

Understanding the Eviction Process

Presented by the 12th
Judicial District Access to
Justice Committee

Why are we here?



- Access to Justice Committee
 - Educate community members about court processes and provide resources for better access to the courts
- Important for tenant, landlord, and court that landlords understand how to proceed with an eviction correctly and understand and respect tenants' rights in the process
 - Less confusion = less conflict

What to expect from this presentation:

- General overview of how the eviction process works: what to do and what not to do
- Return of Security deposits
- Panel discussion
- NOT COVERED: Special rules for evictions in a mobile home park; foreclosure evictions; collection of a money judgment; appeals

Before you begin... know your lease agreement!

- Lease agreement does not necessarily have to be written to be enforceable, but it is preferable because it will make the terms clear for the landlord, tenant, and court, if necessary
- Lease agreement should contain information/terms including:
 - Term/duration of lease
 - Type and length of notice required to terminate the tenancy
 - What actions will constitute a violation of the lease and what happens when such a violation occurs





END

Terminating a Tenancy

- **No eviction required**

- Tenant and landlord agree to a move-out date voluntarily
- End of term—lease period ends on definite date, depending on terms of lease, no notice required
- NOTE: if you accept rent after the date the lease was set to terminate, you may have extended the tenancy for another term

- **Eviction required**

- Ending a tenancy with no definite end date
- Termination due to violation of terms of lease agreement
- Forcible Entry and Detainer—see C.R.S. § 13-40-101
- Unlawful Detention—see C.R.S. § 13-40-103

- Landlord CANNOT simply lockout a tenant or turn off heat, electricity, water or other utilities
 - Called a constructive eviction and it is a violation of the tenant's rights and may result in liability on the part of the landlord for tenant's damages
- Landlord CANNOT simply call the Sheriff to come and remove a tenant—Sheriff's office will not assist in removing a tenant without a court order directing them to do so

Starting the Eviction process:

What NOT to do



Starting the Eviction Process: Written Notice to Tenant

- The eviction process always begins with written notice to tenant—the type and length of notice may depend on why eviction and type of tenancy
- Check the terms of lease first
- Form notices available on courts website:
 - www.courts.state.co.us
 - Click on “Self Help/Forms”, then “All Court Forms & Instructions” then “Housing (Evictions, Foreclosures, and Unauthorized Persons Removal)”

EVICTIION NOTICE

We regret to inform you that your suite is scheduled for
demolition in the next three days.

If you do not leave within the next three days, you forfeit the right to occupy your suite. Anyone left inside is outside our responsibility. This may mean the loss of your suitcases, but in reality, 24,813 suitcases have been demolished by the Denver Police in the West Bank, East Anderson and Glavo since 1987. Legal removal of your unit without proper justification. Have the outside air one of many items of Colorado government owned by the State, Colorado Police, (Supplies) Find out more at www.denverpolice.com. Do this, this is not a real eviction notice.

Demand for Compliance or Right to Possession

Non-payment of Rent

- Identify amount of rent owed and dates owed for
- Gives tenant 3 days to leave property OR comply by paying rent owed

Minor violation of lease

- Clearly identify the provision/term of lease that was violated
- Gives tenant 3 days to leave property OR comply by curing lease violation

Demand for Compliance or Right to Possession

DEMAND FOR COMPLIANCE OR RIGHT TO POSSESSION NOTICE
FOR
PROPERTY LOCATED IN _____ COUNTY

To: _____ (Tenant)

I hereby demand that you shall, within three days of the time this notice is served upon you, either comply with the covenant stated below or deliver to the Landlord the possession of the premises identified below:

Street Address _____		
City _____		County _____
Subdivision	Lot	Block

The covenant/condition with which you are to comply is (check one or both, as applicable)

The payment to the landlord in the sum of \$ _____ being past due rent and owed to the landlord from _____, 20 _____, to _____ 20 _____.

Other covenant of the lease that is being violated is: _____

The covenant/condition checked above constitutes default under the terms of the Lease, and this default entitles the Landlord to possession of the premises.

The rental for said premises is \$ _____ per _____.

Dated: _____

Landlord/Property Manager

Agent or Attorney

Notice to Quit

- Landlord wants to terminate the tenancy at the end of term—no reason is necessary
- Length of notice depends on term of tenancy—see C.R.S. §13-40-107
- Notice period calculated from **end of term** (e.g. 21 days from end of month)

Term of Tenancy:	Length of Required notice:
1 year or more	91 days
6 months or more, but less than 1 year	28 days
1 month or more but less than 6 months	21 days
1 week or more, but less than one month; tenancy at will	3 days
Less than 1 week	1 day

Notice to Quit

Repeat Minor Violation

- Clearly indicate the provision/term of lease violated
- Must have given previous notice for same violation
- Tenant has 3 days to leave property
- Does not give tenant the opportunity to cure by complying with term of lease

Substantial Violation

- Tenant has 3 days to leave property
- Does not give tenant opportunity to cure violation
- Notice must indicate violation and must fall within statutory definition of “substantial violation”
- **There are some exceptions—e.g. for victims of Domestic Violence (can still evict offender)**

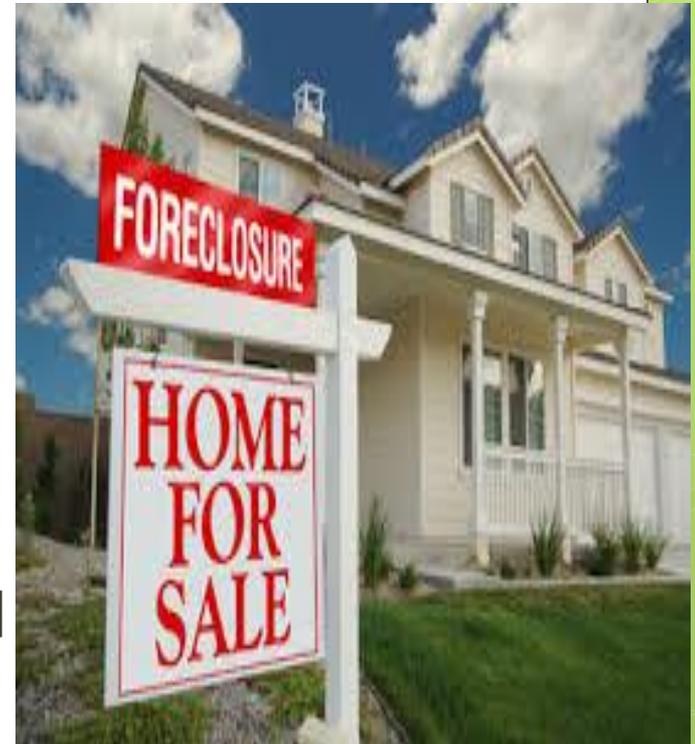
“Substantial Violation”



- Refers to an action by the tenant or a guest or invitee of the tenant that occurs on or near the property and:
 - Endangers the person or willfully and substantially endangers the property of landlord, co-tenant or person living on or near premises;
 - Is a violent or drug-related felony; or
 - Is declared a public nuisance and carries a potential sentence of 180 days or more.
- See C.R.S. § 13-40-107.5

Notice to Quit

- Eviction After Public Trustee or Judicial Foreclosure; Eviction After Authorized Sale by Personal Representative; and Eviction After Failure to Make Payments on Installment Land Contract or Similar Transaction. See §§ 13-40-104(1)(f)(g)(h) and (i), C.R.S.



Notice to Quit

NOTICE TO QUIT (Please Type or Print Legibly)

To: _____ Any and all other occupants.

Pursuant to §13-40-107, C.R.S., you are hereby notified by the undersigned owner that your tenancy of the land and premises described below is terminated as of _____ (date) at _____ (time) and you are accordingly notified to vacate said premises and surrender possession thereof on or before said date and time.

Street Address _____

City _____ County _____

Subdivision

Lot

Block

Describe the property and the particular time when the tenancy will terminate: _____

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.
(Checking this box requires you to remove JDF number and copyright at the bottom of the form.)

Date: _____

Landlord/Owner

By: _____
Landlord/Owner's Agent or Attorney

Steps in Giving Notice:

1) Service of Notice—Notice must be hand delivered to tenant or posted in conspicuous place on property.

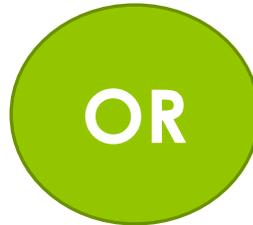
Note: Not required to use sheriff/process server, but recommended you have a neutral party deliver notice.



2) Wait notice period—Starts on **day after** notice posted and cannot end on a Saturday, Sunday or holiday (will run to next business day).



3)a. Tenant gets out or complies—end of process.



3)b. Tenant does not leave property—start an FED (eviction) case with the court.

Starting a Court Case:

Who can bring the case

- The action must be filed by a “person in interest”, i.e. the property owner or other individual or entity identified as the landlord or lessor on the lease. If you are the property manager or the individual or entity acting as an agent for the owner(s), you may be required to show proof of your authority to the Court.
- NOTE: The general rule is that corporations and other entities must be represented by an attorney in court cases—C.R.S. § 12-5-101
 - *There is an exception for “closely-held entities” with no more than 3 owners—C.R.S. § 13-1-127*

What is needed to start a court case?

- Complaint (Form JDF 99)
 - Attach copy of written lease, if any
 - Attach copy of Notice served on tenant
- Summons (Form CRCCP 1A)
 - If you are not represented by an attorney, complete the top portion only and clerk will fill in the rest when you file
 - The clerk will give you a hearing date that should be between 7 and 14 days from the day you file
- Answer (Form CRCCP 3)
 - Leave this blank and include with the documents served on the tenant
- Filing fee
 - County Court if Less than \$1,000 Filing Fee \$85
 - County Court if \$1,000 up to \$15,000 Filing Fee \$105
 - County Court if \$15,000 up to \$25,000 Filing Fee \$135
 - District Court is anything above \$25,000 Filing Fee \$224

County Court _____ County, Colorado			
Court Address:			
Plaintiff(s):		▲ COURT USE ONLY ▲	
X.			
Defendant(s):			
<input type="checkbox"/> Any and all other occupants			
Attorney or Party Without Attorney (Name and Address):		Case Number:	
Phone Number:	E-mail:		
FAX Number:	Atty. Reg. #:	Division	Courtroom
COMPLAINT IN FORCIBLE ENTRY AND DETAINER			
The Plaintiff(s), named above, state(s) and allege(s) as follows:			
1. Plaintiff(s) is/are the owner(s) of premises in the City of _____ County of _____ State of Colorado as follows:			

Service of Summons and Complaint

- The tenant must be served with the Summons and Complaint by someone who is over 18 and not related to your case (e.g. a process server or law enforcement)
 - Whoever serves the tenant should complete an affidavit of service (form JDF 98)
- The tenant must be served **no later than** 7 days before the hearing date
- Service should be accomplished by handing the papers directly to the tenant or a member of his family over 18, if possible. If not possible, service can be accomplished by posting the papers in a conspicuous location on the property and mailing a copy to the tenant
 - **Note:** If service is accomplished by posting and mailing, rather than personal service, the court can enter an order regarding possession of the property, but will not be able to enter a money judgment for back rent, damages, etc.

- Possible defenses may include:
 - ❑ Did not receive/inadequate notice or improper service of notice
 - ❑ Improper service of Summons and Complaint
 - ❑ Tenant paid rent or cured violation within the Notice period
 - ❑ Tenant tried to pay rent within the notice period, but landlord refused payment
 - ❑ Landlord agreed to accept late rent payment or accept work in trade for rent

Tenant may file an Answer to the Complaint on or before the court date

DO NOT IGNORE A TENANT'S ANSWER

- Answer may contain defense to your Complaint you will need to address in court
- Answer may contain a counterclaim against you



Possible Defenses: Continued

- ❑ Landlord accepted rent after lease violation occurred and/or notice given
- ❑ No lease violation or failure to pay rent occurred
- ❑ Eviction for substantial violation—actions do not meet requirements of “substantial violation”
- ❑ Eviction for substantial violation—victim of domestic violence
- ❑ Person responsible for lease violation or substantial violation not tenant or guest/invitee of tenant and no way tenant could have known in advance person would commit the acts
- ❑ Tenant used rent money to repair premises and deducted cost from rent after giving notice to landlord of repairs needed and landlord fails to make repairs
- ❑ Tenant physically or mentally disabled and unable to pay rent due to disability
- ❑ Landlord evicting tenant in retaliation for tenant making report to government about landlord or property
- ❑ Eviction due to unlawful discrimination

Before the court date

- If you and the tenant come to an agreement, you can file a Stipulation (written agreement signed by both of you) with the court and ask to vacate the hearing
- **Prepare for your court appearance.**
 - You are responsible for getting any evidence you want to present to the court—this means arranging for any witnesses to be available to testify and having 3 copies of any documents, pictures, or other evidence with you when you come to court



Court trial

- As the Plaintiff, you will have the burden of proof, so it will be your job to prove what you are claiming
 - Includes proving damages—do you have before and after pictures? Checklists?
- Both sides will have the opportunity to give testimony, have witnesses testify, and present evidence to the court
- The judge and the other party will be able to ask you (if you testify) and any of your witnesses questions
- You will be able to ask questions of the tenant (if he/she testifies) and any of the tenant's witnesses
 - Make sure to actually ask questions, and not argue or talk over the tenant/witness
- Remember to be organized, prepared, and respectful at all times

After trial—if you win



Order for Possession

- Judge orders possession of the property returned to you and gives the tenant time, not less than 48 hours, to leave
- After 48 hours, you can ask the court to issue a Writ of Restitution (form JDF 103)
- The Writ of Restitution directs the Sheriff to assist you in forcibly removing the tenant from the property

Money Judgment

- Judge enters a judgment in your favor for back rent, damages, etc.
- May be an additional hearing on damages after possession returned to landlord
- Court costs usually awarded to prevailing party—whether attorney fees awarded depends on terms of your lease agreement
- Can collect like any other money judgment, but it is your responsibility—the court does not do this for you
- For more information see Form JDF 82 on the Courts website

Removing the tenant and belongings from property



- If the court issues a Writ of Restitution, it will be your responsibility to make arrangements with the Sheriff's office to go execute the Writ
- The Sheriff's office will supervise, but likely will not participate in physically removing any of tenant's belongings from property—it will be your responsibility to make arrangements to have someone physically move the belongings
- If you (or someone under your direction) are physically moving the belongings, you can legally move them as far as the street and you have no further obligation—if you undertake to store the possessions, you may be taking on additional obligations/liabilities
- Abandoned property—See C.R.S. § 38-20-116 or consult an attorney

- Landlord **must** return tenant's security deposit and/or give itemized accounting
- Landlord has 30 days to do this, unless longer stated in the lease, but no more than 60 days
- **THIS REQUIREMENT CANNOT BE WAIVED THROUGH THE LEASE**

After a Tenant Leaves

Return of security
deposits

C.R.S. § 38-12-103

Return of Security Deposit

- Landlord can retain all or a portion for the deposit only for:
 - Unpaid rent;
 - Unpaid utilities (if agreed that it was tenant's responsibility to pay);
 - Damage beyond "normal wear and tear"
- **"Normal wear and tear"** means that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant or members of his household, or their invitees or guests.
 - C.R.S. § 38-12-102(1)
- Before and after checklists/pictures can be helpful in showing damages

Return of Security Deposit

- **If the you fail to timely return deposit/provide accounting and fail to respond to a demand letter from tenant, you forfeit the right to retain any of the security deposit for damages and may end up owing the tenant triple the amount of the security deposit plus attorney fees.**
- See C.R.S. § 38-12-103(2), (3)

Statute of Limitations:

Court actions to recover security deposit

Treble Damages

- Tenant must bring a court action within 1 year in order to recover the treble damages.

Security Deposit & Attorney Fees

- Tenant can still recover security deposit and attorney fees as long as he/she brings a court action within 6 years.

➤ *Carlson v. McCoy*, 566 P.2d 1073 (Colo. 1977).

Panel Discussion

Panel members:

- Judge Kimberly Cortez, *Conejos County Judge*;
- Alex Raines, *private attorney*;
- Darlene McCarroll – *property manager with Century Property Management*;
- John Montgomery – *private attorney*;
- Kaylene Guymon, *12th Judicial District Self-Represented Litigant Coordinator and*;
- Jason Chacon with the *Alamosa County Sheriff's office*.

Moderated by Judge Martin Gonzales, *District Court Judge for 12th Judicial District*.

Special Thanks to our panel members and Darlene McCarroll, *property manager with Century Property Management*