FORCIBLE ENTRY AND DETAINER

The following information should not be considered legal advice. Please see an Attorney if you have additional questions

EVICTION

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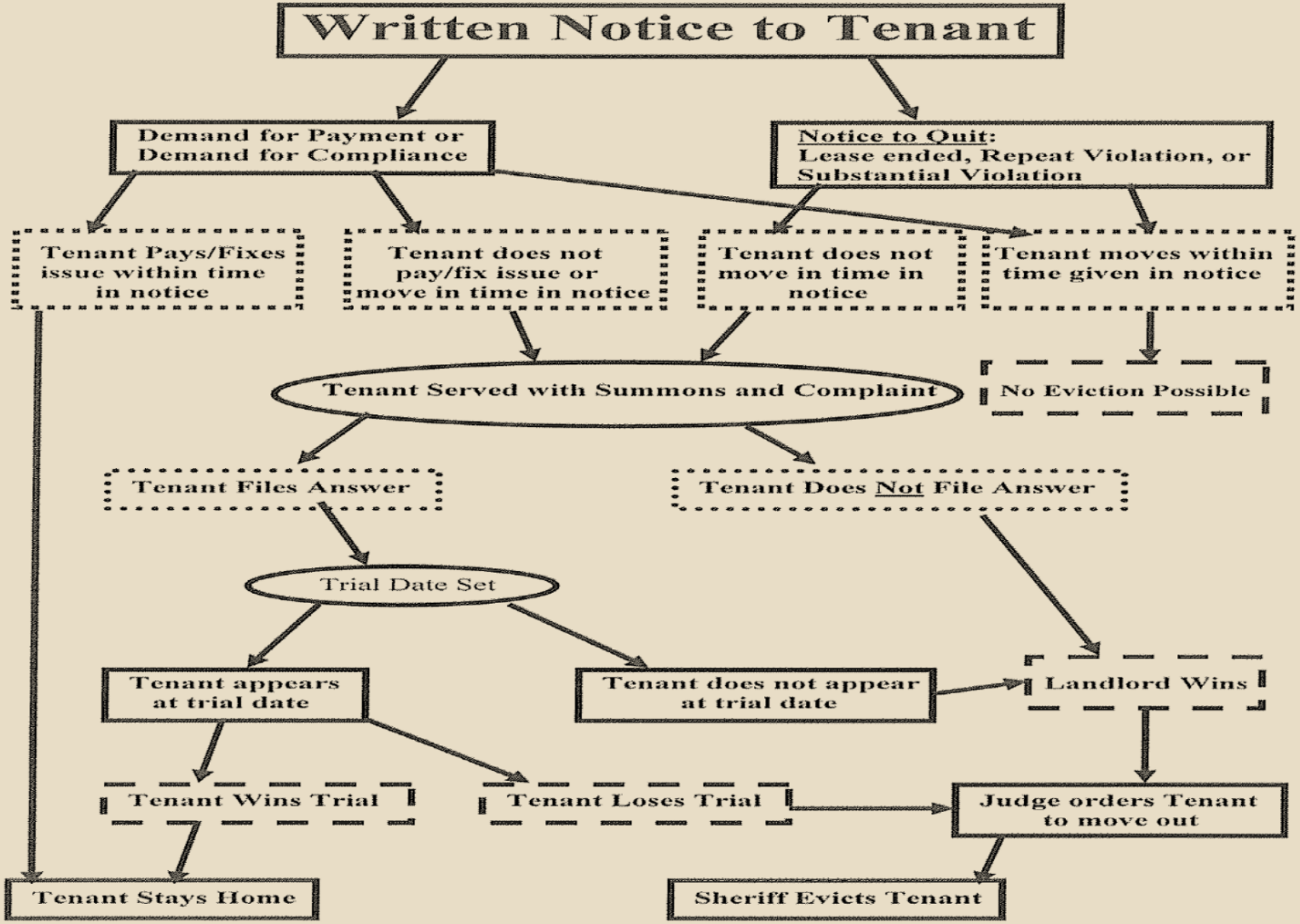
A FORCIBLE ENTRY AND DETAINER IS ANOTHER TERM FOR EVICTION, AND IS COMMONLY REFERRED TO IN THE COURT AS AN FED.

WHAT IS A FORCIBLE ENTRY AND DETAINER?


Written Notice to Tenant
Demand for Payment or Demand for Compliance
Notice to Quit: Lease ended, Repeat Violation, or Substantial Violation
Tenant Pays/Fixes issue within time in notice
Tenant does not pay/fix issue or move in time in notice
Tenant does not move in time in notice
Tenant moves within time given in notice
No Eviction Possible
Tenant Served with Summons and Complaint
Tenant Files Answer
Tenant Does Not File Answer
Trial Date Set
Tenant appears at trial date
Tenant does not appear at trial date
Landlord Wins
Tenant Wins Trial
Tenant Loses Trial
Judge orders Tenant to move out
Tenant Stays Home
Sheriff Evicts Tenant

THERE ARE SEVERAL REASONS WHY A LANDLORD CAN FILE AN FED AND SEEK TO EVICT A TENANT. THESE REASONS CAN INCLUDE BUT ARE NOT LIMITED TO:

Examples of breaking the lease can be but are not limited to:

Failure to Pay Rent When Due

Breaking the Terms of your Lease

- having too many people living in the rental
- having pets when the lease prohibits them
- using the rental for a business when the lease allows
- only for residential use
- illegal activity

Expiration of the Lease

Once your lease has expired the Landlord has the option of not renewing it for a new term.

STAGES IN THE EVICTION PROCESS:

1) Eviction threat, no written notice
2) Received an eviction notice telling you to pay, comply with your lease, or to move
3) Received a summons and complaint to appear in court
4) Filed an answer in court or Signed a stipulation with a lawyer in court
5) Already have a judgment entered against you by a court

LEASE ENDS ON CERTAIN DATE

If your lease ends on a specific date, and landlord is telling you to move, move out by that date or landlord can file an eviction action against you without first giving you a written notice to move.

LEASE NOT ENDING OR HOLDOVER TENANT

- If you've already stayed on past the end of your lease or your lease talks about you staying on as a "holdover tenant," your landlord MUST give you a written notice to move before filing an eviction action against you.

WRITTEN NOTICE
TYPES OF NOTICE

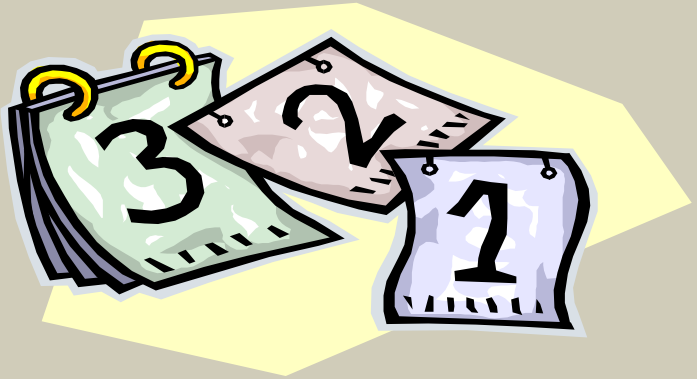
- Notice to Quit
- Demand for Rent or Possession
- Demand for Compliance or Possession- Minor Lease Violation
- Notice to Quit- Repeat Minor Violation
- Notice to Quit – Substantial Violation

THE WRITTEN NOTICE MUST

- Give the address of the property
- Give how much time you have to move, pay what you owe, or comply with your lease
- Be signed by the owner, landlord, agent, or attorney
- Be handed to you or a family member. If the notice can't be hand-delivered, it can be posted on your door.
- Does <u>not</u> need to give a reason if your lease is up

CALCULATING THE TIME ON THE NOTICE

- The law states that the notice period begins the day after you get the notice, and the last day of the notice cannot end on a Saturday, Sunday, or legal holiday.



NOTICE TO QUIT
HAS TO BE GIVEN WITHIN A CERTAIN AMOUNT OF TIME BEFORE THE END OF THE TENANCY

Tenancy Period	Notice Required
One year or longer	91 Days
Six months or longer, but less than a year	28 Days
One month or longer, but less than six months	7 Days
One week or longer, but less than a month or tenancy at will	3 Days
Less than one week	1 day
A lease with a set beginning	No notice required and ending date for the tenancy

DEMAND FOR COMPLIANCE

Your landlord must give you a 3-day notice to pay or move, also called a "Demand for Payment or Possession" or a "Demand for Rent or Possession" The written notice must:

- ✓ **Tell what you owe.**
- ✓ **Tell you that you have three days to either pay what you owe or leave, and by what date.**

Once the 3-day notice has been given to you or posted, you have three days to pay (or offer to pay) all that you owe or move.

- ✓ **If you do this, the landlord should not be able to evict you.**
- ✓ **If you don't offer to pay or the landlord does not accept your payment (usually because you pay less than the full amount demanded), the landlord has to file an eviction case in court to ask the court to force you to move out.**

IF YOU DISAGREE WITH THE EVICTION NOTICE, IT IS IMPORTANT THAT YOU RESPOND IN WRITING TO THE COURT IN A TIMELY MANNER.

If you have been served a Notice to Quit or Demand for Compliance, contact your Landlord and try to work out a resolution.

DEMAND FOR COMPLIANCE FOR MINOR LEASE VIOLATION

Your landlord must give you a 3-day notice to comply with the lease or move unless you have committed a substantial violation of the lease. The notice must be in writing and:

- ✓ Tell you how you have violated your lease.
- ✓ Tell you that you have three days to either comply with your lease (fix the problem) or move, and by what date.

Once the 3-day notice has been given to you or posted, you have three days to comply with the lease or move.

- ✓ If you do this, the landlord should not be able to evict you.
- ✓ If you continue to violate your lease, the landlord has to file an eviction case in court to ask the court to force you to move out.

DEMAND FOR COMPLIANCE FOR REPEAT MINOR VIOLATION

You must have previously been issued a 3-day demand for compliance/possession for violating the same part of your lease

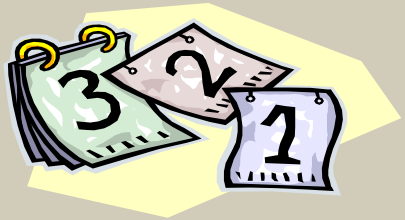
Your landlord must give you a 3-day notice to move if you commit a repeat violation of your lease.

The notice must:

- ✓ State how you have violated the same part of your lease which you violated before
- ✓ Tell you that you have 3 days to move

DEMAND FOR COMPLIANCE FOR SUBSTANTIAL VIOLATION

If you have committed a substantial violation of the lease, the written notice only has to give you 3 days to move out.

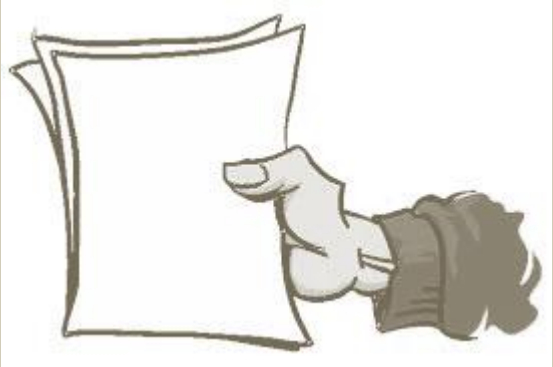


A <u>substantial violation</u> occurs at or near your home and is:

- an act that endangers someone living at or near your home or their property;
- a violent or drug-related felony; or
- a crime punishable by a jail sentence of 180 days or more and is an act that is a public nuisance.

NEXT…

You Receive a Summons and Complaint



IF YOU HAVE BEEN SERVED A SUMMONS AND COMPLAINT IN FORCIBLE ENTRY AND DETAINER (EVICTION) READ THESE PAPERS CAREFULLY.

The papers you are served will contain:

- A Summons
- A Complaint
- An Answer form

Received a Summons and Complaint

Service of Summons and Complaint

- You must receive these at least 7 days before the court date given on the summons
- These can be handed to you or a family member or posted on your door and mailed to you.

The Summons will contain a Court date on which you will need to appear in front of a Judge. You will need to complete the Answer form and file it in the Clerks office before your Hearing. This lets the Judge know that you are not in agreement with the Landlord.

WHAT DO I DO NEXT AFTER BEING SERVED?

- You must go to Court on the date given on the summons, “answer date.”
- In Court, you must either sign and file an agreement (Stipulation) or file an Answer with the Court clerk.
- If you don’t do this, a “default judgment” will enter against you, allowing your landlord to have the sheriff evict you as soon as 48 hours later

FILING AN ANSWER

Purpose:

- Respond to the Landlord's reasons for evicting you as stated in the Complaint
- Tell the landlord and the judge why you should not be evicted (your defenses).

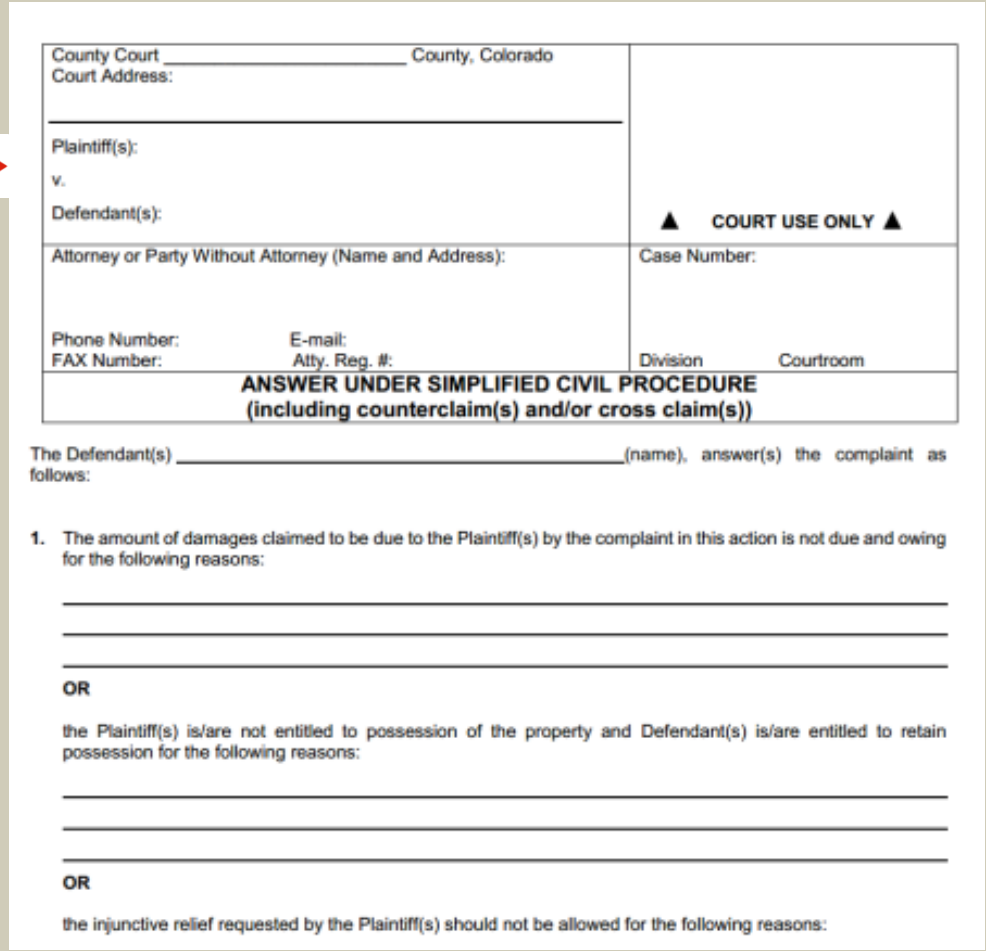
To file an Answer, there is a filing fee, but you can ask the court to waive the filing fee if you can't afford to pay it.

- You may purchase a Motion to Waive Filing Fee from the Court or use the one provided in the packet you were served with
- File the Motion to Waive Filing Fee (along with 3 months of bank statements and 3 months of proof of income) with your Answer.
- Give a copy of your Answer to the landlord when you go to Court.

COMPLETING AN ANSWER
STEP-BY-STEP

- **The Caption**
  - **Fill it in completely and clearly with parties names, etc.**

- **Defenses 1**
  - **List yourself as Defendant**
  - **Owe Money- List reasons why you don't owe in 1st section**
  - **Violated Lease- List reasons why you didn't violate in 2nd section**



County Court _____ County, Colorado
Court Address:

_____

Plaintiff(s):

v.

Defendant(s):

▲ COURT USE ONLY ▲

Attorney or Party Without Attorney (Name and Address):

Phone Number: E-mail:
FAX Number: Atty. Reg. #:

Case Number:

Division Courtroom

ANSWER UNDER SIMPLIFIED CIVIL PROCEDURE
(including counterclaim(s) and/or cross claim(s))

The Defendant(s) _____(name), answer(s) the complaint as follows:

1. The amount of damages claimed to be due to the Plaintiff(s) by the complaint in this action is not due and owing for the following reasons:

_____

_____

_____

OR

the Plaintiff(s) is/are not entitled to possession of the property and Defendant(s) is/are entitled to retain possession for the following reasons:

_____

_____

_____

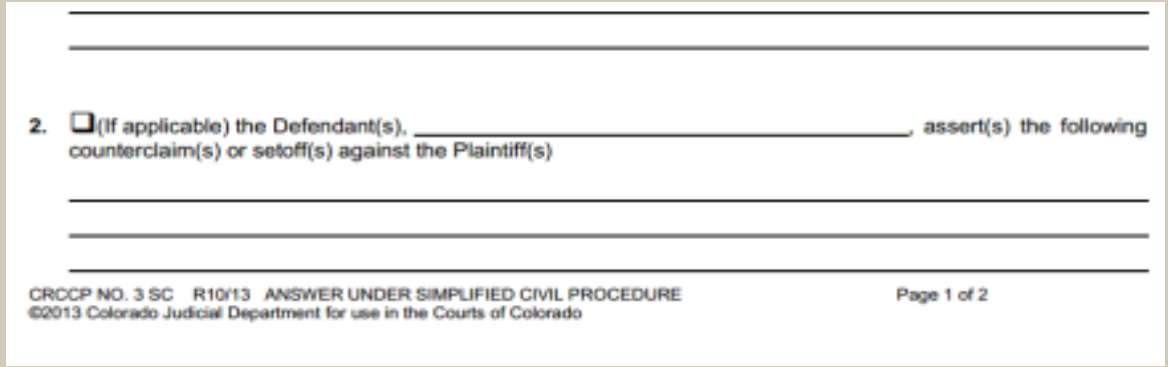
OR

the injunctive relief requested by the Plaintiff(s) should not be allowed for the following reasons:

COMPLETING AN ANSWER
STEP-BY-STEP (CONT'D)

Counterclaims 2

- **If you have a claim against your landlord, write your name as defendant and describe the claim**



2. ❑(If applicable) the Defendant(s), _____, assert(s) the following counterclaim(s) or setoff(s) against the Plaintiff(s)

_____

_____

_____

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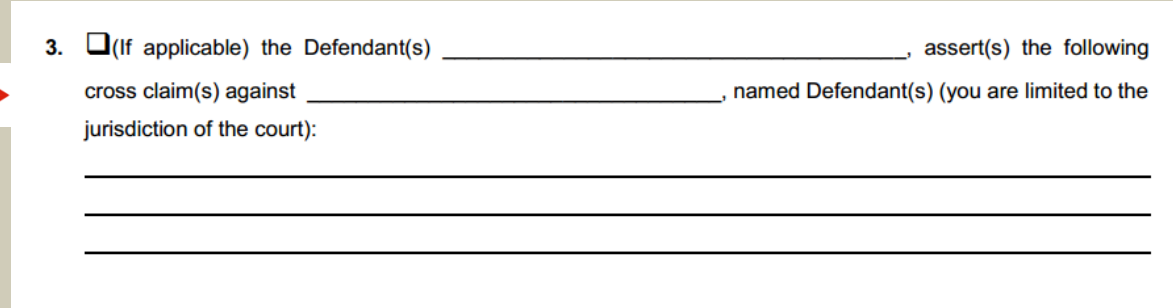
Cross-Claims 3

- **If you have a claim against another party who is responsible for the claim currently against you, check the box, write your name as defendant, list their name as additional defendant, and describe the claim**



3. ❑(If applicable) the Defendant(s) _____, assert(s) the following cross claim(s) against _____, named Defendant(s) (you are limited to the jurisdiction of the court):

_____

_____

_____

STEP-BY-STEP (CONTINUED)

Jurisdiction 4

- If you made a counterclaim less than $15,000, check the 1st box
- If you made a counterclaim that you are willing to accept less than $15,000 for, check the 2nd box
- If you made a counterclaim for more than $15,000, check the 3rd box

4. If a counterclaim is asserted above, you must check one of the following statements:
   - ❑ The amount of the counterclaim **does not** exceed the jurisdiction of the court (County Court filing fee required).
   - ❑ The amount of the counterclaim **does** exceed the jurisdiction of the court, but I wish to limit my recovery to the jurisdiction of the court (County Court filing fee required).
   - ❑ The amount of the counterclaim **does** exceed the jurisdiction of the court, and I wish the case transferred to the District Court (District Court filing fee required)

5. The Defendant(s):
   - ❑ Request(s) a trial to the court.
   - ❑ Request(s) a jury trial. By requesting a jury trial, the Defendant(s) understand(s) that a jury fee must be paid unless the fee is waived by the Court.

WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, A REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.

Note: All Defendants filing this answer must sign unless the answer is signed by an attorney.

_____ Signature of Defendant(s)

_____ Signature of Attorney for Defendant(s) (if applicable)

Address(es) of Defendant(s): _____

Phone Number(s) of Defendant(s): _____

STEP-BY-STEP (CONTINUED)

Jury Trial 5

- Check the box if you want a jury trial. You will have to pay an extra fee unless you receive a fee waiver

Signature, Address, Phone Number

- Sign on the line marked "Signature of Defendant(s)," write your current address and phone number

5. The Defendant(s):
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Note: All Defendants filing this answer must sign unless the answer is signed by an attorney.

_____ _____
Signature of Defendant(s) Signature of Attorney for Defendant(s) (if applicable)

Address(es) of Defendant(s): _____

Phone Number(s) of Defendant(s): _____

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of this *ANSWER UNDER SIMPLIFIED CIVIL PROCEDURE* was served on _____ the other party(s) or attorney(s) by:

❑Hand Delivery ❑E-filed ❑Faxed to this number _____ or ❑by placing it in the United States mail, postage pre-paid, and addressed to the following:

_____
_____
_____
_____

_____
Defendant(s) or Attorney for Defendant(s) Signature

STEP-BY-STEP (CONTINUED)

- <u>Certificate of Mailing</u>
  - Write plaintiff or plaintiff's attorney's name, plaintiff or plaintiff's attorney's address, and the date
  - Sign on line for "Defendant(s)
  - or Attorney for Defendant(s) signature"

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of this *ANSWER UNDER SIMPLIFIED CIVIL PROCEDURE* was served on _____ the other party(s) or attorney(s) by:

❑Hand Delivery ❑E-filed ❑Faxed to this number _____ or ❑by placing it in the United States mail, postage pre-paid, and addressed to the following:

_____
_____
_____
_____

_____
Defendant(s) or Attorney for Defendant(s) Signature

IF YOU AND THE LANDLORD REACH AN AGREEMENT

<u>Stipulation</u>

- A signed agreement between yourself and the landlord
- Settles the eviction without having a judge decide the outcome
- This document is filed with the court

- You are not required to sign a stipulation if you do not agree!!!
- If you do not understand it, you should not sign it!

FILED AN ANSWER OR SIGNED A STIPULATION

- If you signed a Stipulation, your case is over as long as the terms are followed.
- If you filed an Answer, you will get a hearing/ trial date.

EXHIBITS

ANY EVIDENCE THAT YOU WISH TO PRESENT TO THE COURT TO PROVE YOUR CLAIM WILL NEED TO BE FILED AS AN EXHIBIT.

Examples of Exhibits are documents such as photographs, charts, and receipts.

IF YOU HAVE MORE THAN ONE EXHIBIT, IT IS BEST TO ORGANIZE AND LABEL ALL EXHIBITS.

Exhibits are labeled by letter; Exhibit A, Exhibit B, etc.

Remember, anything you file with the Court regarding your case must also be provided to the other party.

EXHIBITS CAN BE FILED BEFORE OR DURING YOUR HEARING.

Make copies of the Exhibits for the Court and for the other party. If the Court has to make copies for you, copy fees will be assessed.

COURT APPEARANCE

PREPARE FOR HEARING/TRIAL:

Prior to trial- Get together any documents that you need for court

- **your lease agreement**
- **receipts for rent or proof of rent payments**
- **other documents that you need to support your case**

(Warning: If the document was written by someone other than yourself or the landlord, you may need that person to be a witness regarding the document.)

PREPARING FOR TRIAL:

Documents:

- Bring the original and two copies of any papers relevant to the case
  - Ex. Lease agreement, agreements with landlord, rent receipts, etc.
- Write the facts down on paper before trial to make sure you can explain yourself clearly and simply to the judge
- Write down questions for your landlord and his witnesses before trial. Bring them to Court.

DURING YOUR TRIAL:

Your responsibilities:

- Prepare written questions for the landlord and landlord's witnesses before trial
- Testify and present your case
  - Keep the facts as simple as possible
  - Questions should be related to what landlord said and what you wrote in your answer
  - Use evidence whenever possible
- The landlord can then question you and any of your witnesses

It is understandable that going through an Eviction is a stressful Process, but it is important that you speak calmly and clearly during your Hearing. It is very important that you arrive on time for your Hearing and that you are prepared to answer questions which might be asked by the Judge.

YOU MAY COMPLETELY DISAGREE WITH WHAT THE LANDLORD IS SAYING – BE POLITE AND WAIT FOR YOUR TURN. THE JUDGE WILL GIVE YOU AN OPPORTUNITY TO TELL THE COURT WHAT YOU NEED TO.

IF YOU HAVE ADDITIONAL DOCUMENTS TO PRESENT AS EXHIBITS TO THE COURT SUCH AS RECEIPTS, ESTIMATES, PICTURES OF THE PROPERTY, ETC., BRING THEM WITH YOU TO THE HEARING.

If you are presenting Exhibits to the Court, you will need to bring a copy to give to the Landlord. Anything you file with the Court must also be provided to the other party.

Receipt

Estimate

AFTER THE HEARING

SEVERAL FACTORS WILL DETERMINE WHERE YOUR CASE WILL GO FROM HERE. PLEASE LISTEN CAREFULLY TO THE JUDGE AND TAKE NOTES DURING YOUR HEARING IF NECESSARY. YOU MAY OR MAY NOT BE GIVEN A SECOND COURT DATE.

YOUR OPTIONS AFTER LOSING THE TRIAL

1. Try to talk to your landlord and get him/her to agree to let you stay longer. If the landlord does, make sure you write the agreement down, both sign it, and file it with the court that entered the eviction order.

2. Move out now, before the landlord and sheriff do it by force.

3. If you think the eviction is not legal, you can try to get it set aside or appeal it.

2. MOVE OUT NOW

Pack and get your things out as soon as possible!!!

Once the sheriff comes, they will put you and your things out on the street and you will lose them!

A Writ of Restitution is an order for the Sheriff's Department to oversee the removal of your belongings from the Property by the Landlord

IF THE JUDGE RULES THAT YOU NEED TO MOVE, TYPICALLY YOU WILL BE GIVEN 48 HOURS FROM THE DATE OF THE HEARING TO VACATE THE PROPERTY. IF YOU HAVE NOT VACATED WITHIN THAT TIME, THE LANDLORD CAN HAVE A WRIT OF RESTITUTION ISSUED BY THE COURT.

THIS PROCESS CAN HAPPEN ANY TIME ONCE THE WRIT OF RESTITUTION IS ISSUED, THE TIME FRAME WILL DEPEND ON WHAT THE SHERIFF'S DEPARTMENT ALREADY HAS SCHEDULED.

EVICTION 101- IN REVIEW

- Your landlord must give you a 3-day notice, unless your lease is already up
- Once you get the notice, you have 3 days to pay rent, fix the lease violation, etc.
- Your landlord can file an eviction case against you by giving you a summons and complaint
- You must file an answer by the deadline in the summons to try to prevent eviction
- If you file on time, the court will set a date for trial within 7 to 14 days.
- If you win- you can stay in your home
- If you lose- you have a <u>minimum</u> of 48 hours before the sheriff can evict you

FREQUENTLY ASKED QUESTIONS

What are my rights as a Tenant?

You can pick up information on Tenant rights by seeing a Clerk in the self-help center or by contacting Colorado Legal Services or by contacting an Attorney.

If am evicted, will I lose my public housing assistance?

If a Tenant is evicted from public housing, Tenant will be ineligible for other public housing.

How long is a Writ of Restitution valid?
A Writ of Restitution is valid for 45 days from the date the Judge ordered it.

How soon will the Sheriff's Department enforce a Writ of Restitution?

This Process can happen any time once the Writ of Restitution is issued, the time frame will depend on what the Sheriff's Department already has scheduled.

What is a Writ of Restitution?

A Writ of Restitution is an order for the Sheriff's Department to oversee the removal of belongings from the Property by the Landlord.