

UNDERSTANDING EVICTION (F.E.D.) ACTIONS

If you have questions and you are in Boulder County/ 20th Judicial District, please contact the Boulder Court Self-Help Resource Center at (303) 441-4741 or email BoulderCourtSelfHelp@judicial.state.co.us

Materials developed by the 16th Judicial District &
Colorado Legal Services

Our Goals



To **educate** community members about court processes and **provide resources** for **improved access** to the courts

Topics Covered Today

- Navigating the Judicial System
 - general overview of how the eviction process works
- Landlord / Tenant Basics
 - what to do and what not to do
 - return of security deposits
- Questions / Answers

Not Covered In Today's Presentation

- Special rules for evictions in a mobile home park
- Foreclosure evictions
- Collection of a money judgment



By hikingArtist.com

F.E.D. Explained

Forcible Entry and Detainer (F.E.D.), commonly known as eviction, is legally removing someone from a property, like a house or an apartment, because:

- ❑ the landlord no longer wants to rent to the tenant;
- ❑ the tenant is not paying rent; or
- ❑ the tenant is not following the rules in a lease or rental agreement.

Terminating a Tenancy

- No eviction required
 - Tenant and landlord agree to a move-out date voluntarily
- Eviction required
 - Ending a tenancy with no definite end date
 - Termination due to violation of terms of lease agreement or failure to pay rent

Eviction: The Wrong Way

- 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
 - 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



Beginning The Eviction Process



- The eviction process always begins with written notice to the tenants/occupants
 - the type and length of notice may depend on the reasons for the eviction and type of tenancy
- Form notices available on courts website:
 - www.courts.state.co.us
 - Click on “Self Help/Forms”, then “All Court Forms & Instructions” then “Evictions & Foreclosures”

Demand for Compliance or Right to Possession

□ Non-Payment of Rent

- Identifies amount of rent owed and dates for which rent was not paid
- Gives tenant 3 days to leave property OR comply by paying rent owed

□ Minor Violation

- Clearly identifies the provisions of lease that were 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: _____

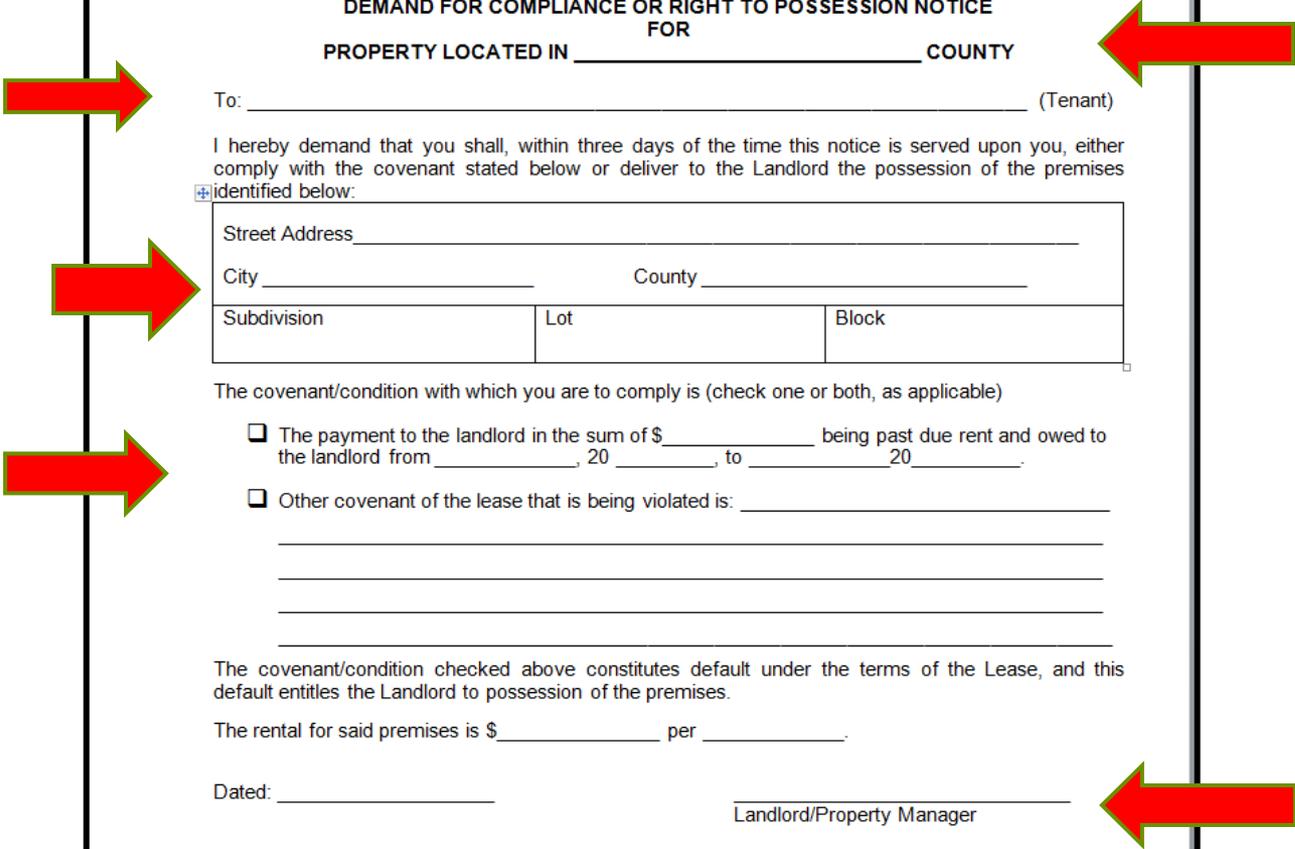
The covenant/condition checked above constitutes default under the terms of the Lease, and this default entitles the Landlord to possession of the premises.

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. 7 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	7 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 indicates 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

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 _____

The grounds for termination are as follows: _____

Date: _____

Landlord/Owner
By: _____
Landlord/Owner's Agent or Attorney

CERTIFICATE OF SERVICE

I hereby certify that I served this Notice to Quit on _____ (date) in _____ (County), Colorado by my selection below:

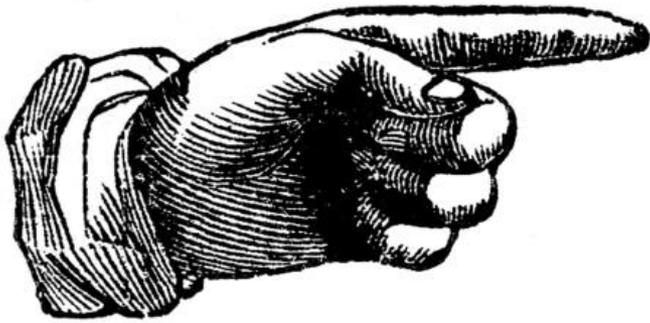
By leaving a true copy with _____ (Full Name) who is the Tenant, other person occupying such premises, or a member of the tenant's family above the age of fifteen years and residing on or in charge of the premises _____ (Full Name of Person)

By posting in a conspicuous place on the premises at _____

Signature

Service of Notice

Please Notice This



- Without proper service of notice to tenant, the case cannot move forward

Who Must Be Served?

- Service should be completed **on every adult** named on the lease or known to be living in the rental, as well as any unknown occupants
- If an occupant of the rental is **not served**, the **eviction will not apply** to that person



Who Completes Service?

- Service must be completed by:
 - the Sheriff's Department;
 - a private process server; or
 - someone at least 18 years old who is not involved in the case and is familiar with the rules of service.

Steps in Giving Notice

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

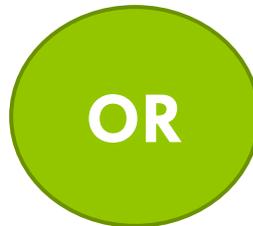
Note: Not required to use sheriff/process server, but may be best.



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.

Service Options

Personal Service

This form of service requires that the eviction paperwork is handed directly to:

- ❑ the renter;
- ❑ the renter's employer at the renter's usual workplace; or
- ❑ a member of the renter's family who is at least 18 years old and is at the rental at the time of service.

Posting

This form of service requires the person completing service to post the papers:

- ❑ on the door to the main entrance of the property; or
- ❑ a place at the rental that is easily seen.

After Notice

- If the tenant has not moved out or fixed the violation indicated on the notice, the landlord may then file a **Complaint in Court**



Who Can File A Complaint?

County Court _____ County, Colorado	
Court Address: _____	
Plaintiff(s): v.	▲ COURT USE ONLY ▲
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: <input type="checkbox"/>	

- The action must be filed by a “person in interest,” which is generally limited to the property owner
 - Property managers are not persons in interest
- 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*

Required Forms

- 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 the 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

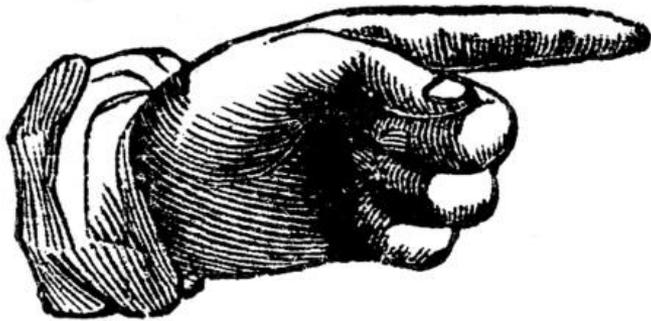
Filing Fee

- The filing fee in an F.E.D. action is \$97.00
- If you feel like you cannot afford this fee, you can file a Motion to File Informa Pauperis (MIFP) to request that your filing fees be waived or a payment plan be set up



Service of Summons and Complaint

Please Notice This



- Without proper service of Summons and Complaint, the case cannot move forward

Who Completes Service?

- Service must be completed by:
 - the Sheriff's Department;
 - a private process server; or
 - someone at least 18 years old who is not involved in the case and is familiar with the rules of service.

Service Options

Personal Service

- This form of service requires that the eviction paperwork is handed directly to:
 - the renter;
 - the renter's employer at the renter's usual workplace; or
 - a member of the renter's family who is at least 18 years old and is at the rental at the time of service.
- **NOTE:** Personal service is required for money judgments for past due rent or damages.

Posting and Mailing

- This form of service requires the person completing service to post the papers:
 - on the door to the main entrance of the property; or
 - a place at the rental that is easily seen.
- Then, before the end of the next business day, the landlord must:
 - mail a copy of the paperwork to each defendant by postage prepaid, first class mail; and
 - complete the Certificate of Mailing on page two of the Summons and give a copy of the form to the Court.
- **NOTE:** Unknown other occupants must be served by posting and mailing.

Before Court

- **Explore Settlement Options**
 - If the landlord and tenant come to an agreement, the parties can file a Stipulation (written agreement signed by parties) with the court and ask to vacate the hearing

- **Prepare For Trial**
 - Organize photos, documents, receipts, etc., and be prepared to provide copies to the court and the other party
 - Arrange for any witnesses to be available to testify (letters from witnesses will most likely not be admitted in lieu of in person testimony)



Burden of Proof

- The plaintiff will have the burden of proof
 - Should be prepared to prove damages with before and after pictures, checklists, etc.
- Tenants can use before and after pictures, checklists, etc., to argue against alleged damages as well



Tenant's Answer



- Tenant may file an Answer to the Complaint on or before the court date
 - ▣ Answer may contain defense to the landlord's Complaint that the landlord will need to address in court
 - ▣ Answer may contain a counterclaim against the landlord

Potential Defenses

- 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 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 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
- Landlord evicting tenant in retaliation for tenant making report to government about landlord or property
- Eviction due to unlawful discrimination

After The Trial

Order for Possession

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

Money Judgment

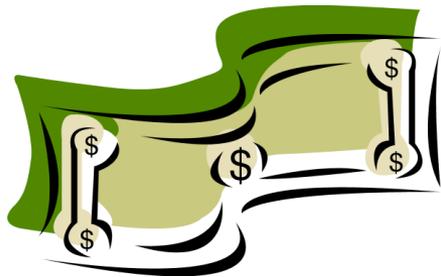
- Judge enters a judgment in your favor for back rent, damages, etc.
- May be an additional hearing on damages after possession returned to landlord
- Court costs usually awarded to prevailing party—whether attorney fees awarded depends on terms of your lease agreement
- Can collect like any other money 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

Forcible Removal

- If the court issues a Writ of Restitution, the landlord must make arrangements with the Sheriff's office to 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 is the landlord's responsibility to make arrangements to have someone physically move the belongings
- The landlord (or someone under the landlord's direction) can legally move the tenant's belongings as far as the street with no further obligation—
 - if the landlord undertakes to store the possessions, he or she may be taking on additional obligations/liabilities

Security Deposit

- Landlord can retain all or a portion of the deposit only for:
 - Unpaid rent;
 - Unpaid utilities (if agreed that it was tenant's responsibility to pay); and
 - 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)



Security Deposit (Continued)

IF the landlord fails to timely return deposit or provide accounting and fails to respond to a demand letter from tenant

THEN the landlord forfeits 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)