forth his arguments and was granted a hearing. Oral argument was made before the Court on November 18, 1992, and Appellant had full opportunity to argue his objections. Following argument, the Court ruled that summary judgment was proper, not only because Appellant failed to pay rent as ordered earlier, but also pursuant to Utah Code Annotated Section 57-16-8, which reads as follows:

If a resident elects to contest an eviction proceeding, all rents, fees, and service charges due and incurred during the pendency of the action shall be paid into the court according to the current mobile home park payment schedule. Failure of the resident to pay such amounts, in the discretion of the court, may constitute grounds for granting summary judgment in favor of the mobile home park. Upon final termination of the issues between the parties, the court shall order all amounts paid into court paid to the mobile home park. The prevailing party is also entitled to court costs and reasonable attorney's fees.

The Court ordered that pursuant to the above section, Appellee was entitled to summary judgment, which included restitution of the mobile home park premises, rent due and owing, and reasonable attorney's fees. Appellant clearly was in violation of the statute and the Court had every right to exercise its discretion to grant summary judgment in favor of the Appellee. The Judge very clearly stated in a minute entry of November 9, 1992, that he had not discussed the case with the previous judge who had recused himself,

Judge Sumsion, that he had no idea who the Appellant was nor the Appellee or its attorneys or agents, and that he had no personal interest in this matter except to exercise justice. (See Addendum "E".) There is simply nothing in the record that would indicate that Judge McGuire was prejudiced and did anything other than follow the applicable statutory provisions. Because the issues raised in Appellant's counterclaim were moot in light of the ruling for summary judgment, the Court dismissed the counterclaim which was within the Court's discretion.

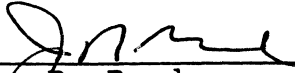
As an additional matter, Appellant has filed an affidavit of impecuniosity claiming poverty and inability to bear the expenses of appeal. Appellant, however, had no difficulty posting a \$3,500.00 bond within three days when so ordered by the Trial Court. Further, Appellant represented that he owned the subject mobile home free and clear of any liens. Appellee, therefore, believes Appellant has the ability to bear his costs of appeal and has not come before this Court with clean hands by stating otherwise. (See Addendum "H".)

#### CONCLUSION

Appellee respectfully requests the Court to deny Appellant's request to have the case remanded to the lower court and accordingly to uphold the summary judgment granted herein.

DATED this 18 day of May, 1993.

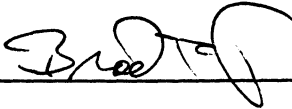
ASHTON, BRAUNBERGER, POULSEN  
& BOUD, P.C.

By   
James R. Boud  
Attorney for Appellee

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the  
foregoing Appellee's Brief was mailed postage prepaid on the  
18 day of May, 1993, to the following:

Howard Hatch  
843 South 1150 East  
Pleasant Grove, Utah



06-97-bn

James R. Boud, USB #A0388  
ASHTON, BRAUNBERGER, POULSEN & BOUD, P.C.  
Attorneys for Plaintiff  
302 West 5400 South, Suite 103  
Murray, Utah 84107  
Telephone: (801) 263-0300

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IN THE FOURTH CIRCUIT COURT, PROVO DEPARTMENT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

---

JJBAKD, a Utah General Partnership,	)	
	)	
Plaintiff,	)	ORDER
	)	
vs.	)	
	)	
HOWARD HATCH,	)	Civil No. 920-2330 CV
	)	
Defendant.	)	

---

On Tuesday, September 22, 1992, at the hour of 11:00 a.m. a hearing was held on Plaintiff's notice of possession bond which had been served upon the Defendant, Howard Hatch. James R. Boud appeared on behalf of Plaintiff along with representatives of the Plaintiff. Howard Hatch appeared personally and personally requested the hearing. After hearing the arguments of counsel, James R. Boud, and Defendant, Howard Hatch, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court requires the Defendant, Howard Hatch, if he is to retain possession of the premises, to post a counter-bond in the form of cash or cashier's check in the amount of \$3,500.00. The Court acknowledges that this bond would have been lower had the Defendant not requested a jury trial in the above matter and filed



a counterclaim. However, it clearly appears to the Court that with the complications in the case, and the requested jury trial, that \$3,500.00 is a minimum bond for the Defendant to post in order to protect Plaintiff for attorney fees and costs that will be expended in the prosecution and trial of this case. The Court acknowledges that Plaintiff has shown its good faith by posting a \$5,000.00 cashier's check with the Court in order to protect the Defendant should Defendant prevail.

2. The \$3,500.00 bond shall be posted by Friday, September 25, 1992, at 5:00 p.m. If said bond is not posted, then the Clerk of the Court shall issue a writ of restitution in favor of the Plaintiff. It was acknowledged at the hearing that rents for July, August, and September have not been paid. If Defendant does not pay these rents into the Court, then Plaintiff shall have a right to make the rent an issue in this case and proceed with a summary judgment motion against the Defendant as authorized by Utah Code Annotated Section 57-16-8.

DATED this \_\_\_\_ day of September, 1992.

15  
JUDGE JOHN BACKLUND

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Order was mailed postage prepaid on the 23 day of September, 1992, to the following:

Howard Hatch  
843 South 1150 East  
Pleasant Grove, UT 84062

03-14-BN

[Signature]

## JJBAKD

**VS**

Defendant.

JUDGE Robert J. Sumsion

Circuit Court Judge

ADDENDUM "B"

JJBAKD, a Utah General Partnership,  
Plaintiff,  
  
vs  
  
HOWARD HATCH,  
  
Defendant.

**CASE# 920002330 CV**

  
Circuit Court Judge

ADDENDUM "C"

James R. Boud, USB #A0388  
Bradley R. Jones, USB #A4747  
ASHTON, BRAUNBERGER, POULSEN & BOUD, P.C.  
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---

IN THE FOURTH CIRCUIT COURT, PROVO DEPARTMENT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

---

JJBAKD, a Utah General Partnership,	)	
	)	ORDER
Plaintiff,	)	
	)	
vs.	)	Civil No. 920-2330 CV
	)	
HOWARD F. HATCH,	)	
	)	
Defendant.	)	

---

Plaintiff's Motion for Summary Judgment having come before the above-entitled Court, based upon the pleadings and for good cause showing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff shall have Judgment against the Defendant for \$680.00 rent; \$881.25 attorneys fees for a total of \$1,561.25.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is entitled to restitution of the premises described as 920 South 340 West, Provo, Utah and that the lease agreement between the parties is hereby terminated. The Clerk of the Court

is hereby authorized to issue a Writ of Restitution on behalf of Plaintiff for the purpose of restoring the premises to Plaintiff.

DATED this \_\_\_\_\_ day of October, 1992.

BY THE COURT:

151  
Circuit Court Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Order was mailed postage prepaid on the 12 day of October, 1992, to the following:

Howard F. Hatch  
843 South 1150 East  
Pleasant Grove, Utah 84062

ASHTON, BRAUNBERGER, POULSEN  
& BOUD, P.C.

25

FOURTH CIRCUIT COURT, STATE OF UTAH  
UTAH COUNTY, PROVO DEPARTMENT

JJBAKED, a Utah General Partnership,	)	
	)	
	)	Minute Entry
	)	
Plaintiff,	)	
vs	)	CASE# 920002330 CV
	)	
HOWARD HATCH,	)	
	)	
	)	
Defendant.	)	

---

The assignment of this case was pursuant to the procedure set up by the Utah Law, that is by the presiding Judge of the Circuit who is Judge Sumsion.

I have not discussed this case with Judge Sumsion or any other person and am at this time making it very clear to the parties and their attorneys that I will accept no phone calls on this case, no personal contacts and no further letters directed personally to me and not the file.

Mr. Hatch, I would not know you if you walked through the door, which of course. based on the above you will not do. I know none of the parties and have absolutely no desire to know any of the parties. I have only briefly reviewed the file for purposes of ruling on a motion. At this moment I could not tell you the averments of plaintiffs' complaint and who is plaintiff and who is defendant in the case.

I am a hands on Judge and will play an active part in moving this case, as I do all my civil cases, through the Court system in hopefully an efficient and timely way.

The facts of the case and applicable law is all that interests me in this civil case as all others.

DATED: November 9, 1992

  
Circuit Court Judge

I do hereby certify that copies of the foregoing Minute Entry were mailed, postage prepaid, on this 10th day of November, 1992 to the following parties.

Howard F. Hatch, 843 South 1150 East, Pleasant Grove, UT 84062  
James R. Boud, 302 West 5400 South, Suite 103, Murray, UT 84107

Davi Coombs  
Circuit Court Clerk

# **CHAPTER 16**

## **MOBILE HOME PARK RESIDENCY**

### **57-16-2. Purpose of chapter.**

The fundamental right to own and protect land and to establish conditions for its use by others necessitate that the owner of a mobile home park be provided with speedy and adequate remedies against those who abuse the terms of a tenancy. The high cost of moving mobile homes, the requirements of mobile home parks relating to their installation, and the cost of landscaping and lot preparation necessitate that the owners of mobile homes occupied within mobile home parks be provided with protection from actual or constructive eviction. It is the purpose of this chapter to provide protection for both the owners of mobile homes located in mobile home parks and for the owners of mobile home parks.

### **57-16-3. Definitions.**

As used in this chapter:

(1) "Mobile home" means a transportable structure in one or more sections with the plumbing, heating, and electrical systems contained within the unit, which when erected on a site, may be used with or without a permanent foundation as a family dwelling.

(2) "Mobile home park" means any tract of land on which two or more mobile home spaces leased, or offered for lease or rent, to accommodate mobile homes for residential purposes.

(3) "Resident" means an individual who leases or rents space in a mobile home park.

(4) "Mobile home space" means a specific area of land within a mobile home park designed to accommodate one mobile home.

(5) "Rent" means charges paid for the privilege of occupying a mobile home space, and may include service charges and fees.

(6) "Service charges" means separate charges paid for the use of electrical and gas service improvements which exist at a mobile home space, or for trash removal, sewage and water, or any combination of the above.

(7) "Fees" means other charges incidental to a resident's tenancy including, but not limited to, late fees, charges for pets, charges for storage of recreational vehicles, charges for the use of park facilities, and security deposits.

(8) "Change of use" means a change of the use of a mobile home park, or any part of it, for a purpose other than the rental of mobile home spaces.

### **57-16-4. Termination of lease by park owner — Requirement for lease agreement.**

(1) A mobile home park or its agents may not terminate a lease or rental agreement upon any ground other than as specified in this chapter.

(2) Each agreement for the lease of mobile home space shall be written and signed by the parties. Each lease shall contain at least the following information:

(a) the name and address of the mobile home park owner and any persons authorized to act for the owner, upon whom notice and service of process may be served;

(b) the type of the leasehold, and whether it be term or periodic;



(c) a full disclosure of all rent, service charges, and other fees presently being charged on a periodic basis;

(d) the date or dates on which the payment of rent, fees, and service charges are due; and

(e) all rules that pertain to the mobile home park which, if broken, may constitute grounds for eviction.

(3) Increases in rent or fees for periodic tenancies shall be unenforceable until 60 days after notice of the increase is mailed to the resident. If service charges are not included in the rent, service charges may be increased during the leasehold period after notice to the resident is given, and increases or decreases in electricity rates shall be passed through to the resident. Increases or decreases in the total cost of other service charges shall be passed through to the resident.

The mobile home park may not alter the date or dates on which rent, fees, and service charges are due unless a 60-day written notice precedes the alteration.

(4) Any rule or condition of a lease purporting to prevent or unreasonably limit the sale of a mobile home belonging to a resident is void and unenforceable. The mobile home park may, however, reserve the right to approve the prospective purchaser of a mobile home who intends to become a resident, but such approval may not be unreasonably withheld. The mobile home park may require proof of ownership as a condition of approval. The mobile home park may unconditionally refuse to approve any purchaser of a mobile home who does not register prior to purchase.

(5) A mobile home park may not restrict a resident's right to advertise for sale or sell his mobile home. However, the park may limit the size of a "for sale" sign affixed to the mobile home to not more than 144 square inches.

(6) A mobile home park may not compel a resident who desires to sell his mobile home, either directly or indirectly, to sell it through an agent designated by the mobile home park.

(7) In order to upgrade the quality of a mobile home park, it may require that a mobile home be removed from the park upon sale if:

(a) the mobile home does not meet minimum size specifications; or

(b) the mobile home is in rundown condition or in disrepair.

#### **57-16-5. Grounds for terminating lease.**

An agreement for the lease of mobile home space in a mobile home park may be terminated during its term by mutual agreement or for any one or more of the following causes:

(1) Failure of a resident to comply with a mobile home park rule for a period of 15 days after receipt of notice of noncompliance from the mobile home park;

(2) Repeated failure of a resident to abide by a mobile home park rule, if the original notice of noncompliance states that another violation of the same or a different rule might result in forfeiture without any further period of cure;

(3) Behavior by a resident which substantially endangers the security and health of the other residents or threatens the property in the park;

(4) Nonpayment of rent, fees, or service charges;

(5) A change in the land use or condemnation of the mobile home park or any part of it.

**57-16-6. Action for lease termination — Prerequisite procedure.**

A legal action to terminate a lease based upon a cause set forth in Section 57-16-5 may not be commenced except in accordance with the following procedure:

- (1) Before issuance of any summons and complaint, the mobile home park shall send or serve written notice to the resident or subtenant:
  - (a) by delivering a copy of the notice personally;
  - (b) by sending a copy of the notice through registered or certified mail addressed to the resident or subtenant at his place of residence;

- (c) if the resident or subtenant is absent from his place of residence, by leaving a copy of the notice with some person of suitable age and discretion at his residence and sending a copy through the mail addressed to the resident or subtenant at his place of residence;

or

- (d) if a person of suitable age or discretion cannot be found, by affixing a copy of the notice in a conspicuous place on the resident's or subtenant's mobile home and also sending a copy through the mail addressed to the resident or subtenant at his place of residence.

- (2) The notice shall set forth the cause for the notice and, if the cause is one which can be cured, the time within which the resident has to cure. The notice shall also set forth the time after which the mobile home park may commence legal action against the resident if cure is not effected, as follows:

- (a) In the event of failure to abide by a mobile home park rule, the notice shall provide for a 15-day cure period except in the case of repeated violations and, shall state that if a cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately.

- (b) If the resident commits repeated violations of a rule, a summons and complaint may be issued three days after a notice is served.

- (c) If a resident behaves in a manner that substantially endangers the well-being or property of other residents, eviction proceedings may commence immediately.

- (d) If a resident does not pay rent, fees, or service charges, the notice shall provide a three-day cure period and, that if cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately.

- (e) If there is a planned change in land use or condemnation of the park, the notice shall provide that the resident has 90 days after receipt of the notice to vacate the mobile home park if no governmental approval or permits incident to the planned change are required, and if governmental approval and permits are required, that the resident has 90 days to vacate the mobile home park after all permits or approvals incident to the planned change are obtained.

- (3) If the planned change in land use or condemnation requires the approval of a governmental agency, the mobile home park, in addition to the notice required by Subsection (2)(e), shall send written notice of the date set for the initial hearing to each resident at least seven days before the date scheduled for the initial hearing.

- (4) Regardless of whether the change of use requires the approval of any governmental agency, if the resident was not a resident of the mobile home park at the time the initial change of use notice was issued to residents the owner shall give notice of the change of use to the resident before he occupies the mobile home space.

(5) Eviction proceedings commenced under this chapter and based on causes set forth in Subsections 57-16-5(1), (2), and (5) shall be brought in accordance with the Utah Rules of Civil Procedure and shall not be treated as unlawful detainer actions under Chapter 36, Title 78. Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(3) and (4) may, at the election of the mobile home park, be treated as actions brought under this chapter and the unlawful detainer provisions of Chapter 36, Title 78, except, if unlawful detainer is charged, the court shall endorse on the summons the number of days within which the defendant is required to appear and defend the action, which shall not be less than five days or more than 20 days from the date of service.

#### **57-16-7. Rules of parks.**

(1) A mobile home park may promulgate rules related to the health, safety, and appropriate conduct of residents and to the maintenance and upkeep of such park. No change in rule that is unconscionable is valid. No new or amended rule shall take effect, nor provide the basis for an eviction notice, until the expiration of at least 60 days after its promulgation. Each resident, as a condition precedent to such rule being in effect, shall be provided with a copy of each new or amended rule that does not appear in their lease agreement.

(2) A mobile home park may specify the type of material used, and the methods used in the installation of, underskirting, awnings, porches, fences, or other additions or alterations to the exterior of a mobile home, and may also specify the tie-down equipment used in a mobile home space, in order to insure the safety and good appearance of the park; but under no circumstances may it require a resident to purchase such material or equipment from a supplier designated by the mobile home park.

(3) No mobile home park may charge an entrance fee, exit fee, nor installation fee, but reasonable landscaping and maintenance requirements may be included in the mobile home park rules. The resident is responsible for all costs incident to connection of the mobile home to existing mobile home park facilities and for the installation and maintenance of the mobile home on the mobile home space.

(4) Nothing in this section shall be construed to prohibit a mobile home park from requiring a reasonable initial security deposit.

#### **57-16-8. Payment of rent and fees during pendency of eviction proceeding.**

If a resident elects to contest an eviction proceeding, all rents, fees, and service charges due and incurred during the pendency of the action shall be paid into court according to the current mobile home park payment schedule. Failure of the resident to pay such amounts may, in the discretion of the court, constitute grounds for granting summary judgment in favor of the mobile home park. Upon final termination of the issues between the parties, the court shall order all amounts paid into court paid to the mobile home park. The prevailing party is also entitled to court costs and reasonable attorney's fees.

#### **57-16-9. Lienholder's liability for rent and fees.**

Notwithstanding the provisions of § 38-3-2 and § 70A-9-317, the lienholder of record of a mobile home is primarily liable to the mobile home park owner or operator for rent and service charges if a mobile home is not removed within 10 days after receipt of written notice that a mobile home has been abandoned or that a writ of restitution has been issued. The lienholder, however, is only liable for rent that accrues after receipt of such notice.

**57-16-10. Utility service to mobile home parks — Limitation on providers' charges.**

Local water, sewer, and sanitation entities, including those administered by municipalities and counties which provide water, sewer, or garbage collection services shall not receive a greater percentage net return from supplying a mobile home park than said entity receives from other residential customers. The net return is determined by taking into consideration the costs of maintenance and depreciation of the mobile home park facilities and all savings on administrative costs, including cost of billing residents.

**57-16-11. Rights and remedies not exclusive.**

The rights and remedies granted by this chapter are cumulative and not exclusive.

**57-16-12. Waiver of rights and duties prohibited.**

No park or resident may agree to waive any right, duty, or privilege conferred by this chapter.

**57-16-15.1. Eviction proceeding.**

(1) Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(1), (2), and (5), and eviction proceedings commenced under this chapter based on causes of action set forth in Subsections 57-16-5(3) and (4), where a landlord elects to bring an action under this chapter and not under the unlawful detainer provisions of Chapter 36, Title 78, shall provide for the following:

(a) A judgment may be entered upon the merits or upon default. A judgment entered in favor of the plaintiff may include an order of restitution of the premises. The judgment may also declare the forfeiture of the lease or agreement.

(b) The jury or the court, if the proceedings are tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:

(i) waste of the premises during the resident's tenancy, if waste is alleged in the complaint and proved; and

(ii) the amount of rent due.

(c) The judgment shall also provide for reasonable attorneys' fees, if they are provided for in the lease or agreement.

(d) If the proceeding is contested, the prevailing party is entitled to court costs and attorneys' fees, regardless of whether the lease agreement provides for the same.

## **CHAPTER 36**

### **FORCIBLE ENTRY AND DETAINER**

#### **78-36-1. "Forcible entry" defined.**

Every person is guilty of a forcible entry, who either:

- (1) by breaking open doors, windows or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstances of terror, enters upon or into any real property; or,
- (2) after entering peaceably upon real property, turns out by force, threats or menacing conduct the party in actual possession.

#### **78-36-2. "Forcible detainer" defined.**

Every person is guilty of a forcible detainer who either:

- (1) by force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or,
- (2) in the nighttime, or during the absence of the occupants of any real property, unlawfully enters thereon, and, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to such former occupant. The occupant of real property within the meaning of this subdivision is one who within five days preceding such unlawful entry was in the peaceable and undisturbed possession of such lands.

#### **78-36-3. Unlawful detainer by tenant for term less than life.**

(1) A tenant of real property, for a term less than life, is guilty of an unlawful detainer:

(a) when he continues in possession, in person or by subtenant, of the property or any part of it, after the expiration of the specified term or period for which it is let to him, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;

(b) when, having leased real property for an indefinite time with monthly or other periodic rent reserved:

(i) he continues in possession of it in person or by subtenant after the end of any month or period, in cases where the owner, his designated agent, or any successor in estate of the owner, 15 days or more prior to the end of that month or period, has served notice requiring him to quit the premises at the expiration of that month or period; or

(ii) in cases of tenancies at will, where he remains in possession of the premises after the expiration of a notice of not less than five days;

(c) when he continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, has remained uncomplied with for a period of three days after service, which notice may be served at any time after the rent becomes due;

(d) when he assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises, or when he sets up or carries on any unlawful business on or in the premises, or when he suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section 78-38-9, and remains in possession after service upon him of a three days' notice to quit; or

(e) when he continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the prop-

erty, served upon him and upon any subtenant in actual occupation of the premises remains uncomplied with for three days after service. Within three days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, then no notice need be given.

(2) Unlawful detainer by an owner resident of a mobile home is determined under Title 57, Chapter 16, Mobile Home Park Residency Act.

(3) The notice provisions for nuisance in Subsection 78-36-3(1)(d) are not applicable to nuisance actions provided in Sections 78-38-9 through 78-38-16 only.

#### **78-36-4. Right of tenant of agricultural lands to hold over.**

In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of his term without any demand of possession or notice to quit by the owner, his designated agent, or his successor in estate, he shall be deemed to be held by permission of the owner, his designated agent, or his successor in estate, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year; and the holding over for the 60-day period shall be taken and construed as a consent on the part of the tenant to hold for another year.

#### **78-36-5. Remedies available to tenant against undertenant.**

A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to an undertenant in case of his unlawful detention of the premises underlet to him.

#### **78-36-6. Notice to quit — How served.**

The notices required by the preceding sections may be served:

- (1) by delivering a copy to the tenant personally;
- (2) by sending a copy through registered or certified mail addressed to the tenant at his place of residence;
- (3) if he is absent from his place of residence or from his usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at the address of his place of residence or place of business; or
- (4) if a person of suitable age or discretion cannot be found at the place of residence, then by affixing a copy in a conspicuous place on the leased property. Service upon a subtenant may be made in the same manner.

#### **78-36-7. Necessary parties defendant.**

(1) No person other than the tenant of the premises, and subtenant if there is one in the actual occupation of the premises when the action is commenced, shall be made a party defendant in the proceeding, except as provided in Section 78-38-13, nor shall any proceeding abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made a party defendant; but when it appears that any of the parties served with process or appearing in the proceedings are guilty, judgment shall be rendered against those parties.

(2) If a person has become subtenant of the premises in controversy after the service of any notice as provided in this chapter, the fact that such notice was not served on the subtenant is not a defense to the action. All persons who enter under the tenant after the commencement of the action shall be bound by the judgment the same as if they had been made parties to the action.

(3) A landlord, owner, or designated agent is a necessary party defendant only in an abatement by eviction action for an unlawful drug house as provided in Section 78-38-13.

#### **78-36-8. Allegations permitted in complaint — Time for appearance — Service of summons.**

The plaintiff in his complaint, in addition to setting forth the facts on which he seeks to recover, may set forth any circumstances of fraud, force, or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor or compensation for the occupation of the premises, or both. If the unlawful detainer charged is after default in the payment of rent, the complaint shall state the amount of rent due. The court shall indorse on the summons the number of days within which the defendant is required to appear and defend the action, which shall not be less than three or more than 20 days from the date of service. The court may authorize service by publication or mail for cause shown. Service by publication is complete one week after publication. Service by mail is complete three days after mailing. The summons shall be changed in form to conform to the time of service as ordered, and shall be served as in other cases.

**78-36-8.5. Possession bond of plaintiff — Alternative remedies.**

(1) At any time between the filing of his complaint and the entry of final judgment, the plaintiff may execute and file a possession bond. The bond may be in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action. The court shall approve the bond in an amount that is the probable amount of costs of suit and damages which may result to the defendant if the suit has been improperly instituted. The bond shall be payable to the clerk of the court for the benefit of the defendant for all costs and damages actually adjudged against the plaintiff. The plaintiff shall notify the defendant that he has filed a possession bond. This notice shall be served in the same manner as service of summons and shall inform the defendant of all of the alternative remedies and procedures under Subsection (2).

(2) The following are alternative remedies and procedures applicable to an action if the plaintiff files a possession bond under Subsection (1):

(a) With respect to an unlawful detainer action based solely upon non-payment of rent or utilities, the existing contract shall remain in force and the complaint shall be dismissed if the defendant, within three days of the service of the notice of the possession bond, pays accrued rent, utility charges, any late fee, and other costs, including attorney's fees, as provided in the rental agreement.

(b) The defendant may remain in possession if he executes and files a counter bond in the form of a corporate bond, a cash bond, certified funds, or a property bond executed by two persons who own real property in the state and who are not parties to the action. The form of the bond is at the defendant's option. The bond shall be payable to the clerk of the court. The defendant shall file the bond prior to the expiration of three days from the date he is served with notice of the filing of plaintiff's possession bond. The court shall approve the bond in an amount that is the probable amount of costs of suit and actual damages that may result to the plaintiff if the defendant has improperly withheld possession. The court shall consider prepaid rent to the owner as a portion of the defendant's total bond.

(c) The defendant, upon demand, shall be granted a hearing to be held prior to the expiration of three days from the date the defendant is served with notice of the filing of plaintiff's possession bond.

(3) If the defendant does not elect and comply with a remedy under Subsection (2) within the required time, the plaintiff, upon ex parte motion, shall be granted an order of restitution. The constable of the precinct or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff promptly.

(4) If the defendant demands a hearing under Subsection (2)(c), and if the court rules after the hearing that the plaintiff is entitled to possession of the property, the constable or sheriff shall promptly return possession of the property to the plaintiff. If at the hearing the court allows the defendant to remain in possession and further issues remain to be adjudicated between the parties, the court shall require the defendant to post a bond as required in Subsection (2)(b). If at the hearing the court rules that all issues between the parties can be adjudicated without further court proceedings, the court shall, upon adjudicating those issues, enter judgment on the merits.



### **78-36-9. Proof required by plaintiff — Defense.**

On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, had been in the quiet possession thereof for the space of one whole year continuously next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

### **78-36-10. Judgment for restitution, damages, and rent — Immediate enforcement — Treble damages.**

(1) A judgment may be entered upon the merits or upon default. A judgment entered in favor of the plaintiff shall include an order for the restitution of the premises. If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:

- (a) forcible entry;
- (b) forcible or unlawful detainer;
- (c) waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial;
- (d) the amount of rent due, if the alleged unlawful detainer is after default in the payment of rent; and
- (e) the abatement of the nuisance by eviction as provided in Sections 78-38-9 through 78-38-16.

(3) The judgment shall be entered against the defendant for the rent, for three times the amount of the damages assessed under Subsections (2)(a) through (2)(c), and for reasonable attorney's fees, if they are provided for in the lease or agreement.

(4) If the proceeding is for unlawful detainer after default in the payment of the rent, execution upon the judgment shall be issued immediately after the

entry of the judgment. In all cases, the judgment may be issued and enforced immediately.

### **78-36-11. Time for appeal.**

(1) Except as provided in Subsection (2), either party may, within ten days, appeal from the judgment rendered.

(2) In a nuisance action under Sections 78-38-9 through 78-38-16, any party may appeal from the judgment rendered within three days.

**78-36-12. Exclusion of tenant without judicial process prohibited — Abandoned premises excepted.**

It is unlawful for an owner to willfully exclude a tenant from the tenant's premises in any manner except by judicial process, provided, an owner or his agent shall not be prevented from removing the contents of the leased premises under Subsection 78-36-12.6(2) and retaking the premises and attempting to rent them at a fair rental value when the tenant has abandoned the premises.

**78-36-12.3. Definitions.**

(1) "Willful exclusion" means preventing the tenant from entering into the premises with intent to deprive the tenant of such entry.

(2) "Owner" means the actual owner of the premises and shall also have the same meaning as landlord under common law and the statutes of this state.

(3) "Abandonment" is presumed in either of the following situations:

(a) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent within 15 days after the due date, and there is no reasonable evidence other than the presence of the tenant's personal property that the tenant is occupying the premises; or

(b) The tenant has not notified the owner that he or she will be absent from the premises, and the tenant fails to pay rent when due and the tenant's personal property has been removed from the dwelling unit and there is no reasonable evidence that the tenant is occupying the premises.

**78-36-12.6. Abandoned premises — Retaking and rerenting by owner — Liability of tenant — Personal property of tenant left on premises.**

(1) In the event of abandonment the owner may retake the premises and attempt to rent them at a fair rental value and the tenant who abandoned the premises shall be liable:

(a) for the entire rent due for the remainder of the term; or

(b) for rent accrued during the period necessary to re-rent the premises at a fair rental value, plus the difference between the fair rental value and the rent agreed to in the prior rental agreement, plus a reasonable commission for the renting of the premises and the costs, if any, necessary to restore the rental unit to its condition when rented by the tenant less normal wear and tear. This subsection applies, if less than Subsection (a) notwithstanding that the owner did not re-rent the premises.

(2) If the tenant has abandoned the premises and has left personal property on the premises, the owner is entitled to remove the property from the dwelling, store it for the tenant, and recover actual moving and storage costs from the tenant. The owner shall make reasonable efforts to notify the tenant of the location of the personal property; however, if the property has been in storage for over 30 days and the tenant has made no reasonable effort to recover it, the owner may sell the property and apply the proceeds toward any amount the tenant owes. Any money left over from the sale of the property shall be handled as specified in Section 78-44-18. Nothing contained in this act shall be in derogation of or alter the owner's rights under Title 38, Chapter 3.

Howard F. Hatch  
843 South 1150 East  
Pleasant Grove, UT 84062  
Ph: 785-4818 / 227-6598

IN THE FOURTH CIRCUIT COURT, PROVO DEPARTMENT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

JJBAKD, a Utah General Partnership,	)	DEFENDANT'S
	)	AFFIDAVIT OF IMPECUNIORITY
Plaintiff,	)	
<b>vs.</b>	)	Civil No. 920-2330 CV
HOWARD F. HATCH	)	Judge MCGUIRE
Defendant.	)	

State of Utah,  
                  : ss  
County of Utah.

The Affiant, Howard F. Hatch, says and avers as follows:

1. That I am the Defendant in the above entitled case.
2. That due to my present poverty I am unable to bear the expenses of the appeal I have taken in this case and that I verily believe I am justly entitled to the relief sought by such an appeal.

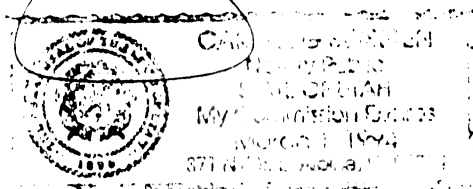
Further, the Affiant sayeth naught at this time.

DATED: 1-19-93

  
Howard F. Hatch, pro se

SWORN AND SUBSCRIBED TO this 19<sup>th</sup> day of January, 1993.

  
Notary Public



the decision. Judicial review shall be governed by the procedures set forth in Utah Code Ann. § 63-46b-15.  
(Amended effective January 15, 1990; April 15, 1991; January 1, 1992; February 1, 1993.)

**Amendment Notes.** — The 1990 amendment renumbered this rule, formerly Rule 4-405; added the phrase beginning "and to" under "Applicability"; added "Upon initial application, and thereafter" to the beginning of Subdivision (1); in Subdivision (1)(C), inserted the subdivision designation (i) and added Subdivisions (ii) through (vii); redesignated former Subdivision (1)(D) as Subdivision (1)(C)(xiii); redesignated former Subdivision (1)(E) as Subdivision (1)(D); redesignated former Subdivisions (1)(F) through (J) as Subdivisions (1)(C)(viii) through (xii) and in Subdivision (viii) substituted "existing in Utah or any other state" for "in any court of the state"; added Subdivisions (2)(A) through (C), (3), (4), and (5)(A) and the first two sentences in Subdivision (5)(B), making former Subdivision (3) the third sentence in present Subdivision (5)(B); deleted former Subdivision (4), providing for full faith and credit among courts for orders qualifying sureties; redesignated former Subdivisions (5) through (7) as Subdivisions (5)(C) and (D) and (6); substituted "circuit" for "court" in Subdivision (5)(C); substituted "presiding judge" for "court" in two places in Subdivision (5)(D); substituted "March 1st" for "February 28th" in Subdivision (6); added Subdivision (7); and made stylistic changes throughout.

The 1991 amendment in Subdivision (1) added "or if the statement is made on behalf of

a business or corporation, a statement that the business or corporation" to the introductory language of paragraph (C) and made stylistic changes; rewrote Subdivision (2) to delete language relating to appraisals and inserted "prepared by a certified public accountant"; redesignated former Subdivision (2)(C) as present Subdivision (3), added present Subdivision (4), and renumbered the remaining subdivisions accordingly, making appropriate reference changes throughout; in present Subdivision (3), deleted "audited" before "financial statement" and substituted "surety" for "company" in the first sentence and substituted "the value" for "a ratio of bond dollars to letter of credit dollars" in the second sentence; in present Subdivision (5), substituted "current assets" for "real assets" in two places; and rewrote present Subdivision (6) to delete a table setting out the ratio of bond dollars outstanding to net worth value.

The 1992 amendment substituted "Commercial" for "qualifications of" in the rule heading, inserted "re-qualification and disqualification" and "commercial" in the Intent section, and substantially rewrote the rule.

The 1993 amendment, effective February 1, 1993, in Subdivision (6) added the designation (A), deleted "the lesser of \$500,000 or" after "exceed" in Subdivision (A), and added Subdivision (B).

## **Rule 4-408. Locations of trial courts of record.**

### **Intent:**

To designate locations of trial courts of record.

### **Applicability:**

This rule shall apply to all trial courts of record.

### **Statement of the Rule:**

(1) Each county seat and the following **municipalities** are hereby designated as locations of trial courts of record: **American Fork; Bountiful; Cedar City; Clearfield; Kaysville; Layton; Murray; Orem; Park City; Roosevelt; Roy; Salem; Sandy; Spanish Fork; West Valley City.**

(2) Subject to limitations imposed by law, a trial court of record of any subject matter jurisdiction may hold court in any location designated by this rule.

(Added effective January 1, 1992.)

## **ARTICLE 5. CIVIL PRACTICE.**

### **Rule 4-501. Motions.**

#### **Intent:**

To establish a uniform procedure for filing motions, supporting memoranda and documents with the court.

To establish a uniform procedure for requesting and scheduling hearings on dispositive motions

To establish a procedure for expedited dispositions

**Applicability:**

This rule shall apply to motion practice in all district and circuit courts except proceedings before the court commissioners and the small claims department of the circuit court. This rule does not apply to petitions for habeas corpus or other forms of extraordinary relief.

**Statement of the Rule:**

**(1) Filing and service of motions and memoranda.**

(a) **Motion and supporting memoranda.** All motions, except uncontested or ex-parte matters, shall be accompanied by a memorandum of points and authorities appropriate affidavits, and copies of or citations by page number to relevant portions of depositions, exhibits or other documents relied upon in support of the motion. Memoranda supporting or opposing a motion shall not exceed ten pages in length exclusive of the "statement of material facts" as provided in paragraph (2), except as waived by order of the court on ex-parte application. If an ex-parte application is made to file an over-length memorandum, the application shall state the length of the principal memorandum, and if the memorandum is in excess of ten pages, the application shall include a summary of the memorandum, not to exceed five pages.

(b) **Memorandum in opposition to motion.** The responding party shall file and serve upon all parties within ten days after service of a motion, a memorandum in opposition to the motion, and all supporting documentation. If the responding party fails to file a memorandum in opposition to the motion within ten days after service of the motion, the moving party may notify the clerk to submit the matter to the court for decision as provided in paragraph (1)(d) of this rule.

(c) **Reply memorandum.** The moving party may serve and file a reply memorandum within five days after service of the responding party's memorandum.

(d) **Notice to submit for decision.** Upon the expiration of the five-day period to file a reply memorandum, either party may notify the Clerk to submit the matter to the court for decision. The notification shall be in the form of a separate written pleading and captioned "Notice to Submit for Decision." The notification shall contain a certificate of mailing to all parties. If neither party files a notice, the motion will not be submitted for decision.

**(2) Motions for summary judgment.**

(a) **Memorandum in support of a motion.** The points and authorities in support of a motion for summary judgment shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the movant relies.

(b) **Memorandum in opposition to a motion.** The points and authorities in opposition to a motion for summary judgment shall begin with a section that contains a concise statement of material facts as to which the party contends a genuine issue exists. Each disputed fact shall be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the opposing party relies, and, if applicable, shall state the numbered sentence or sentences of the movant's facts that are disputed. All material facts set forth in the movant's statement and properly supported by an accurate reference to the record shall be

deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party's statement.

**(3) Hearings.**

(a) A decision on a motion shall be rendered without a hearing unless ordered by the Court, or requested by the parties as provided in paragraphs (3)(b) or (4) below.

(b) In cases where the granting of a motion would dispose of the action or any issues in the action on the merits with prejudice, either party at the time of filing the principal memorandum in support of or in opposition to a motion may file a written request for a hearing.

(c) Such request shall be granted unless the court finds that (a) the motion or opposition to the motion is frivolous or (b) that the dispositive issue or set of issues governing the granting or denial of the motion has been authoritatively decided.

(d) When a request for hearing is denied, the court shall notify the requesting party. When a request for hearing is granted, the court shall set the matter for hearing or notify the requesting party that the matter shall be heard and the requesting party shall schedule the matter for hearing and notify all parties of the date and time.

(e) In those cases where a hearing is granted, a courtesy copy of the motion, memorandum of points and authorities and all documents supporting or opposing the motion shall be delivered to the judge hearing the matter at least two working days before the date set for hearing. Copies shall be clearly marked as courtesy copies and indicate the date and time of the hearing. Courtesy copies shall not be filed with the clerk of the court.

(f) If no written request for a hearing is made at the time the parties file their principal memoranda, a hearing on the motion shall be deemed waived.

(g) All dispositive motions shall be heard at least thirty (30) days before the scheduled trial date. No dispositive motions shall be heard after that date without leave of the Court.

**(4) Expedited dispositions.** Upon motion and notice and for good cause shown, the court may grant a request for an expedited disposition in any case where time is of the essence and compliance with the provisions of this rule would be impracticable or where the motion does not raise significant legal issues and could be resolved summarily.

**(5) Telephone conference.** The court on its own motion or at a party's request may direct arguments of any motion by telephone conference without court appearance. A verbatim record shall be made of all telephone arguments and the rulings thereon if requested by counsel.

(Amended effective January 15, 1990; April 15, 1991.)

**Amendment Notes.** — The 1990 amendment rewrote this rule to such an extent that a detailed description is impracticable.

The 1991 amendment deleted "and a copy of

the proposed order" following "supporting documentation" in Subdivision (1)(b) and made related stylistic changes and inserted "principal" in Subdivision (3)(b).

## NOTES TO DECISIONS

### ANALYSIS

When rule applies.  
Cited.

**When rule applies.**

Because the defendants' Rule 56(e) objection to the plaintiff's first affidavit was framed as a separate, written motion to strike, the plaintiff

should have been given ten days to respond, as prescribed by Subdivision (1)(b) of this rule. *Gillmor v. Cummings*, 806 P.2d 1205 (Utah Ct. App. 1991).

Cited in *Huston v. Lewis*, 818 P.2d 531 (Utah 1991); *Lucero v. Warden of Utah State Prison*, 841 P.2d 1230 (Utah Ct. App. 1992).