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# EVICTIION 101

## VOLUNTEER LAWYER TRAINING

JUNE 9, 2021



# WHAT IS AN EVICTION UNDER COLORADO LAW?

Colorado evictions are guided by the **Forcible Entry and Detainer Act** (C.R.S. §§ 13-40-101 through -123) which defines the grounds and process under which landlords can seek to remove tenants from property they own or control.

Landlords may seek to evict from tenants on the basis of numerous different types of “unlawful detainer,” however most Colorado eviction cases are tied to:

- 1. Holding over by a tenant after a default in payment of rent:** Prior to filing, a landlord must serve a Demand for Rent or Possession which will typically give the tenant ten (10) days to pay the rent due and avoid eviction. “Exempt residential agreements” may reduce this period to five (5) days. (See C.R.S. § 13-40-104(d))
- 2. Holding over by a lessee or tenant at will after the expiration of the term for which the property was leased, or after such tenancy was terminated by either party:** No reason/good cause required. (See C.R.S. § 13-40-104(c))
- 3. Holding over by a tenant after a violation of a non-monetary condition of the tenancy:** Prior to filing, a landlord must serve a Demand for Compliance or Possession which will typically give the tenant ten (10) days to cure the lease violation and avoid eviction. “Exempt residential agreements” may reduce this period to five (5) days. (See C.R.S. § 13-40-104(e))

- Holding over by a tenant after a substantial violation of the lease:** “Substantial violation” is typically involves acts on or near the premises that are a drug-related felony, violent criminal activity, a public nuisance, or other acts that endanger the person or willfully and substantially endangers the property of others. Tenant only entitled to a three (3) day Notice to Quit with no right to cure. (See C.R.S. § 13-40-104(d.5), 13-40-107.5)
- Holding over by a tenant after a subsequent or repeat violation of a condition of the tenancy:** If a tenant previously has received a Demand for Compliance or Possession and violates the same provision of the lease, a tenant can be served with a ten (10) day Notice to Quit for a Repeat Violation with no right to cure. “Exempt residential agreements” may reduce this period to five (5) days. (See C.R.S. § 13-40-104(e.5))

**DEMAND FOR RENT OR POSSESSION**

To: \_\_\_\_\_ and myself all other occupants of the premises described below. You occupy the premises which are known as: District of \_\_\_\_\_ Apartment # \_\_\_\_\_ Attached Garage # \_\_\_\_\_

in the City of \_\_\_\_\_ Zip Code of \_\_\_\_\_

State of Colorado as tenant. You are hereby notified that the undersigned Landlord or the Tenant, or Agent for Landlord, demands that you shall within Ten Days after this demand to correct your occupancy of the premises, the undersigned Landlord or Tenant or Agent for Landlord, shall have the premises vacated. **IF YOU DO NOT COMPLY WITH THIS DEMAND, YOU WILL BE EVICTED FROM THE PREMISES.**

The monthly rent for the premises is: \$ \_\_\_\_\_

Other Tenants: \_\_\_\_\_

\*LATE FEE: For each day after the date of the demand for possession, you shall pay a late fee of \$ \_\_\_\_\_ per day until you have paid all amounts due.

**TOTAL DUE AS OF THE DATE OF THIS DEMAND: \$ \_\_\_\_\_**

**YOUR LEASOR HAS DEMAND THAT THIS PAYMENT BE MADE IN CASH.**

The amount of each payment is \$ \_\_\_\_\_ in a series of payments at the above described intervals until the lease. If you fail to pay the demand for possession, you shall be liable for the full amount of the lease. You are hereby notified that the undersigned Landlord or Tenant, or Agent for Landlord, shall have the premises vacated. **IF YOU DO NOT COMPLY WITH THIS DEMAND, YOU WILL BE EVICTED FROM THE PREMISES.**

Landlord / Agent for Landlord: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Landlord: \_\_\_\_\_

Signature of Tenant: \_\_\_\_\_

I declare I am the undersigned Demand for Rent or Possession on the above listed premises in the above listed address.

**YOUR DEMAND HAS SERVED YOU: (SEE STATUTE)**

By sending a copy of this demand to me at \_\_\_\_\_ (Resident Full Name)  
 I have made diligent efforts to personally serve this Demand. I have made every effort to bring this Demand for Rent or Possession to the attention of a responsible person at the premises described herein.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of THE BETTER BARBER & WILSON, P.C.  
 For completed forms to 303.756.4141 or 303.756.4149 or Colorado Springs 719.227.4141  
 800.400.0000

**DEMAND FOR COMPLIANCE OR POSSESSION**

To: \_\_\_\_\_ and myself all other occupants of the premises described below. You occupy the premises ("Premises") which are known as: \_\_\_\_\_ and are, and all other occupants of the premises described below. Pursuant to C.R.S. Colorado Revised Statutes § 13-40-107, a Demand for Compliance or Possession may be served by the undersigned Landlord or Agent for Landlord, or the Tenant, or Agent for Landlord, if you have violated the terms of the lease. **IF YOU DO NOT COMPLY WITH THIS DEMAND, YOU WILL BE EVICTED FROM THE PREMISES.**

in the City of \_\_\_\_\_ Zip Code of \_\_\_\_\_

State of Colorado as tenant. You are hereby notified that the undersigned Landlord or the Tenant, or Agent for Landlord, demands that you shall within Ten Days after this demand to correct your occupancy of the premises, the undersigned Landlord or Tenant or Agent for Landlord, shall have the premises vacated. **IF YOU DO NOT COMPLY WITH THIS DEMAND, YOU WILL BE EVICTED FROM THE PREMISES.**

The monthly rent for the premises is: \$ \_\_\_\_\_

Other Tenants: \_\_\_\_\_

\*LATE FEE: For each day after the date of the demand for possession, you shall pay a late fee of \$ \_\_\_\_\_ per day until you have paid all amounts due.

**TOTAL DUE AS OF THE DATE OF THIS DEMAND: \$ \_\_\_\_\_**

**YOUR LEASOR HAS DEMAND THAT THIS PAYMENT BE MADE IN CASH.**

The amount of each payment is \$ \_\_\_\_\_ in a series of payments at the above described intervals until the lease. If you fail to pay the demand for possession, you shall be liable for the full amount of the lease. You are hereby notified that the undersigned Landlord or Tenant, or Agent for Landlord, shall have the premises vacated. **IF YOU DO NOT COMPLY WITH THIS DEMAND, YOU WILL BE EVICTED FROM THE PREMISES.**

Landlord / Agent for Landlord: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Landlord: \_\_\_\_\_

Signature of Tenant: \_\_\_\_\_

I declare I am the undersigned Demand for Compliance or Possession on the above listed premises in the above listed address.

**YOUR DEMAND HAS SERVED YOU: (SEE STATUTE)**

By sending a copy of this demand to me at \_\_\_\_\_ (Resident Full Name)  
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 800.400.0000

**NOTICE TO QUIT FOR A SUBSTANTIAL VIOLATION**

To: \_\_\_\_\_ and myself all other occupants of the premises described below. Pursuant to C.R.S. Colorado Revised Statutes § 13-40-104(d.5), you are hereby notified that the undersigned Landlord or Agent for Landlord, or the Tenant, or Agent for Landlord, if you have violated the terms of the lease. **IF YOU DO NOT COMPLY WITH THIS DEMAND, YOU WILL BE EVICTED FROM THE PREMISES.**

in the City of \_\_\_\_\_ Zip Code of \_\_\_\_\_

State of Colorado as tenant. You are hereby notified that the undersigned Landlord or the Tenant, or Agent for Landlord, demands that you shall within Three Days after this demand to correct your occupancy of the premises, the undersigned Landlord or Tenant or Agent for Landlord, shall have the premises vacated. **IF YOU DO NOT COMPLY WITH THIS DEMAND, YOU WILL BE EVICTED FROM THE PREMISES.**

The monthly rent for the premises is: \$ \_\_\_\_\_

Other Tenants: \_\_\_\_\_

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**NOTICE TO QUIT FOR A REPEAT VIOLATION**

To: \_\_\_\_\_ and myself all other occupants of the premises described below. Pursuant to C.R.S. Colorado Revised Statutes § 13-40-104(e.5), you are hereby notified that the undersigned Landlord or Agent for Landlord, or the Tenant, or Agent for Landlord, if you have violated the terms of the lease. **IF YOU DO NOT COMPLY WITH THIS DEMAND, YOU WILL BE EVICTED FROM THE PREMISES.**

in the City of \_\_\_\_\_ Zip Code of \_\_\_\_\_

State of Colorado as tenant. You are hereby notified that the undersigned Landlord or the Tenant, or Agent for Landlord, demands that you shall within Five Days after this demand to correct your occupancy of the premises, the undersigned Landlord or Tenant or Agent for Landlord, shall have the premises vacated. **IF YOU DO NOT COMPLY WITH THIS DEMAND, YOU WILL BE EVICTED FROM THE PREMISES.**

The monthly rent for the premises is: \$ \_\_\_\_\_

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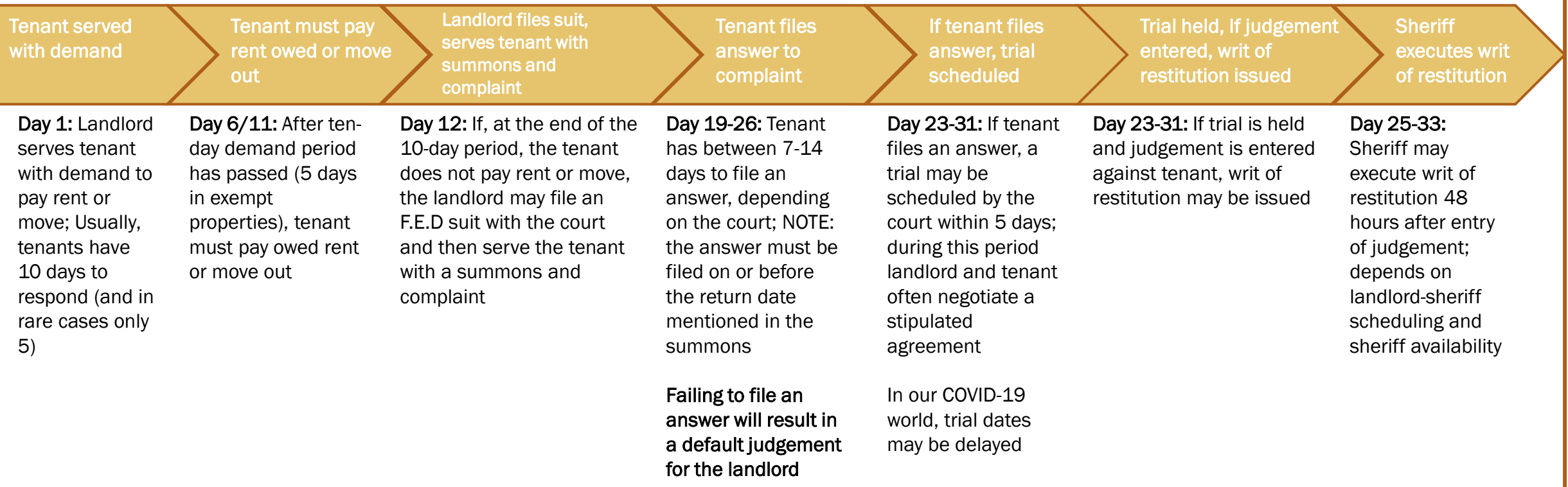
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of THE BETTER BARBER & WILSON, P.C.  
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# LEGAL PROCEEDINGS: MAKING SURE TENANTS KNOW THEIR RIGHTS

We are hoping that there will be a public policy solution that will modify the traditional eviction process (see SB-173); however, in the absence of these changes, here is a general timeline of an eviction action.

**Simplified eviction timeline (normal circumstances—note that right now there is a 30-day demand period for nonpayment)**



## NOTICE REQUIREMENTS

- **Remember that this is the beginning of the process, not the end**
- Landlord **MUST** give written notice to tenant prior to filing FED in court
- Notice must typically state reason
- C.R.S. § 13-40-104 and C.R.S. § 13-40-107
- Note: If lease is self-terminating with no option for renewal, no notice required

### Notice: No-Cause (termination of lease/tenancy)

- Amount of time required in notice varies (look at lease and/or payment structure/history)
- Good cause required for most subsidized housing, including LIHTC properties, but not Section 8 Housing Choice Voucher tenancies
- If good cause is required, the notice should state the legal and factual bases for termination of tenancy

### Notice: For Nonpayment of Rent

- Usually 10 days to cure (currently 30 pursuant to Governor's Executive Order)
- Landlord cannot refuse payment within 10/30-day period
- After 10/30 days, no requirement to accept rent
- Must give tenant right to pay OR surrender possession to avoid eviction action being filed

## NOTICE REQUIREMENTS (CONTINUED)

### Notice: Non-monetary Lease Violation

- 10 days to cure (unless exempt property which can provide a 5-day demand)
- Must give tenant right to cure OR surrender possession to avoid eviction action being filed
- Notice should state the legal and factual bases for termination of tenancy

### Notice: Repeat Violation

- 10-day Notice to Quit (unless exempt property which can provide a 5-day Notice to Quit) with NO right to cure
- Notice should state the legal and factual bases for termination of tenancy which should include copy of prior demand for compliance or possession or detailed information regarding such prior notice

### Notice: Substantial Violation

- 3-day Notice to Quit with NO right to cure
- Notice should state the legal and factual bases for termination of tenancy

# NOTICE TO TERMINATE EXPIRED TENANCY/LEASE

- A tenancy may be terminated not less than the respective period fixed before the end of the term of tenancy
  - e.g. at the end of the lease term or as a result of mutual agreement to terminate the lease prior to the end of the lease term
- Length of notice depends on term of tenancy (or periodic nature of payments)
- Notice period calculated from end of term (e.g. 7 days from end of month)

Tenancy:	Length of Required Notice:
1 year or longer	91 days
6 months or longer, but less than 1 year	28 days
1 month or longer, but less than 6 months	21 days
1 week or longer, but less than 1 month, or a tenancy at will	3 days
Less than 1 week	1 day



# FED FILING REQUIREMENTS

## FED SUMMONS AND COMPLAINT

- Diligent effort at personal service on tenant required
  - Personal service includes leaving court papers at the premises with someone who is 18 or over and a member of the tenant's family
- If no personal service, process server may post the Summons and Complaint in a conspicuous place AND mail
- Service must occur at least seven days before Answer/Return date
- Complaint must describe property, grounds for recovery, name of person in possession and prayer for relief
- Summons contains a brief explanation of rights & date and time of appearance
- Defendant must also be provided a blank copy of an answer form
- Answer/Return date must be at least 7 but not more than 14 days out from issuance
- Some Courts require information sheets, affidavits regarding CARES Act or CDC Order compliance



# GENERAL PROCEDURAL DEFENSES APPLICABLE TO ALL FED ACTIONS

- Improper Service of the Summons and Complaint
- Is plaintiff the proper party? Landlord? Owner?
- Is the plaintiff registered with the Colorado Secretary of State? (entitled to do biz in Colorado?)
- Failure to name & serve a necessary party? (All lessees?)
- Improper service of demand/notice
- Complaint fails to state a claim on which relief may be granted
- Demand/Notice lacks specificity required by law or lacks information necessary so that the tenant can comply with the requirements of the demand/notice
- Plaintiff failed to serve a copy of the Demand/Notice upon the housing authority that administers the tenant's Section 8 voucher at that same time that said notice was served upon the tenant (only applicable to a client with a Section 8 Housing Choice or Project-Based Voucher)

# DEFENSES THAT CAN BE ASSERTED AND CONSIDERATIONS IN DEFENDING END OF LEASE CASES

- Is the property subsidized or a Low-Income Housing Tax Credit (LIHTC)(see [www.chfainfo.org](http://www.chfainfo.org) for LIHTC properties) property for which a landlord must always have good cause to terminate the tenancy?
- If the property is in a LIHTC complex, does the notice proposing to terminate the tenancy state with specificity the good cause for terminating the tenancy?
- Does the notice provide the minimum time allowed by §13-40-107, C.R.S. to vacate the premises?
- Does the notice terminate the tenancy at the end of the term (typically the end of the month)?
- Does the parties' expired lease call for greater notice than that which is provided by statute? Good for the geese argument?
- Action was filed in violation of state, local or federal fair housing protections, including protections against retaliation for filing a fair housing complaint.
  - State and federal fair housing protections include the right of a disabled person to seek **reasonable accommodations** (RA) of their disabilities in order to have equal access to and enjoyment of housing. RA request may be used to get additional time to vacate.
- Waiver by acceptance of rent or any other action which signals intent to not enforce lease provision.
- Retaliation for making good faith complaints to landlord or governmental agency alleging a breach of the warranty of habitability or organizing or becoming a member of a tenants' association.

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## DEFENSES THAT CAN BE ASSERTED AND CONSIDERATIONS IN DEFENDING NON-MONETARY LEASE VIOLATION CASE

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Does the Complaint/Notice plead with specificity a lease violation and did the notice provide the tenant with the opportunity to cure the violation or vacate the premises?

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General denial of the allegations raised in the Complaint.

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*De minimus* breach of the lease that should not result in eviction – equitable relief.

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It is not an unlawful detention if the tenant is a victim of domestic violence or abuse, which domestic violence was the cause of or resulted in the alleged unlawful detention and such domestic violence or abuse can be documented by a police report or protection order.

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Action was filed in violation of state, local or federal fair housing protections, including protections against retaliation for filing a fair housing complaint.

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State and federal fair housing protections include the right of a disabled person to seek **reasonable accommodations** of their disabilities in order to have equal access to and enjoyment of housing.

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Waiver by acceptance of rent or any other action which signals intent to not enforce lease provision.

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Retaliation for making good faith complaints to landlord or governmental agency alleging a breach of the warranty of habitability or organizing or becoming a member of a tenants' association.

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## DEFENSES THAT CAN BE ASSERTED AND CONSIDERATIONS IN DEFENDING REPEAT VIOLATION CASES

- Does the Complaint/Notice plead with specificity an original lease violation, plead or provide a copy of a prior demand for compliance or possession, and plead a subsequent lease violation?
- Is the subsequent violation a violation of the same condition or covenant of the lease?
- Can the landlord prove both the prior and subsequent violation of the lease?
- General denial of the allegations raised in the Complaint.
- *De minimus* breach of the lease that should not result in eviction – equitable relief.
- It is not an unlawful detention if the tenant is a victim of domestic violence or abuse, which domestic violence was the cause of or resulted in the alleged unlawful detention and such domestic violence or abuse can be documented by a police report or protection order.
- Action was filed in violation of state, local or federal fair housing protections, including protections against retaliation for filing a fair housing complaint.
  - State and federal fair housing protections include the right of a disabled person to seek **reasonable accommodations** of their disabilities in order to have equal access to and enjoyment of housing.
- Waiver by acceptance of rent or any other action which signals intent to not enforce lease provision.
- Retaliation for making good faith complaints to landlord or governmental agency alleging a breach of the warranty of habitability or organizing or becoming a member of a tenants' association.

# DEFENSES THAT CAN BE ASSERTED AND CONSIDERATIONS IN DEFENDING SUBSTANTIAL VIOLATION CASES

- Does the Complaint/Notice plead with specificity a substantial violation?
- Specifically, is it alleged that the tenant, guest or invitee engaged in an act or series of acts that:
  - Occurred on or near the premises and endangers the person or willfully and substantially endangered the property of the landlord, any co-tenant or person living on or near the premises; or
  - Occurred on or near the premises and constitutes a violent or drug-related felony prohibited under article 3, 4, 6, 7, 9, 10, 12 or 18 of title 18, CRS; or
  - Occurred on the leased premises and constitutes a criminal act in violation of a federal, state or local ordinance declared to be a public nuisance under state law or ordinance based upon a state law and carries a potential sentence of 180 days or more.
- Watch for landlords' attempts to expand definition of substantial violation by lease or crime-free tenancy addenda. Look to introductory paragraphs at §13-40-107.5(1)(a-d).

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## DEFENSES THAT CAN BE ASSERTED AND CONSIDERATIONS IN DEFENDING SUBSTANTIAL VIOLATION CASES, CONTINUED

- It is a defense to a substantial violation if the tenant did not know of and could not reasonably have known of or prevented substantial violation by guest or invitee, but immediately notified law enforcement of the substantial violation.
- General denial of the allegations raised in the Complaint or Notice.
- It is not an unlawful detention if the tenant is a victim of domestic violence or abuse, which domestic violence was the cause of or resulted in the alleged unlawful detention and such domestic violence or abuse can be documented by a police report or protection order.
- Action was filed in violation of state, local or federal fair housing protections, including protections against retaliation for filing a fair housing complaint.
  - State and federal fair housing protections include the right of a disabled person to seek **reasonable accommodations** of their disabilities in order to have equal access to and enjoyment of housing.
- Waiver by acceptance of rent or any other action which signals intent to not enforce lease provision.
- Retaliation for making good faith complaints to landlord or governmental agency alleging a breach of the warranty of habitability or organizing or becoming a member of a tenants' association.

# DEFENSES THAT CAN BE ASSERTED AND CONSIDERATIONS IN DEFENDING NONPAYMENT ACTIONS

Does the Demand for Rent or Possession give the tenant the appropriate period of time to pay and avoid a forfeiture of their tenancy? Typically, Demand must give ten (10) days to pay or vacate (or five days for an exempt property).

Is there any reason that the time period of the Demand should have been extended beyond the standard ten (10) days?

Governor Polis' Executive Order D 2021 110 extended D 2021 88 which suspended the requirement in §13-40-104(d) which requires a ten (10) day demand with a right to cure and substituted a thirty (30) day demand through the end of June 2021.

§4024(c) of the CARES Act requires all covered properties to provide a thirty (30) day notice of termination prior to filing a nonpayment of rent case. A covered property includes:

All properties subject to the **Violence Against Women Act**, including Public Housing, Section 8 Housing Choice Voucher Program, Section 8 Project-Based Housing, Section 202 Housing for Elderly, Section 811 Housing for People with Disabilities, Section 236 multifamily rental housing, Section 221(d)(3) Below-Market Interest Rate (BMIR) housing, HOME Funds units, Housing Opportunities for Persons with Aids (HOPWA) housing, McKinney-Vento Act homelessness programs, Department of Agriculture rental housing programs including rural voucher programs, Low-Income Housing Tax Credit (LIHTC) properties. Look up on [www.nhpd.preservationdatabase.org](http://www.nhpd.preservationdatabase.org) and [www.chfainfo.org](http://www.chfainfo.org).

Properties with (**federally backed mortgage loans with 1-4 units** defined as being made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by [HUD] or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association) or properties with federally, backed multifamily mortgage loans with 5 or more dwelling units.



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## DEFENSES THAT CAN BE ASSERTED AND CONSIDERATIONS IN DEFENDING NONPAYMENT ACTIONS, CONTINUED

- Tenant, and preferably all adults in the household, have executed a Declaration Under Penalty of Perjury for the Centers for Disease Control and Prevention's (CDC) Temporary Halt in Evictions to Prevent Further Spread of Covid 19. See slide below for requirements to seek to protections under the CDC Declaration and Moratorium and limitations on CDC Moratorium.
- Tenant has paid the amount alleged due in the Demand or has paid the amount actually due and landlord has accepted payment.
- Tenant has tendered the amount alleged or actually due during the period of the Demand and landlord has refused said tender of rent. Look to ways of eliminating charges alleged due in the Demand.
- The tenant does not owe the amounts claimed due, but this defense is safest if amount actually due was tendered. Look to ways of eliminating charges alleged due in the Demand.
- *De minimus* breach of the lease that should not result in eviction – equitable relief.

# DEFENSES THAT CAN BE ASSERTED AND CONSIDERATIONS IN DEFENDING NONPAYMENT ACTIONS, CONTINUED

- It is not an unlawful detention if the tenant is a victim of domestic violence or abuse, which domestic violence was the cause of or resulted in the alleged unlawful detention and such domestic violence or abuse can be documented by a police report or protection order, but there is a statutory construction problem with this claim.
- Action was filed in violation of state, local or federal fair housing protections, including protections against retaliation for filing a fair housing complaint.
  - State and federal fair housing protections include the right of a disabled person to seek **reasonable accommodations** of their disabilities in order to have equal access to and enjoyment of housing.
- Waiver by acceptance of rent or any other action which signals intent to not enforce lease provision.
- Retaliation for making good faith complaints to landlord or governmental agency alleging a breach of the warranty of habitability or organizing or becoming a member of a tenants' association.
- Defense based upon Colorado's Source of Income Antidiscrimination Statute as it relates to rental assistance. See §14-34-501, et seq.
- A tenant may assert, as a defense to an eviction for nonpayment of rent, the landlord's breach of the warranty of habitability, but they must jump through hoops, including:
  - Proof that the tenant provided written/electronic notice of the condition(s) in need of repair,
  - That the landlord failed to repair the condition(s) consistent with the requirements under the Warranty of Habitability, and
  - Tenant has posted into the Court registry the rent alleged due less any actual expenses on or before the Tenant's Answer/Return Date.

# FILING AN ANSWER

Tenant must file Answer on or before the date and time specified in the Summons. Answer must be on the Court approved Answer form or a form that is substantially similar.

Check with the court clerk about filing rules for Answers because many Courts have changed their procedures (Denver requires landlords to file a Motion for Entry of Judgment while Adams will enter a default judgment if the Tenant has not appeared at the Adams County Court and filed her Answer by the time listed in the Summons).

In some jurisdictions, the mere filing of an Answer prior to the date and time listed in the Summons will not be enough and the Court may require an actual or virtual appearance to avoid entry of judgment. This is especially true in Courts in which the Court holds the hearing on possession on the Answer/Return date.

If an attorney is filing the Answer on behalf of the Tenant, the Answer should be electronically filed prior to the date and time listed in the Summons (remember that because Denver County Court is special, they have their own e-filing system).

Attorneys should be careful because many of the e-filing systems now require the attorney to first file an Entry of Appearance, have that accepted and approved by the Court, and only then can the attorney file the Answer or other pleadings.

A mere appearance by the Tenant or their attorney is not enough. Either an Answer, Motion to Dismiss or Stipulation will need to be filed on the Answer/Return date to avoid a default judgment entering against the Tenant.

Tenant must either pay a filing fee to file their Answer or have the fees waived by filing a Notice of Fee Waiver (JDF 209), Motion to Waive Filing Fees (JDF 205) and Order (JDF 206) or an attorney may file a Certification of Determination of Indigency on behalf of their client (JDF 203).

# HEARING ON POSSESSION

- Both the Landlord and Tenant must appear but check whether the hearing will be done virtually or in person. If the hearing is being done virtually, can the Tenant meaningfully participate in the hearing remotely or should due process considerations be raised.
- Eviction actions are bifurcated proceedings meaning that the issue of possession will be heard first by the Court and then issues related to money damages may be heard later.
- Outside of the Denver metropolitan area, the hearing on possession is sometimes held on the Answer/Return date. Check with the Court ahead of time so that you are not surprised with a hearing on the Answer/Return date.
- Hearings on possession must typically be set within five business days, but a delay in setting can be requested by either party for good cause. The Court may set a bond or other security as a condition for granting the delay but be prepared to argue against the bond. Also, the failure to pay the bond should result in an expedited hearing on possession and not a default judgment against the Tenant.
- Make sure that all subpoenas for the hearing have been timely served at least forty-eight (48) hours prior to the hearing while taking into consideration that weekend hours do not count.
- If you do not have the necessary information to prepare for trial, advocates should file Motions for Discovery which is within the Court's discretion to grant. A timely request for the documentation should be made to the Landlord's attorney prior to filing a Motion for Discovery.
- Exhibits must typically be marked and uploaded to the e-filing system prior to trial (check local court rules).

## WHAT HAPPENS AFTER THE HEARING ON POSSESSION?

- If the Tenant is successful, the Judge will dismiss the Landlord's claims for possession (but may ask if Tenant wants Counterclaims, if any, set down for a hearing).
- If the Landlord is successful or if the Tenant fails to appear, a Judgment for Possession will enter in favor of the Landlord.
- If the Landlord prevails, a Writ of Restitution may issue forty-eight (48) hours after entry of Judgment.
- Judgment and Writ of Restitution are then delivered to the County Sheriff to schedule the eviction (removal of Tenant's possessions and changing of locks). Some county sheriffs will post a copy of the Writ or some other notice prior to executing on the Writ of Restitution, but such a step is not required by any statutory provision. Sheriff does not actually remove property of Tenant but is only there to keep the peace. Possessions are moved onto the sidewalk with no obligation to store any possessions and limits on liability for damages to property during removal.

# APPEALS

In order to appeal an adverse decision on the issue of possession, the Tenant must serve and file a Notice of Appeal, Designation of Record on Appeal, a Transcript Request Form and pay the estimated cost of the transcript into the Court. In addition, the Tenant must get the Court to set an Appeal Bond as a condition of appealing the action. All of this must occur within fourteen (14) days but the Tenant is playing a dangerous game of “Beat the Clock.”

In an action brought based upon nonpayment of rent, the Tenant will have to deposit with the Court the amount of rent found due by the Court and must pay the monthly rent as it becomes due into the Court registry.

An appeal bond in an action based upon a non-monetary violation of the lease may be waived for an indigent person, but it is safer to request that a nominal bond be set as the appeal bond.

Upon filing of the Notice of Appeal, Designation of Record on Appeal, the posting and approval of the appeal bond and the deposit of the estimated cost for preparing the record, a stay on execution of the Writ is in place.

See Rule 411 of the Colorado County Court Rules of Civil Procedure for additional requirements including correcting the record, docketing the case in District Court and timelines and requirements for briefs on appeal.

# SOME FEDERAL GOVERNMENT ACTIONS TAKEN IN RESPONSE TO COVID-19

## CARES ACT

The [CARES Act \(3/27/20\)](#) included an eviction and late fee moratorium through 7/25/20 for covered properties, including [most federally assisted rental housing programs](#), LIHTC properties and [housing with federally backed loans](#).

**Covered properties still must provide 30 days notice before bringing eviction for nonpayment of rent.**

For more information, please see this [summary](#) prepared by the National Housing Law Project.

## CDC EVICTION MORATORIUM

The CDC's [Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19](#) halts evictions due to nonpayment of rent through June 30, 2021

- Applies to all tenants who meet criteria
- Late fees permitted
- Tenants must complete and submit affidavit to be protected
- CDC Order is floor
- Exceptions for lease violations & health/safety

## CDC's Non-binding Guidance

Under the [CDC's non-binding guidance](#), **eviction proceedings need not be stayed**

- No clarification whether it applies to non-renewals, this has been county by county
- No requirements that landlords provide notice (state executive orders may require notice)
- Court hearings may proceed up as long as "the actual eviction . . . does not take place"
- Courts have authority to issue rules

The federal eviction moratorium has not prohibited court proceedings, and many county courts allow hearings on the veracity of the CDC Declaration



## CDC MORATORIUM

### Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

- <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-03292021.pdf>
- Went into effect September 4, 2020 and ends June 30, 2021
- “Under [42 CFR 70.2](#), a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.”
- The order includes an [affidavit](#) tenants must file to be protected.
- The CDC and HUD are regularly issuing guidance and FAQs on its moratorium. See [www.nhlp.org](http://www.nhlp.org).

# MORATORIUM ELIGIBILITY REQUIREMENTS

Tenants must file [affidavit](#) affirming under penalty of perjury:

- They made their best effort to obtain government assistance for rent
- Income limits:
  - They expect to earn no more than \$99,000 in annual income for 2020 (or \$198,000 for couples filing jointly); OR
  - They were not required to report income in 2020 to the IRS; OR
  - They received a CARES Act stimulus check
- They cannot make a full rental payment because of a loss of income, lay-off, loss of work hours or extraordinary medical expenses
- They are making a best effort to make timely partial payments as close to the full payment as possible
- If evicted, they would become homeless, need to live in a shelter or need to move into a shared residence where they would be living in close quarters
- They understand they may be required by their landlord to provide full or all payments when the moratorium ends

# ACTIONS TAKEN BY COLORADO IN RESPONSE TO COVID-19

## STATE EVICTION MORATORIA

The first statewide eviction moratorium ended on June 13, 2020, but is still relevant:

- Prohibition of the filing of evictions
- A ban on late fees

Executive Orders 227 & 255 & 285 prohibited evictions October 21 through December 31

- Same criteria as CDC Order
- Required affidavit asserting protection
- Applied to non-payment and other cases (broad)

## EVICTION-RELATED EXECUTIVE ORDERS

Executive Order 223 (October 15 through December 31, 2020) adopted some of the Eviction Prevention Task Force's suggestions:

- 30 days' notice of default for nonpayment
- No FED notice or filing unless it includes a copy of CDC's Order and Declaration (originally in EO D2020 202)
- No late fees or penalties permitted

## CURRENT REALITY

Executive Order 2020 307 Until April 27, no late fees or penalties associated with nonpayment of rent

- EO 2021 73 expired April 28
- EO 2021 88, effective April 20, 2021, (extended by EO 2021 105) requires LLs to give tenants **30 days' notice for nonpayment of rent**
- EO 2021 110 extends 30 days' notice & adds requirement to notify tenants of resources per DOLA guidelines

# OTHER COLORADO STATUTORY PROTECTIONS FOR TENANTS

- Warranty of Habitability (§38-12-501 to 38-12-508, C.R.S.) provides definitions relevant to a landlord's obligations to maintain premises in a habitable condition, details process by which a tenant must complain (in writing) about conditions in need of repair and steps that a landlord must take to address conditions and includes the following remedies:
  - Relocation to a comparable dwelling unit or hotel for a condition that materially interferes with tenant's life, health or safety.
  - Tenants' right to terminate tenancy.
  - Injunctive relief.
  - Defense to eviction for nonpayment of rent.
  - Damages for breach of warranty of habitability.
  - Repair and deduct.
- Security Deposit Law (§38-12-101 to 38-12-104, C.R.S.)
- Prohibition on Retaliation (§38-12-509, C.R.S.) for good faith complaints to landlord or governmental entity regarding conditions or involvement with tenant associations with remedies including right to terminate lease and statutory penalties.
- Unlawful Removal or Exclusion (§38-12-510, C.R.S.) bars self-help evictions and reduction in services seeking to force a tenant out of a premises without resorting to court process.

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## **OTHER COLORADO STATUTORY PROTECTIONS FOR TENANTS, CONTINUED**

- Mobile Home Park Act (§38-12-200.1 to 38-12-222, C.R.S.) applies to those parties that own a mobile home and rent space in a mobile home park. Owners of mobile homes renting space in a mobile home park have significant additional rights concerning both their residence in the mobile home park and the eviction process.
- Mobile Home Park Act Dispute Resolution and Enforcement Program (§38-12-1101 to 38-12-1110, C.R.S.)
- Right to early termination of lease upon payment of one month of rent for victims of domestic violence and abuse (§38-12-301, C.R.S.).
- Right to receive copy of lease and receipts upon payment (§38-12-801 to 38-12-802, C.R.S.).
- Rental Application Fairness Act (§38-12-901 to 38-12-905, C.R.S.) limits application fees, limits landlord rights to consider older rental, credit and criminal histories and right to written notice of denial of application.
- Bed Bugs in Residential Premises (§38-12-1001 to 38-12-1007, C.R.S.) details procedures to be following by landlords and tenants concerning infestation of bed bugs.
- Immigrant Tenant Protection Act (§38-12-1201 to 38-12-1205, C.R.S.) limits landlords from seeking and/or disclosing information regarding a tenant's immigration status and provides remedies for violations.
- Suppressing or Sealing of Eviction Court Records (§13-40-110.5, C.R.S.) mandates the sealing of eviction filing records unless a judgment for possession enters against the tenant.

# TENANTS STILL BOUND BY RENTAL CONTRACTS

While moratoria remain in place, tenants are still expected to pay rent under the terms of their rental agreements. Landlords may still use normal measures to attempt to collect rent from tenants during a moratorium

## Acceptable landlord collection tactics

1. **Calls, emails, letters, and other outreach:** Landlords may ask tenants to pay rent during the moratoria and are permitted to follow up
2. **Posting a demand:** Landlords may post a demand for possession on a tenant's door during the moratorium period (*\*maybe?*)
3. **Proposing payment agreements:** Landlords may attempt to negotiate payment agreements with tenants during the moratorium period
4. **Refusing to accept partial payments:** Landlords are unfortunately not required to accept partial payments.

## Unacceptable landlord collection tactics

1. **Evicting tenants:** Landlords may not use “self-help” measures to remove tenants during or after the moratoria period
2. **Harassing or intimidating tenants:** Landlords cannot seek rental payments through harassment, intimidation, or other related means
3. **Locking-out tenants:** Landlords may not change locks or attempt to block tenant entry to premises
4. **Discontinuing utilities or other services:** Landlords may not discontinue critical services during the moratoria
5. **Failing to maintain premises:** Landlords must continue to maintain premises

# WHEN THE MORATORIUM ENDS...

## Post moratorium legal action

## Description

Eviction (F.E.D.)

- Landlords are permitted to proceed in F.E.D. suits; procedure varies by county
- Under the CDC's non-binding guidance landlords can file non-payment eviction suits and ask courts to adjudicate the veracity of a CDC Declaration
- In Colorado, Landlords are often permitted to evict based on non-renewal/termination of leases or tenancies

Money damages

- Landlords may also pursue back rent from tenants who are still living on the premises, who have voluntarily moved out, and who have been evicted for non-payment and other causes
- Some fees permitted (this is a puzzle: no late fees from May 1 through June 13, 2020 under [EO D2020 51](#) and [EO D2020 88](#); late fees allowed until October 21, 2021; no late fees again under [EO D2020 223](#) until April 27, 2021 via [2020 307](#) and [2021 73](#))

What tenants need to know: Despite the presence of various eviction moratoria, they are still bound by rental contracts. Landlords will likely seek payment under the terms of rental agreements and will continue to expect tenants to pay



# RENTAL ASSISTANCE

Most tenants are aware that rental assistance is available, but they may not know:

Rental Assistance can be paid to cover 100% of rental arrears + the current month + 2 months into the future

Rental assistance can be paid directly to the tenant if the landlord is unwilling to cooperate

There is one central rental assistance intake portal for most of the state (though some counties process separately)

Landlords must accept rental assistance if the tenant receives the full amount of back-rent within the 30-day notice period

Rental assistance can cover late fees (if legally permitted)

Rental assistance can cover utilities (if the tenant pays them to the landlord)

Tenants can self-certify income, tenancy, and other important requirements for eligibility



## FURTHER QUESTIONS?

Please feel free to contact us:

Carey DeGenaro: [carey.degenaro@cedlaw.org](mailto:carey.degenaro@cedlaw.org)

Leslie F. Ebert: [lebert@colegalserv.org](mailto:lebert@colegalserv.org)

Shannon MacKenzie: [shannon@copovertylawproject.org](mailto:shannon@copovertylawproject.org)

Alternative Resources:

[Colorado Legal Services Training](#)

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# THE COVID-19 EVICTION DEFENSE PROJECT

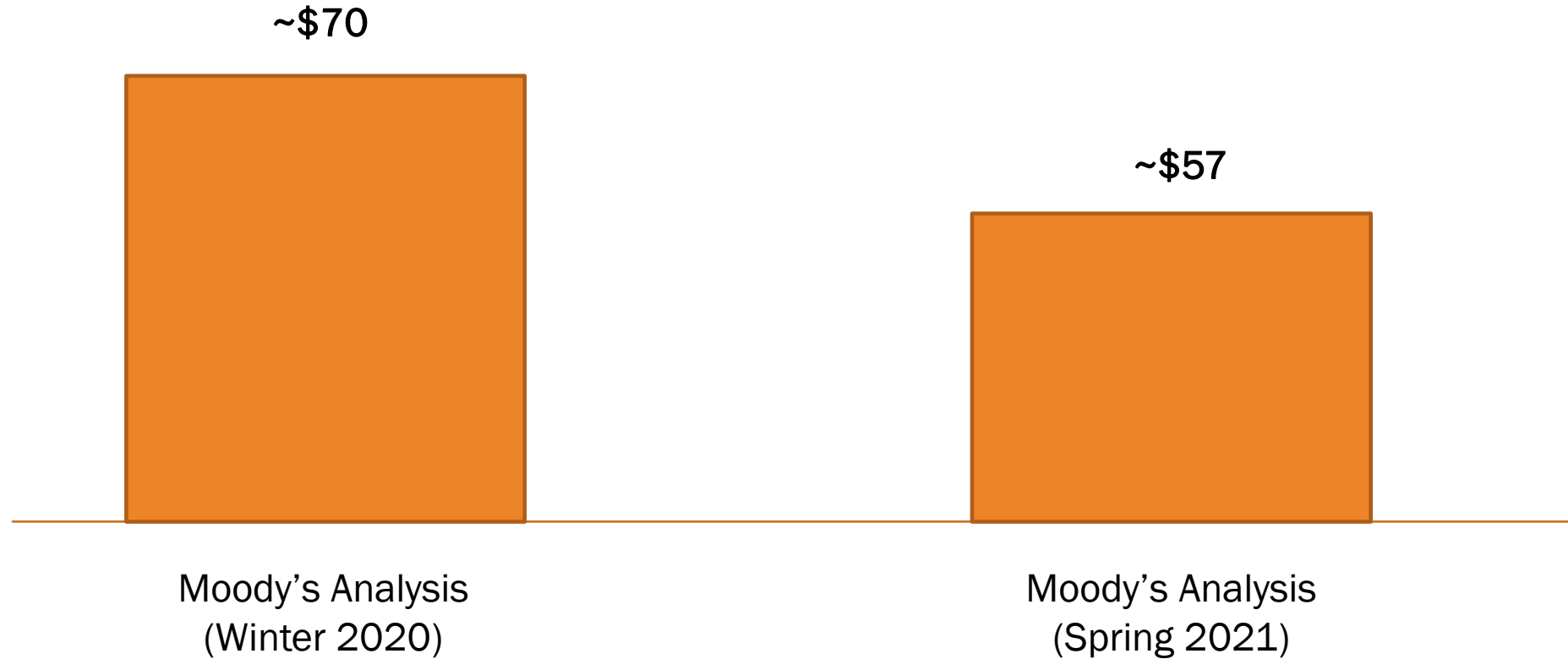
CLS, CPLP, & CEDP EVICTION 101

Confidential  
JUNE 9, 2021



# ACROSS THE UNITED STATES, TENANT RENTAL DEBT REACHED ALL TIME HIGHS DURING THE WINTER OF 2020 - 2021

U.S. Rental Debt, 2020-21,  
\$, billions



# IN RESPONSE, STATE AND FEDERAL GOVERNMENT HAVE ISSUED UNPRECEDENTED RENTAL ASSISTANCE

## Federal rental assistance

- ERA #1 (Winter 2020): \$25B
- ERA #2 (Spring 2021): \$21.5B
- Federal funding distributed to states, cities, and counties to distribute to at-risk landlords and tenants
- Federal and local guidelines determine administration of funding

## CO state rental assistance

- CO rental assistance (Summer of 2020): \$19M
- CO rental assistance round 2 (fall 2020): \$55M
- Flexible state funds, administered by DOLA, supporting rental debt payments

## Other forms of support

- Stimulus checks paid in 2020 and 2021
- Unemployment and (previously available) enhanced unemployment
- Various other financial support payments in 2020 and 2021

# STATE AND LOCAL GOVERNMENTS, ALONGSIDE THEIR NON-PROFIT PARTNERS, HAVE BEEN MANAGING A GROWING CASELOAD

DOLA applications received: 55,516

DOLA funds requested: \$203,000,000

DOLA applications processed: 33,130

DOLA funds issued: ~\$86,000,000

- Through DOLA programs alone, roughly ~140,000 people have applied for, or benefited from state rental assistance (note: these numbers do NOT include local programs, non-profit programs, and residents ineligible or unaware of rental assistance programs- so they are a partial picture of current need)
- While Colorado is experiencing a backlog due to volume, programs compare favorably to Texas, Florida, and other large states where effective programs are still being established (in April, Texas reported 250 payments on ~180K applications)

# RENTAL ASSISTANCE SOLVES A LOT OF PROBLEMS

- Tenants receiving rental assistance who have time left on their lease, or are able to negotiate a new one, may not face eviction and will avoid further credit damage and collections
- Landlords recover on tenant debt at full value and can pay mortgage, maintenance, and taxes on property (alternative is the costly eviction process, vacancy, and collections process)
- State and local governments avoid the enormous costs of eviction, which may include rehousing services, shelter nights, emergency room visits, increased risk of institutionalization in some form, and other costs (recent analysis suggests an ROI on emergency rental assistance of 300%+)

Clients with legal support and access to rental assistance often see the best results and are able to fully clear ledgers, reach balanced stipulations, extend leases, and take other steps that improve housing stability

# WHILE RENTAL ASSISTANCE IS HELPFUL, THE APPLICATION PROCESS IS INCREDIBLY CHALLENGING

## Tenants

- Government-issued ID for primary applicant.
- Document demonstrating applicant lives at the property.
- Evidence of rent due
- If applicable, notice to evict
- Months of rental assistance (back rent and future payments)
- Unemployment benefits letter
- Income documentation for all household members above the age of 18
- Proof that income must be below 80% of AMI
- Verification that at least one member of household experienced income loss due to COVID
- Demonstration that at least one member of household is at risk of homelessness and housing instability
- Signature confirming truthfulness of application

## Landlords

- Tenant's name, email, and phone
- Rent ledger showing back rent owed
- Completed IRS W9
- Confirmation that you have not already received assistance for the time period in question



# LAWYERS HAVE A ROLE TO PLAY

- Helping tenants navigate the complicated and confusing rental assistance application process so they can resolve outstanding ledgers
- Communicating with landlords and their attorneys to discuss the tenant's situation and anticipated timing on full repayment via rental assistance
- Advising tenant on rights, reviewing notice or demand placed on door, filing an answer in the case, and taking other steps to buy tenant more time to successfully navigate rental assistance process
- Negotiating with landlord or landlord's attorneys to sign a balanced stipulation, extending the tenant's lease, or taking other steps to improve the likelihood of a successful outcome



**QUESTIONS?**