

CHAMBERLAIN ASSOCIATES

ATTORNEY AT LAW

225 NORTH 100 EAST

RICHFIELD, UTAH 84701

RICHARD K. CHAMBERLAIN

TELEPHONE 435-896-4461
TELEFAX 435-896-5441

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Bruce Wisan
Wisan, Smith, Racker & Prescott
132 Pierpont Ave., Ste. 250
Salt Lake City, UT 84101

Jeffrey L. Shields
Gateway Tower East Ste. 900
10 East South Temple
Salt Lake City, UT 84133

RE: Service of Process and Serving of Notices

Dear Bruce & Jeff:

I am enclosing a memo that I prepared at the request of the mayor and city council.

It sounds as though some of the individuals posting notices and trying to serve process down in Hildale have become a little careless and callous about the manner in which they're completing their assignment. I truly believe that under some circumstances they are committing criminal trespass and they are interfering with the occupant's right to privacy and the safe and secure occupancy of the premises.

What I would hope to see is some guidance given to these people to be more respectful and considerate of the people and still complete their duties.

I would appreciate an opportunity to talk to you about this issue and a possible solution.

Yours very truly,

CHAMBERLAIN ASSOCIATES

By


Richard K. Chamberlain

RKC:jmm

MEMORANDUM

DATE: June 20, 2006
TO: Hildale Mayor and City Council
FROM: Richard K. Chamberlain
RE: Trespass

The pertinent provisions of Section 76-6-206 of the Utah Code defining criminal trespass read:

A person is guilty of personal trespass if . . . he enters or remains unlawfully on property and . . . is reckless as to whether his presence will cause fear for the safety of another . . . or enters or remains on property as to which notice against entering is given by . . . fencing or other enclosure obviously designed to exclude intruders or posting of signs reasonably likely to come to the attention of intruders.

Those individuals crossing fences or entering property posted with no trespassing signs will claim that they are not intruders because they are there under the authority of the land owner. However, there are Utah court cases outlining the extent to which a landlord can authorize another's entry or presence upon property occupied by a separate tenant.

The court in the State of Utah v. Earl, 1992 P.3d 167 (UT App. 2004) stated that "consequently, although a landlord possesses the bundle of property rights associated with property ownership, he does not possess the authority to grant police officers access to property leased to a tenant."

The analysis of the case revolved around the reasonable expectation of privacy granted a tenant or occupant and that a landlord did not possess the authority to grant an agent or other person the right to violate another person's reasonable expectation of privacy.

Likewise in State of Utah v. Elder, 815 P.2d 1341 (UT App. 1991) the court addressed the issue as it pertained to the right of an officer to search the crawlspace of a home. In Elder, the tenant had given keys to the landlord to enable the landlord to obtain some personal property of the tenant at his request. Even though the keys had been given to the landlord, the court held that such did not give the landlord authority to exceed the purpose for which the keys were given much less authorize others on to the property.

The fact that Section 76-6-206 defining criminal trespass includes reference to persons entering property fenced or posted establishes that a tenant or occupant of such property has a reasonable expectation of privacy as to the area fenced and posted.

It is my understanding that individuals attempting to post notices on the property are crossing fences and entering upon posted property into the late evening, even after dark. It is my opinion that such action, if true, clearly represents reckless indifference to the occupant's right to a sense of safety and security.

The citizens of the town are not obligated to assume that those entering on their property are honest and upright individuals. On the contrary, it is reasonable to assume that some individuals may be seeking the opportunity to evaluate and investigate the property or otherwise "case" the property to burglarize it at that time or at a later date.

The City has not been provided with any background checks for these individuals or given any assurance of the character and caliber of the individuals hired to post notices. Even if such had been given, there have been instances where individuals outside of those hired see this as an opportunity to blend in with the real employees in order to obtain easy access to the property for illegal purposes.

Further, it seems unnecessary and unreasonable to cross a fence or enter upon posted property to attach a notice on a door as opposed to posting the same on the fence without invading the property. There is no reason to believe that notice taped to the front door imparts better notice than the same taped to the fence near a gate or entrance to the property.

It is my opinion that these individuals are committing criminal trespass when they cross over fences or enter onto property that has been clearly posted "no trespassing" and that the landlord does not have the authority to grant these individuals access to such property.