

Sheriff



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Landlord & Tenant Information

The following information has been compiled to help landlord/tenants avoid or resolve rental-housing issues. This information should not be substituted for legal advice from an attorney.

[The Lease](#) | [Termination of the Lease](#) | [The Eviction Process](#) | [Security Deposits](#) | [Repairs and Maintenance](#) | [Landlord's Entry to a Rental Property](#) | [Miscellaneous Information](#) | [Resource List](#)

The Lease

A lease (a written rental agreement) is a legally binding contract between a landlord and tenant that grants a tenant possession and use of the landlord's property for a given period of time. A lease is intended to protect both the landlord and the tenant. Leases can be set for any length of time, but most are for six months or one year. The lease sets forth provisions that may include but are not limited to some of the following: identification of the leased property, number of persons who will reside in the unit, security deposit, rent amount, rent due date, late penalty fee, utility responsibilities, yard care, trash removal, repair responsibility, subleasing, whether pets are allowed, and other rules governing tenancy. A lease is the best evidence of the specific rights and responsibilities for both the landlord and the tenant. A lease must be signed by both the landlord and the tenant. If there is something in the lease that the landlord/tenant does not understand or agree with, do not sign it until the issue is resolved. Once a lease is signed, there is no grace period to back out of the lease and both the landlord and tenant are bound to it. In order to avoid landlord/tenant disputes, make sure that both parties have read and understand the lease completely. ([Return to top](#))

Written Leases

Be alert to clauses in a written lease that require the tenant to give up certain rights:

- A clause that would allow the landlord to evict a tenant for nonpayment of rent without a "three day notice". Colorado law requires a "three day notice"; neither the tenant or landlord can waive three day notices.
- Requirement that the tenant give up the security deposit automatically.
- A statement that the tenant will not hold the landlord responsible for anything, including the landlord's acts of gross negligence. A provision allowing the landlord to evict the tenant and sell the tenant's property without going through the court process.
- A waiver of the right to appeal a trial court's decision.

Verbal Leases

Oral leases for one year or less are binding and enforceable. Oral agreements must be treated as a written lease once a tenant has moved in or the exchange and acceptance of payment have been made. Oral leases are harder to prove but they will stand up in a court of law. Leases longer than one calendar year must be in writing to be enforced by the court(s).

More Than One Tenant: Joint and Several Liabilities

When more than one tenant signs a lease for a particular residence, each tenant is responsible for all of the conditions of that lease. This is called "joint and several liability." If one person does not pay the rent, the other tenants are liable for payment of that person's share or they are all subject to eviction for non-payment of rent. It is up to the other tenants, not the landlord, to collect money from a non-paying tenant. On the same note, if one tenant damages the premises, the landlord may deduct the damages from all the tenants' deposits or may choose to deduct only from the tenant responsible for the damages. For self-protection, joint tenants may execute a "Roommate Agreement" which will outline tenants' obligations to each other which may include, but are not limited to, portion of rent, responsibility for damages, division of payment for utilities, duration of the rental period, responsibility for finding a replacement tenant upon early termination and payment of rent until a replacement is found. A roommate agreement is not binding on the landlord.

Roommate Problems

When problems arise in a roommate situation where all tenants have signed the lease, eviction of one or more roommates can only be done legally by the landlord. The landlord can serve the tenant a "three day notice" and start

the eviction procedures. If confusion exists regarding legal rights and responsibilities by any of the roommates, tenants should seek legal advice.

Substantial Violations

Colorado Law provides that every lease contains an implied term that the tenant shall not commit a "substantial violation" while in possession of the premises. A "substantial violation" means any act that endangers the person or willfully and substantially endangers the property of the landlord, any joint tenant or any other person living on or near the property, or occurs on or near the premises and constitutes a violent or drug-related felony. The commission of a substantial violation is a breach of the lease and subjects the tenant to eviction.

Conditions on Move-In Day

Prior to moving in to the rental property, a list of all existing damages and necessary cleaning should be prepared and signed by both landlord and tenant. If either party is unavailable or unwilling to do this, an uninvolved third party should witness the inventory list and sign it. A copy should be provided to the missing landlord/tenant. Accurate documentation and photographs of individual rooms and specific items addressed should be kept for personal record.

Upon moving out, the tenant should make an appointment with the landlord to accompany the landlord on a tour of the premises, listing damages or necessary cleaning. The tenant and the landlord should sign both copies of the list and keep a copy for their records. ([Return to top](#))

Termination of the Lease

Termination is the end of a tenancy and occurs at the end of the lease term, or after a mutual agreement to terminate prior to the end of the lease term.

Termination of a Six Month or Year Lease

If a lease has a date of termination or a definite term and there is no mention of a requirement to give notice of termination, the lease will expire and the tenant is responsible for complying on the date stated. A landlord is under no obligation to automatically renew a lease. If a lease states that notice must be given prior to the expiration, notice must be given before the tenant is free from his/her obligations.

Many leases contain hold-over clauses that allow the tenant to continue tenancy on a month-to-month basis, following the expiration of the initial lease term. In a written lease, it is possible that a landlord may require a certain number of days for notice. In that case, that period would have to be complied with. Common practice requires a thirty day notice; failure by either party may obligate both parties to another month's rent.

Termination of a Month-to-Month Lease

A month-to-month lease is a rental agreement for a period of one month. Month-to-month agreements are automatically renewed each month until otherwise terminated by the landlord or the tenant. If a tenant was previously in a long term lease agreement and remained a renter, then the lease would roll over to a month-to-month lease. The terms and conditions of the long term lease may still be applicable on the month-to-month unless written communication is signed by all parties. A tenant may give written notice of intent to terminate any lease by mailing or hand-delivering a copy to the landlord. A month-to-month written termination must be given at least 10 days prior to the last day of the rental month which has already been paid.

There is an implied agreement in every lease of real property that the landlord will refrain from acts that interfere with the tenant's rights for peaceful enjoyment of the premises.

If the landlord breaches that agreement by either action or the premises becoming legally uninhabitable, the tenant may vacate the premises, terminate the lease, and owe no further rent. Before the tenant moves out, the landlord must be given notice of the problem and have reasonable time to remedy the situation. A tenant should get legal advice from an attorney prior to vacating the lease. This should never be attempted without first talking to an attorney. ([Return to top](#))

The Eviction Process

An eviction occurs when the court enters an order for the tenant to vacate the property. This order is enforceable only by the Sheriff. It allows the Sheriff to monitor the removal of the tenant, his/her property from the premises, and keep the peace. It is never legal for a landlord to evict a tenant without a court order.

The proper eviction procedures are listed below:

First Step Notice (Demand) to Vacate: General eviction begins when the landlord gives a written demand to the tenant to vacate (13-40-106). The written notice must be served upon the tenant three days before the landlord can seek additional remedy in the courts, 13-40-104 (1)(d)-(e). Three days continually run and include Saturdays, Sundays, and Holidays. It is not possible for a waiver of the three day notice to be included in any written agreement 13-40-104(1) (d). The written notice to vacate is used only when a tenant has failed to meet the obligation of the agreement (lease).

The notice must contain:

- Specific grounds for the landlord's right to possession of the premises.
- Description of the premises.
- Specific time to deliver possession.
- Signature of the landlord, agent, or attorney.
- Alternative acceptance of rent payment (if applicable).

In the case of mobile home eviction from a mobile home park for nonpayment of rent, 38-12-204(1) allows the tenant five days to remove the mobile home after the written notice is served or posted; there are no express requirements for the contents of this notice.

Second Step Summons and Complaint in Forcible Entry and Detainer: If the tenant has not vacated within three days, the landlord can file with the court a Summons and Complaint in Forcible Entry and Detainer (S.C.F.E.D.). Depending upon which court has jurisdiction and the applicable statutes, it will either be District or County Court. At the time of filing a (S.C.F.E.D.), the court will request a copy of the three day notice (13-40-108/110/111). Service of the (S.C.F.E.D.) may be completed by either the Sheriff's Office or by a disinterested third party over the age of 18 years. "Personal" service as outlined in Rule 4 of the Colorado Rules of Civil Procedure is required if you are seeking a money judgment along with the actual eviction. A copy of the complaint must be served with the summons (13-40-12). If no money judgment is sought, or the tenant is avoiding service, the summons and complaint may be served by posting in a conspicuous place upon the premises after diligent effort to make "Personal" service (38-40-112). When service by posting is complete, a copy must be sent by certified mail the next day. Both types of service must be completed at least seven working days, not including Sundays and Holidays, before the court day. Evidence must be produced (completion of the return of service) and supplied to the court (13-40-113).

The landlord may not lock the tenant out of the property, shut off utilities or forcibly move the tenant or his/her possessions out. Lock outs are not permissible; actions of physical contact or intimidation should be immediately reported to local law enforcement. If a tenant is locked out, he/she should seek legal advice prior to attempting a forced entry. By state law, the prevailing party in a S.C.F.E.D suit is entitled to an award of reasonable attorney's fees and costs incurred.

Third Step Writ of Restitution: A Writ of Restitution is entered when judgment of the (S.C.F.E.D.) is awarded to the landlord. Only Sheriff's Deputies can execute a Writ of Restitution. Two copies of the Writ of Restitution need to be supplied for service. The issuing court must wait 48 hours after entry of a judgment before issuing a Writ of Restitution. (If they fail to do so, the Sheriff will wait the 48 hours before serving or posting), 13-40-122. The Sheriff's Office will post the Writ of Restitution and Notice of Judgment (when applicable) with a date approximately 48 hours from the time of posting to return for eviction. Mileage is charged for each round trip to the premises and a service fee is charged for the completion of the Writ of Restitution. Special circumstances or concerns (including concerns about anticipated tenant's reactions to being evicted) should be directed to the Civil Department prior to service or eviction by removal.

Sheriff's Office Requirements:

- The Sheriff's Office requires the landlord to hire and be responsible for all necessary movers, towers, and locksmiths.
- The Landlord must be present at the scheduled time of eviction.
- If the landlord or agent fails to arrive, the eviction may be cancelled.
- The landlord is required to provide enough manpower to remove all belongings within one hour (when possible) at his/her expense. The Civil Officer will stand by to keep the peace while the premise is cleared. ([Return to top](#))

Security Deposits

Colorado Law regulates security deposits. A security deposit may also be called a damage deposit; it is any advance or deposit of money that is used to secure the lease. The deposit may be retained by the landlord for the following: any unpaid rent or utility bills owed by the tenant, payment for damages to the premises beyond "normal wear and tear", any cleanings outlined in the lease, and any other breach of the lease causing financial damage to the landlord's property. "Normal wear and tear" is defined by Colorado statute to mean "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 chattel by the tenant or members of his/her household or their invitee guests."

Return of Security Deposits

If the tenant has fulfilled all the terms of the lease, the tenant is entitled to a full return of the security deposit. The tenant should collect the security deposit in person or leave a forwarding address with the landlord so that he/she can return the deposit.

Colorado law requires the landlord return the security deposit or an itemized statement of the deductions and balance, if any, to the tenant within 30 days after termination of the lease or the surrender and acceptance of the premises, whichever occurs last. This time period may be extended up to 60 days if specified in the lease. The landlord must either deliver or mail the full deposit or a statement of deductions and the balance of the deposit to the last known

address of the tenant. If the landlord fails to provide a written statement of deductions and the balance of the deposit in full within the specified time, the landlord forfeits his right to withhold any portion of the security deposit. The landlord has the right to pursue damages by counter-claim against the tenant in a civil lawsuit for unpaid rent or any other charges, deductions from the deposit damage to the property, or any other financial obligation owed to the landlord. Treble damages may be brought against the landlord in a lawsuit for a security deposit not returned within the stated time frame. ([Return to top](#))

Repairs and Maintenance

A tenant who withholds rent until repairs are made can be legally evicted for nonpayment of rent. Colorado law does not allow a tenant to make any repairs and use them as a deduction from the rent.

Except for common areas and multi-unit properties, the landlord is required to repair and maintain the premises only if:

- The lease specifies that a landlord is responsible for repairing and maintaining the premises.
- There is a specific agreement between the landlord and the tenant that the landlord will make specific repairs such as an attachment or a letter of promise.

What a Tenant May Do When Repairs are Required

A tenant should refer to the lease to determine responsibility for repairs. If the landlord is responsible, the tenant should first contact the landlord. If the landlord refuses to comply with the request, the tenant may try the following:

- Present a written list of the repairs requested with a defined time limit.
- Be cooperative, be available and offer to be present when a repair person arrives.

The tenant should:

- Keep copies of correspondence to and from the landlord.
- Follow-up on any agreement, both written and verbal, given by the landlord.
- Give reasonable time frames for repairs to be made.
- Follow-up with written reminders for outstanding repairs.
- If the landlord still remains delinquent in completion of repairs, the tenant should contact an attorney. ([Return to top](#))

Landlord's Entry to a Rental Property

The landlord may enter into a rental property at a reasonable time and manner without force or physical threats in the following situations.

- The tenant has given permission
- There is an emergency such as fire, flood, or gas leak
- The landlord is asserting a valid, legal landlord's lien
- The landlord enters to make repairs ordered by health, building, fire or other code inspections

The landlord may enter at other times only if the tenant has given permission, verbally or written. A Realtor's lock box may be placed on the unit's door and the landlord may show the property to new tenants or prospective purchasers only with the tenant's permission.

Landlord's Unwelcome Unannounced Entry to Rental Property

If the landlord enters the unit without permission or without proper authorization, the tenant may consider taking the following steps:

- Send a written complaint to the landlord documenting the landlord's actions, keeping a copy of the complaint for tenant's records, requesting that the actions stop immediately.
- If the landlord's invasion of privacy continues, document the landlord's disregard of the last letter by sending another letter, stating that tenant intends to exercise his/her legal rights.
- Change the locks and do not provide the landlord with a key. Remember, that a tenant would assume future liability in case of an emergency and must reinstall the original locks before moving out. Send a letter advising the landlord that the locks have been changed due to the landlord's invasion of privacy and that the landlord should contact the tenant to gain entry to the unit in the future.
- Subject the landlord to arrest for breaking and entering by calling the local Law Enforcement Agency (Police or Sheriff's Department) when the landlord has entered into the property improperly. Report all threats, intimidation, defamation of character, and physical attacks to Law Enforcement immediately. Be sure to keep copies of any complaints filed with Law Enforcement. ([Return to top](#))

Personal Property

The landlord is not responsible for damage to the tenant's personal property, unless such damage was a direct result of his/her negligence. A tenant should carry renter's insurance for his/her own protection.

Landlord Liens

Colorado law provides that in some cases, a landlord may lien some of the tenant's personal property for past due rent. Prior to a lien, the landlord should seek legal advice. If property has been seized, the tenant should document, in writing, the property taken. When involved in landlord lien, tenant/landlord should seek legal services. If a lien is improperly executed, the landlord could be liable to the tenant for punitive damages.

Rent Increases

If a lease specifies the rent amount, it cannot be increased during the lease period. Once a lease has expired, a new lease may have an increased rent amount. Colorado law currently has no rent control.

Subleases and Assignments

A sublease is an additional contract between the landlord and a new tenant. It doesn't relieve the original tenant from his/her lease. For example, if the subtenant is delinquent in rent payment, the landlord may sue for any unpaid balances from the original tenant, or both. The landlord may or may not require a new security deposit on a sublease.

An assignment is a contract between the landlord and a second tenant that relieves the original tenant of his/her lease. In this case, if the second tenant is delinquent on rent, the landlord may only sue the second tenant. On an assignment, the landlord will almost always require a new security deposit.

Both subleases and assignments only occur under the landlord's direction. Under Colorado law, a landlord may not withhold permission to sublet without reason. Always refer to the lease for sublease or assignment agreements.

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Resource List

[Colorado Statutes Title 38 Article 12](#)

[Colorado Division of Housing](#)

[The National Landlord Tenant Guides](#)

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