

Rental Property Handbook for Landlords and Tenants

City of Longmont





Rental Property Handbook

This Rental Property Handbook for Landlords and Tenants in the City of Longmont is prepared and distributed by the City of Longmont office of Community and Neighborhood Resources. By providing an overview of legal and other issues relating to the landlord/tenant relationship, it is meant to serve as an information guide to help property managers, owners, and tenants better understand their legal rights and responsibilities, and to build a stronger landlord/tenant relationship. Many conflicts and disputes that arise in our community can be avoided entirely or handled in a better way if all parties have an understanding of the laws and how that legal framework applies to their situation. And as any contract law professor will tell students, good contracts - and good leases - create peace in a community.

This Rental Property Handbook is not presented as legal advice and is not a legal document, but rather is intended to serve as a general guide to Colorado landlord/tenant law. This Handbook is not intended to be used as a substitute for seeking advice from an attorney. It is presented as a summary of current State of Colorado and City of Longmont residential landlord/tenant law. When a specific Colorado law is cited, it is from the Colorado Revised Statutes, "C.R.S." The most up-to-date latest version of the C.R.S. can be accessed at www.leg.state.co.us. The information contained in this Handbook may change at any time and there is no promise that this information is current.

When a disagreement or difference of opinion does arise between tenants, landlords, property management, neighbors, the office of Community and Neighborhood Resources offers these communication tips:

Steps to Resolving a Conflict

- Think of a constructive way to deal with the situation before you speak.
- Agree to ground rules:
 - No interrupting
 - No name calling or put downs
 - Speak for yourself, not for the other person
- When you explain your view of the situation, use 'I' messages. Do not assume you know what someone else is thinking or what their motivations might be.
- If you are the second speaker, before speaking for yourself try to put into your own words what you heard the other person say.
- After both people have spoken, suggest and list possible solutions.
- Agree on a resolution from the list you create.
- Clarify, get more information, and ask questions.
- Use neutral or non-threatening words when explaining your viewpoint

Tip: The key to a good relationship between neighbors, landlords, and tenants is open, honest communication.

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LANDLORD/TENANT

THE LEASE

What is a lease?

A lease is a contract – that is, a legally binding agreement - between the landlord and tenant(s), granting the tenant exclusive use of the landlord’s property for a given period of time in exchange for rent.

A lease can either be written (written is always preferable) or can be implied by the actions of the parties. For example, if someone rents a house without executing a written lease with the landlord, the lease is implied by the landlord accepting rent and allowing the tenant to remain in the property, these actions implying that they have an agreement. The terms of that agreement are the laws, ordinances, and codes that apply to that relationship and that property. **IT IS ALWAYS IN THE BEST INTEREST OF BOTH THE LANDLORD AND THE TENANT TO HAVE A WRITTEN LEASE.**

What’s in a lease?

In a lease, a landlord and tenant agree to the terms, or rules, that will be in effect during the time that the tenant uses the landlord’s property. Such terms may include, for example, the amount of rent; the length of time the tenant can live in the landlord’s property (the “term of possession”); the amount of the security deposit; property maintenance responsibilities of the tenant and/or landlord; and other rules that describe the rights and responsibilities of both the landlord and the tenant.

NOTE: Because a lease is typically written by the landlord, and the tenant typically must accept the terms of the lease as written by the landlord (that is, on a take-it-or-leave it basis, without the ability to negotiate terms), ambiguities in the lease, or provisions that are onerous or that unconscionably favor the landlord’s rights over the tenant’s, are usually construed by the courts in favor of the tenant.

What are some common lease clauses and problem areas? It cannot be emphasized enough that both the landlord and the tenant should completely read and understand all clauses of a lease - and understand the rights and responsibilities created by those clauses - **before** signing the lease. A lease signed by both landlord and tenant is binding upon both landlord and tenant. The tenant does not have a “three-day right of rescission” after signing a lease.

For written leases, under Colorado law, within seven days of the date the tenant signs the lease the landlord must provide the tenant with a copy of the lease signed by both the landlord and the tenant, either electronically or, if requested by the tenant, in a paper copy. C.R.S. 38-12-801

Standard Lease Terms

(See page _____ of this *Handbook*, Appendix B, for a Model Lease.)

The lease should include, at a minimum, the following terms:

- The amount of rent and when rent is due
- Grace periods. Penalties, if any, for late payment of rent. (Landlords might consider not including a “grace period” in the lease, but simply indicating that rent is due on a date certain each month. Tenants often misinterpret the meaning of “grace period”. For example, if a lease states that the rent is due on the first of each month, with a grace period until the fifth of the month, a majority of tenants will interpret that to mean that rent is due on the fifth of the month.)
- How long the lease is in effect (the “term of possession”)
- Who is responsible for utility payments
- Who is responsible for minor and major repairs to the rental property, especially to appliances, plumbing, heating and cooling
- Circumstances under which the landlord may enter the unit – length of notice required to tenant; hours and days when entry will occur; whether the tenant must be present; how entry may be made in emergencies, for repairs, and for showing for sale or re-rental
- Who will be responsible for snow removal, garbage collection, lawn care, etc.
- Whether the tenant can sublet and/or assign the lease during the lease term
- An explanation of security deposit rules including, for example, how soon the security deposit will be returned at the end of the lease term and whether an initial and/or final walk-through with the tenant will be conducted by the landlord
- Any specific use prohibitions, such as no pets or no smoking. Absent a specific restriction, a tenant may make use of a unit for any purpose that is not prohibited by federal, state, or local law, ordinances, or codes, and which doesn’t create a nuisance or cause damage to the rental property.
- Any break lease fees or break lease conditions
- Other specific agreements between the landlord and tenant

Tip: Make sure that your lease clearly explains the rights and responsibilities of both the landlord and tenant.

Joint and Several Liability

Most leases create “joint and several liability” between co-tenants, meaning that when more than one tenant signs a lease, each tenant is individually responsible for all of the conditions and responsibilities of the lease. For example, a landlord can demand the entire rent amount from any one tenant if that tenant’s roommate(s) moves out without paying rent.



Example

Tenants Troy and Todd enter into a lease with Leticia Landlord. Todd punches a hole in the wall and skips town without paying his share of the rent. Because their lease states that they are “jointly and severally liable”, Troy - as well as Todd - is responsible for paying to have the damage repaired, as well as for the entire amount of the rent owed to Leticia Landlord.

Attorney Fees

The prevailing party in an eviction or any other legal action brought under the Forcible Entry and Detainer Statute is entitled to recover damages, reasonable attorney fees and costs. **However, neither a landlord nor a tenant may recover attorney fees unless the lease contains a clause allowing for the award of reasonable attorney fees to either party.** (See C.R.S. §13-40-123). This also applies to any case brought under the Warranty of Habitability (C.R.S. §38-12-507(2)).

Grace Periods

A grace period does not mean that the rent is not late between the rent due date and the last day of the grace period. A grace period is simply a period after the rent due date during which time no late fees will accrue. For example, if rent is due on the 1st of the month, rent is late if not paid on the 1st even if there is a grace period until the 5th of the month. If rent is paid before the 5th, no late fees will be charged. If rent is paid after the 5th, late fees may be charged, depending on the terms of the lease.

Privacy

While not required by statute, reasonable notice by the landlord for access to the rental property should be addressed in the lease. A commonly used privacy clause allows a landlord access to the rental property at reasonable times and with reasonable notice to the tenant to make necessary repairs or reasonable inspections. Additionally, a landlord has the right to enter a rental unit without notice in emergencies. (An example of an emergency might be an apartment flooding after the hot water heater breaks.) **If a lease does not include a written clause specifying when the landlord can enter a rental property, a tenant has exclusive use of the property** and does not have to allow the landlord access. However, if a tenant refuses to allow the landlord entry, the tenant assumes all liability for damages and repairs to the rental unit, as well as consequential damage to other units. **This issue is often the source of tension and misunderstanding, even anger, between a landlord and tenant. It is a best practice when entering into a lease to make sure all parties to the lease understand clearly the privacy rights of the tenant and the landlord's right of entry.**

Rental Applications and Background Checks

A landlord may require a rental application fee in order to do a rental history, credit and/or criminal background check on a prospective tenant. There is no cap on the amount a landlord can charge as an application fee, however:

- The fee must be the same for every applicant
- The entire amount of the fee must be used for processing the application and doing the background check
- The landlord must provide an applicant with a written disclosure of the actual costs of the application process
- The landlord must provide a receipt, either written or by email, for every application fee
- If a landlord denies an applicant, the landlord must give the exact reason for the denial, **in writing**
- Within 20 days of the date of application, the landlord must return to the tenant any unused portion application fee
- A tenant can sue the landlord for three times the amount of the application fee, plus court costs and attorney fees, for any violation of the statutory application fee requirements

(C.R.S. §§38-12-901-905)

A landlord can use only the past seven year rental history or credit check to screen a prospective tenant, and only the past five year criminal **conviction** history. **A landlord may not consider prior arrests.** A Department of

Justice Memorandum of April 4, 2016, requires a landlord to decide on a case-by-case basis whether a particular criminal history indicates that a prospective tenant may be a danger to other tenants, and thus whether the landlord can deny an application based on that criminal history. For example, how old was the person at the time of the conviction? What type of financial and personal responsibility and rehabilitation has the person demonstrated since the conviction? Was there more than one conviction? Was the conviction for a property crime or for a crime against a person? **A landlord may deny an applicant who has a conviction for murder, manslaughter, stalking, or sex offenses requiring that the person be included on the sex offender registry, and for manufacture and/or distribution of methamphetamine, including for possession of the ingredients required to make methamphetamine.**



Tip for Landlords: Both a credit check and background check can be helpful when deciding on a prospective tenant. Be aware, however, that if you require one prospective tenant to provide the information necessary to perform a background and credit check, you must require the same information from all prospective tenants. Contact the resources below for more information on obtaining these records. Landlords set their own background screening policy. Some landlords prefer to have a background screening company do their background checks. If a screening company does a landlord's application checks, the landlord may refer denied tenants to the company for an explanation of their denial.

CREDIT CHECK:

TransUnion: 1-800-888-4213, www.transunion.com

Experian: 1-888-397-3742, www.experian.com

Equifax: 1-800-685-1111, www.equifax.com

CRIMINAL BACKGROUND CHECK:

Colorado Bureau of Investigation

www.cbirecordscheck.com

www.cocourts.com

Renting off Craigslist

Craigslist has become a common way for landlords to advertise for tenants. **Both landlords and prospective tenants should be aware of potential Craigslist scams:**

If a prospective tenant emails you from out-of-state or out of the country saying they are interested and would like to give you a security deposit to hold your rental until they are in town, beware. They might then send you a check and follow with an email saying that they made a mistake and wrote the check for \$3,000 instead of \$300, and ask you to deposit the check and return \$1,700 before you discover that the check is not good.

Insurance

Neither the State of Colorado, the County of boulder nor the City of Longmont, require a landlord to compensate a tenant for damage to that tenant's personal property. If the lease does not contain a clause requiring the landlord to compensate the tenant for damage to a tenant's personal property, the tenant may wish to purchase renter's insurance. Renter's insurance is usually very affordable and may cover not only damage to personal property, but theft and other types of property loss, including to the rental unit. **Renters insurance is highly encouraged. Check with your auto insurance carrier, who may bundle policies at a lower cost.** Increasingly, landlords are requiring a tenant to carry renters insurance and name the landlord as a secondary insured party.

Security Deposits

Also called a damage deposit, a security deposit is a tenant's advance payment of money to the landlord to secure against future lease violations by the tenant, including nonpayment of rent and property damage beyond ordinary wear and tear. The amount of the security deposit should be written into the lease. A landlord might also require a pet deposit if pets are allowed. When the term deposit is used, it always means that the amount of the deposit is refundable if no damages occur. (See page _____ of this *Handbook* for more information about security deposits). (See C.R.S. §§38-12-101 thru 104).

Interest on Security Deposits

The city of Longmont does not require landlords to pay interest on security deposits held during the tenancy. Some jurisdictions do require interest to tenants including the cities of Boulder and Denver.

Subleases and Assignments

A lease may allow, or may specifically prohibit, subleasing and/or assignments. Subleases and assignments can happen only with a landlord's permission, which should always be in writing for the protection of all parties. If a lease does not address subleasing and/or assignment, a landlord cannot unreasonably withhold consent.

Subleases

A sublease is a secondary lease between the original tenant and a new tenant. With a sublease, the original tenant remains responsible to the landlord if the secondary tenant defaults on rent payments, causes property damage or violates other lease provisions. The rental term of a sublease may be shorter than the original lease term. For example, a tenant with a lease term of one year, from January through December, might sublease an apartment for June through August while out of town but then return to complete the lease term from September through December. Under Colorado case law, unless the lease prohibits subleasing, a landlord may not unreasonably withhold permission to sublet.

Sublease Example

Teresa Tenant and Larry Landlord enter into a lease for one year, Three months into the rental period, Teresa needs to move because she gets a job in California. Teresa's friend Sarah Subleser would like to rent the apartment. The lease permits subleasing and Larry agrees to allow Teresa and Sarah to enter into a sublease. Sarah doesn't pay any rent and Larry evicts Teresa and Sarah. Both Teresa and Sarah are legally responsible for the unpaid rent because Teresa's lease with Larry remained in effect, though she has a secondary lease with Sarah. Teresa can sue Sara in small claims court for Sarah's unpaid rent to Teresa.

Assignments

An assignment is the legal transfer to a third party of a tenant's right to possession of a rental property for a specific time frame. In an assignment, the third party assumes all responsibility for payment of rent to the landlord and the original tenant is released from further liability under the lease.

Assignment Example

Teresa Tenant and Larry Landlord enter into a lease for one year. Three months into the rental period, Teresa needs to move because she gets a job in California. Teresa's friend Angie Assignee would like to rent the apartment. The lease permits assignment and Larry agrees to allow an assignment to Angie. Teresa assigns her lease to Angie, which then becomes a lease between Angie and Larry. Once the lease is assigned, Teresa is released from lease obligations (like rent) and benefits (like being able to live in the rental property). When Larry wants to collect unpaid rent, he can only demand payment from Angie, not Teresa.

Unenforceable Clauses

Leases sometimes contain clauses that are contrary to Colorado law and cannot be enforced in court. These clauses should be identified and eliminated before a lease is signed. If any party has a question concerning the enforceability of a lease term, seek legal advice. Some examples of unenforceable clauses are:

- Requiring a tenant to waive the right to the return of the security deposit or a pet deposit or an accounting thereof. (See C.R.S. §38-12-103(7)).
- Giving the landlord more than 60 days to return the security deposit or an accounting of the security deposit. (See C.R.S. §38-12-103(1)).
- Waiving a landlord's responsibility for acts of gross negligence
- Requiring a tenant who has been called into military service before the end of a lease term to pay for the remainder of rent due for their entire lease term. (See Federal Soldiers and Sailors Civil Relief Act (50 U.S.C. App. §534).
- Requiring a tenant to waive the covenant of quiet enjoyment of the premises
- Requiring a tenant to waive the Warranty of Habitability of the premises. (See C.R.S. §38-12-503).
- Allowing the landlord to forcibly remove a tenant and the tenant's personal property without going through the eviction process as required by Colorado law. (See C.R.S. §§13-40-101 thru 123).
- Tenant consent to eviction for non-payment of rent, or for any other reason, without notice as required by Colorado statute. (See C.R.S. §§13-40-01 thru 123).
- Requiring a tenant to engage in arbitration regarding the return of their security deposit. (See C.R.S. §38-12-103(7)).

TYPES OF LEASES

Plain Language

Most leases and other types of contracts are written in dry, boring, and confusing legalese. Some are so dense that even attorneys argue over their meaning. In general, leases are long and full of unnecessary, even incomprehensible, language. Do you need to use words like "heretofore", "indemnification" and phrases like "notwithstanding anything to the contrary here and . . ." to have an enforceable lease?

Contracts describe relationships. Clear, plain language can help make sure that all parties to a lease understand both their relationship and their responsibilities to each other. A plain language lease uses common everyday words, uses the active voice, and is organized with the reader (i.e. tenant) in mind.

Term Lease

If a lease is for a specified period of time (*i.e.*, one year or two years) or has a definite ending date, it is a "term lease," also known as a "definite term" lease. Under a term lease, the landlord is obligated to rent a specified rental property to the tenant for the specified period of time and a specified amount of rent, under all other terms of the lease. The tenant is obligated to pay the rent and fulfill all lease conditions during that specified period of time. When the lease expires the tenant must either renegotiate a new lease or stay on as a month-to-month renter, but may only stay on after the term lease expires with the landlord's express consent, preferably written. **Neither the landlord nor the tenant needs to give notice of termination at the end of a term lease unless the lease requires such notice.** (For information about termination of the lease by either party before the end of the term, see [page _____](#) of this *Handbook*, Termination of the Lease).

Month-to-Month Lease

A month-to-month lease is a rental agreement for a one month period that is renewed automatically each month until properly terminated by either party. When a landlord and a tenant have not executed a written lease and rental payments are made monthly, a month-to-month lease is implied by law. A month-to-month tenancy is usually created when a tenant moves into a property and pays rent without signing a lease. It may also be created when an expired written lease is not renewed and the tenant remains in the property as a “holdover,” with the landlord’s consent. In such a case, if the written lease contains a clause stating that all lease provisions continue to remain in effect after the written lease expires and the tenant stays on with a month-to-month lease, then the rights and responsibilities of each party, as defined by the expired written lease, remain in effect. Even if the original lease doesn’t state that the terms continue to apply, a court would probably conclude that they do.

With any month-to-month lease, the landlord can raise the rent, or change or terminate the agreement at the end of each month, with proper written notice to the tenant. The tenant, likewise, can terminate the lease at the end of the month with proper written notice to the landlord. **Proper notice for both landlord and tenant must be written and received by the other party at least 21 days before the last day of the rental month.** (See C.R.S. § 13-40-107). However, a written month-to-month lease may specify a longer notice period, for example, 30 days or 60 days before termination. (For information about termination of the lease by either party before the end of the term, see page _____ of this *Handbook*, Termination of the Lease.)



Tips to Follow When Entering into a Lease

- Read the lease carefully and understand all the terms before you sign it. Once the landlord and tenant have both signed the lease they are both bound by it. Many people mistakenly believe they have a three-day right of rescission. THERE IS NO RIGHT TO BACK OUT OF A LEASE ONCE IT IS SIGNED BY BOTH PARTIES,
- Be sure all arrangements, agreements, responsibilities, and obligations are in writing and signed by both parties. Ideally, both landlord and tenant should sign and receive an original signed lease, with the pages numbered and each page initialed by the tenant (since a lease is usually prepared by the landlord). IT IS THE LANDLORD’S RESPONSIBILITY TO PROVIDE THE TENANT WITH A COPY OF THE FULLY EXECUTED LEASE WITHIN SEVEN DAYS OF THE DATE THAT THE TENANT SIGNS THE LEASE. (See C.R.S. - _____).
- It is a best practice to do a walk-through. If the landlord does not participate as a matter of course in a move-in walk-through, tenants should always do one themselves to note the condition of the rental, and then provide the landlord with a copy of the tenant’s walk-through sheet and/or photographs. (See sample Move-in/Move-out Checklist page _____ of this *Handbook*, Appendix ‘C’). It is good practice for both landlords and tenants to take date-stamped photographs or a date-stamped video of the property at the beginning of a rental period to establish a record of the property’s condition. Documentation by both the landlord and the tenant can help avoid misunderstandings about return of the security deposit at the end of the rental term.

Lease Rescission/Lease Termination

A “lease rescission” is a written agreement between a landlord and tenant to cancel a lease between a landlord and tenant, as if the lease contract never happened (an annulment). A “lease termination” is a written agreement between a landlord and tenant to end a lease at an earlier date than the original lease termination date. Once a lease rescission or a lease termination is signed by both landlord and tenant, all responsibilities

between them related to the rental property are ended, with the exception of the return of the security deposit or other agreements that may be made part of a modified rescission or termination.

Verbal Leases and Agreements

An entire lease with a term of less than one year - or additions or changes to a written lease - can be created by verbal agreement between a landlord and tenant. Verbal agreements are legally enforceable, if they can be proved. The problem is that when a dispute or misunderstanding arises over the terms of a verbal lease, the disagreement itself makes it almost impossible to know what the parties originally thought they were shaking hands on. The best course of action is to always put a lease in writing, including all changes or additions to the lease, and make sure both parties sign and date the document.



Example

Tomás Tenant and Linda Landlord enter into a lease that does not allow Tomás to have pets in his apartment. Tomás asks Linda if he can have a cat and Linda agrees. Tomás gets a cat. After 2 months, Linda and Tomás have a disagreement about parking spaces and Linda is so mad at Tomás she decides to evict him. Linda brings an eviction action against Tomás, claiming he is breaking the lease by keeping a cat in his apartment, something specifically not allowed according to the lease terms. In court, Tomás explains that Linda gave him permission to keep a cat. Linda tells the court she does not remember giving Tomás permission to have a cat and would not make such an agreement. Tomás can't prove the verbal agreement so the court enforces the written terms of the lease and Tomás is evicted.

CAN LEASE PROVISIONS BE CHANGED AT ANY TIME?

The lease term, or any other lease provision, can be changed **ONLY** if both landlord and tenant agree on the change. To avoid squabbles or more serious disagreements, put all changes in writing, signed and dated by both the landlord and tenant. Absent a subsequent agreement to the contrary between the landlord and tenant, all lease provisions remain binding on both landlord and tenant through the entire specified lease term.

WHAT HAPPENS TO THE LEASE IF A RENTAL PROPERTY IS SOLD?

When a property is sold prior to the end of a lease term, the property is sold subject to the terms of the lease between the seller and the tenants. A landlord cannot terminate a lease early simply because the landlord wishes to sell the property, unless the lease expressly gives the landlord such a right. If a rental property is sold, the new owner/landlord must honor a rental contract existing at the time of the sale. All lease terms, including the termination date and the amount of rent, must be honored by the new owner/landlord unless the new owner/landlord and the tenant agree to make changes. The tenant should always continue to pay rent to the original landlord/owner until the tenant receives a written notice, signed by the original owner/landlord, directing the tenant to send the rent to someone else.

The original owner/landlord has two alternatives regarding the tenant's security deposit:

1. Transfer the security deposit to the new owner/landlord and notify the tenant by mail that this transfer has been made,
- or**
2. Return the security deposit to the tenant per the terms of the lease, less any legitimate deductions.

WHAT HAPPENS TO THE LEASE IF A RENTAL PROPERTY IS FORECLOSED?

Generally, when a house is sold through foreclosure, all tenants with a written lease - including those subsidized through a government program (*i.e.*, Section 8 tenants) - must be allowed to remain in the unit through the term of their lease, UNLESS the new owner intends to live in the rental unit. If the new owner intends to live in the unit, or if there is no written lease, a tenant must be given a 90-day written notice to vacate, UNLESS

- the tenant has an ownership interest in the rental property being foreclosed;
- the tenant is a member of the foreclosed owner's family; or
- the tenant is not subsidized through a government program and is paying substantially less than fair market rental.

Tenants should continue to pay rent to their original landlord until and unless they receive written documentation that rent is to be paid to a new owner.

(See S.896 Title VII, *Protecting Tenants at Foreclosure Act*).

DISCRIMINATION PROTECTION

Under local, state and federal law, discrimination is prohibited on the basis of race, color, creed, religion, national origin, ancestry, sex, disability/handicap*, familial status or marital status. Specifically, the Federal Fair Housing Act makes it unlawful for a landlord to discriminate by refusing to rent based on those characteristics or by negotiating terms, conditions or privileges different from other tenants based on those characteristics. (See 42 U.S.C. §3604(b)).

An exception to anti-discrimination prohibitions is allowed when renting a room in a single-family owner-occupied home. In addition, religious organizations may give preference to individuals of their same religion and a private club may give preference to its own members under particular circumstances. Certain properties or developments may also refuse families with children if those properties meet specific federal and state standards qualifying them as "Housing For Older Persons."

NOTE: The City of Longmont has not added source of income protection as an anti –discrimination ordinance. In 2018, both the City of Boulder and the City and County of Denver added source of income protection to their anti-discrimination ordinances.

Examples of Illegal Advertisements



- **Apartment for Rent!**
 - *1 bedroom. Quiet, homogeneous, all-American neighborhood. Married couples and empty nesters preferred.*
- **Home for Rent!**
 - *2 story, 2 bedroom home. Centrally located close to parks and stores. Not well suited for elderly or disabled.*

Example of Legal Advertisements

- **Apartment for Rent!**
 - 1 bedroom on a quiet block.
- **Home for Rent!**
 - 2 story, 2 bedroom home. Centrally located near local parks and stores.

* Federal law uses the word "handicap" and Colorado law uses the word "disability." They have the same meaning for purposes of the Fair Housing Acts.

Both the Federal and Colorado Fair Housing Acts have special provisions applying to people with disabilities.

Discrimination against person(s) with disabilities/handicaps is defined in the Acts as:

1. Refusing to allow a person with a disability to make a modification to a building or premises, at that person's own expense, if that modification is necessary to give the person with a disability "full enjoyment of the premises;"
or
2. Refusing to make "reasonable accommodations" in "rules, policies, practices or services" to give the person with a disability "equal opportunity to use and enjoy a dwelling."

The Federal Act also prohibits the design or construction of new multifamily buildings after March 13, 1991 which don't have required accessibility features, as outlined in the Act.

Examples of discrimination could include:



- Denying an interested prospective tenant the opportunity to see, rent or buy an apartment or home, yet making it available to other prospective tenants
- Denying disabled or minority tenants privileges offered to other tenants, such as parking spaces, needed repairs and services, or the use of the apartment pool, dining room or club house
- Advertising discriminatory preferences
- Harassing or threatening someone on the basis of their protected class
- Not allowing a person using a wheelchair to build a ramp
- Not allowing a guide dog in a "no pets" building
- Not allowing a reserved parking space for a person with a disability because the housing doesn't give reserved spaces.

For more information, or if you believe that you have been or are being discriminated against, contact Longmont's office of Community and Neighborhood Resources at 303-651-8444 or contact the Colorado Civil Rights Commission at 303-894-2997 or www.dora.state.co.us/civil-rights.htm.

DEPARTMENT OF JUSTICE MEMORANDUM ON CRIMINAL BACKGROUNDS

Landlords can no longer say "we do not rent to felons". In 2016 the Department of Justice published a Memorandum of Understanding following recognition by the United States Supreme Court of the consequences of "disparate impact" in fair housing. Discrimination is often unintentional and can occur when a law or policy that appears to be natural has a disproportionate, unfair effect on a protected class.

Example 1

A rental criteria requiring all tenants to speak English appears neutral but would have disproportionate negative consequence for people of certain national origins. National origin is a protected class;

or

Example 2

A rental policy requiring all tenants to have full time work appears to be neutral but it could have unreasonable negative impact on people with disabilities. Disability is a protected class. Under the Department of Justice Memorandum, a blanket policy of not renting to felons could have a discriminatory impact on African-Americans and Hispanics who are arrested, convicted, and incarcerated at disproportionately higher rates than other racial groups.

What can a landlord do?

Under the Memorandum guideline, a landlord should screen for credit, rental history, and economic criteria first, without looking at criminal history. If the applicant qualifies under those criteria, the landlord can then look at the applicant's criminal background. A rental applicant can be denied for conviction of manufacturing or distribution of drugs; committing a sex offense that places the applicant on the life time sex registry; or if the applicant has committed a breaking and entering within the past 10 years. Otherwise, a landlord must balance a variety of factors:

- Age of the person at the time of the crime
- How long ago the crime happened
- The nature and severities of the crime
- Was it an isolated incident or is it a pattern
- Credit and rental history before and after the crime
- Rehabilitation efforts

ASSISTANCE ANIMALS

What landlords need to know about Assistance Animals

The Federal Fair Housing Act and the American with Disabilities act requires that applicants and tenants with disabilities be allowed "reasonable accommodation" as needed to have full use and enjoyment of their house. Allowing tenants (and their guests who have disabilities) to be accompanied by their service animals is a reasonable accommodation to housing policy and practice.

What is an Assistance Animal?

There are two types of Assistance Animals: service animals, which perform a task for a disabled person, and emotional support animals (also called companion animals), which help a person with a disability enjoy their living environment in the same way a non-disabled person would. The most common Service animals are dogs (miniature horses may also be service animals). A service dog may be any breed, any size, or any weight. Some - but not all - wear special collars and harnesses. Some - but not all - are licensed or certified and/or have ID papers. **However, there is no legal requirement for assistance animals to be visibly identified or to have documentation.**

Who needs an Assistance Animal?

Some disabled people require the assistance of an animal because of their disability. A person is considered to be disabled if he/she has a sensory, mental, or physical condition that substantially limits one or more major life activities (*i.e.*, walking seeing, working, etc.)

What do Assistant Animals do?

A service animal helps a person who has a mobility or health disability with specific tasks. Duties of a service dog may include carrying, fetching, opening doors, ringing doorbells, activating elevator buttons, steadying a person while walking etc. They may also assist a person with a seizure disorder or be used as travel tool by someone who is legally blind. A service animal can only be a dog or a miniature horse.

A companion animal, also known as an emotional support animal, assists people with psychological disabilities. Emotional support animals can help alleviate conditions such as anxiety, depression, stress, and difficulties with social interactions, thereby allowing tenants to live independently and fully use their living environment. An emotional support animal can be any species but usually is a cat or a dog. Emotional support animals are not always trained to perform tasks.

It is important for landlord to understand the rights of a disabled tenant to the help of a service or support animal. According to a Housing and Urban Development (HUD) annual report, the number one reason for complaints to HUD is disability issues, accounting for 58% of all complaints, with many of these complaints relating specifically to animals.

What is the difference between an Assistance Animal and a pet?

Assistance animals are not considered to be pets but are more analogous to a medical appliance. The Fair Housing Act requires housing providers to modify “no pet policies” to permit the use of an assistance animal by an individual with a disability. Pet deposits, pet rent, or other pet fees cannot be charged for assistance animals. A landlord can charge a general security deposit, which is charged to ALL tenants. The tenant remains liable, though, for any damage actually caused by the assistance animal, in the same way that any tenant is liable for damage caused to a rental unit by residents or guests.

Pet rules and Assistance Animals

If you allow tenants to have pets and you place limitations on the size, weight, and type of pet allowed, these rules do not apply to assistance animals.

Assistance Animal accommodation

Landlords and property managers must take seriously and review any and all requests for reasonable accommodation made by a disabled tenant, including a request for an assistance animal. A request for reasonable accommodation does not need to be written and may be made verbally. You can require written verification of a tenant’s disability from that tenant’s health care or mental health provider, and confirmation from the provider that the tenant needs an assistance animal. The provider does not need to be an M.D., but should be a health care professional. Beyond asking for verification from a provider that a tenant has a disability, the landlord cannot require more specific information about the nature of the disability. Finally, an accommodation may involve a request for more than one assistance animal. There is no limit on the number of assistance animals a person may need, or may ask for, but each animal must address a specific, distinct, disability.



Example

Tonya Tenant has a mobility disability, for which she needs a service dog to help steady her and help her keep her balance while walking. Her German shepherd service dog, Brutus, has been trained to perform these tasks for her to help her retain her mobility. Tonya also has an emotional disability, PTSD, which causes her, at its worst, to become housebound with anxiety about being in public. Tonya has a cat, Sweetheart, who helps her control her PTSD-based anxiety with its affection and physical comfort and companionship. Tonya asked for, and received, a reasonable accommodation for both her dog and her cat.

What about other tenants who are afraid of or are allergic to animals?

While some people may fear dogs or other animals, this fear does not amount to a disability, so a housing provider need not “accommodate the fear”. For most people with allergies, an animal causes only minor discomfort such as sneezing. Rarely, an allergy is so severe that animal contact causes respiratory distress, in which case the allergic tenant may also request accommodation – for example to keep the animal and its owner in an apartment away from the allergic tenant.

Animal care and supervision

The tenant with an assistance animal is responsible to care for and supervise the animal and to have full control of the animal at all times. In the presence of others, the animal should be expected to be well-behaved, not jumping on or nipping at people and not snarling or barking.

A landlord can require that the assistance animal be in good health and fully vaccinated and to wear a current rabies tag. The landlord may request immunization records for their file. The landlord may also require the animal to wear owner ID tags. Clean up is the sole responsibility of the owner of the assistance animal. The landlord may require that the assistance animal not defecate in community areas.

Removal of an Assistance Animal

If an assistance animal is unruly or disruptive, or jumps on people, nips or engages in other unwanted behavior, the landlord may ask the tenant to remove the animal from the immediate area. If the animal’s unwanted behavior happens repeatedly, a landlord may require the tenant to keep the animal out of common areas until the tenant takes the training or steps necessary to mitigate the animal’s behavior.

Areas off limits to Assistance Animals:

Landlords may designate certain areas off-limits to assistance animals, for example, swimming pools or sauna rooms. Such rules would not infringe upon the ability of a person with disability to enjoy the amenities because other persons may be of assistance to the disabled person in the swimming pool or sauna.

LANDLORD AND TENANT RIGHTS AND RESPONSIBILITIES

THE RENTAL PERIOD OR “TENANCY”

The tenancy is the time agreed to in the lease during which the tenant has the right to live in and use the landlord’s property. The tenancy is governed by the terms of the lease, applicable Colorado law, and municipal ordinances and codes that create legal rights and responsibilities for both the landlord and the tenant.

LANDLORD RIGHTS AND RESPONSIBILITIES

Responsibility to Repair and Maintain the Rental

Under Colorado law, a landlord has a responsibility to repair the rental property during the lease term under the following circumstances:

- The lease contains a specific agreement that specifies that the landlord is responsible for repairing or maintaining the rental
- A residential rental is uninhabitable or unfit for human habitation, (See C.R.S. §§38-12-503 (a)(I)).
- A residential rental is in a condition that materially interferes with the tenant's life, health, or safety (See C.R.S. §§38-12-503(a)(II)).
- There is a hazardous condition caused by gas-burning equipment. (See C.R.S. §38-12-104).
- The repairs are needed in common areas of multi-unit properties, like parking lots, sidewalks, stairways and hallways, to keep them safe. A landlord must exercise reasonable care to protect against known dangers. (See C.R.S. §13-21-115).
- The repair or maintenance is required in order to conform to the City of Longmont *Property Maintenance Code*. (See following section of this *Handbook*).



Example

Luís Landlord knows that a slippery ice patch forms outside the entrance of his apartment complex, becoming dangerous for tenants entering and leaving the building. He has a duty to make sure the area is clear of ice and he may be liable if a tenant slips on the ice and is injured.

Compliance with Longmont *Property Maintenance Code* and Zoning Ordinances

All rental property within the City of Longmont must be in compliance with the City of Longmont *Property Maintenance Code*, which incorporates by reference the *International Property Maintenance Code* and establishes minimum health, safety, and maintenance standards (see *Longmont Municipal Code*, Title 16, Chapter 16.20). The City of Longmont does not license rental property (in contrast, some cities, including Boulder, do have rental license requirements). **Longmont Code Enforcement, however, does do rental inspections and will inspect properties when it receives complaints.** Minimum standards necessary for decent, sanitary, and safe housing include the following (see page 27 of this *Handbook* for more information):

- At least one electrical convenience outlet and one electric light fixture or 2 electrical outlets in each livable room
- Heating facilities capable of maintaining 65°F at a point 3 feet above the floor
- An emergency escape and rescue window in each sleeping room below the fourth floor, with a minimum window opening of 5.7 square feet and a maximum window sill height of 44 inches for new construction, and as required by the UCBC for existing buildings. Note: In order to achieve the required 5.7 square feet, dimensions must exceed 24 inches minimum height and 20 inches minimum width.
- An adequate supply of hot water, with all fixtures served by hot water properly connected
- A working smoke detector
- All plumbing fixtures maintained in proper operating condition and connected to a sanitary sewer
- Windows for natural light and ventilation in all habitable rooms. The window square foot size must be a minimum of 8% of the room square foot size.
- Additionally, per Colorado law, a rental must have a carbon monoxide detector within 15 feet of every bedroom or room used for sleeping, if the rental is heated with fossil fuel, has a fuel-fired appliance, has a fireplace, or has an attached garage. (C.R.S. §38-45-101 et seq.)

Zoning Ordinances

In addition to the minimum habitability standards of the Longmont *Property Maintenance Code*, the City's zoning ordinances contained in the *Land Development Code* contain provisions affecting landlords and tenants. (See *Longmont Municipal Code*, Title 15, Chapter 15.03). Specifically:

- Apartment units must be located within permissible zoning districts
- The proper indicated amount of street parking must be provided for each unit, unless the building is legally permitted to deviate from that requirement

Occupancy Limits

In Longmont, the number of people permitted to live in a single rental unit (house or apartment) is determined by the Longmont Municipal Code's definition of "family." Only one family is allowed to live in a single rental unit. "Family" is defined as:

- An open-ended number related by blood, marriage, adoption or legal guardianship, including foster children;
or
- Two unrelated persons and their minor children living together in a dwelling unit;
or
- A group of not more than five persons not related by blood, marriage, adoption or legal guardianship (including foster children) living together.



Example:

Tenants Tad and Tammy, their 5 children, Tammy's mother, and Tad's brother all live in one rental property. This is permitted because they are "family" as defined by the *Longmont Municipal Code*. Note: they all need to either be included in the lease or have the landlord's permission, preferably in writing.

The above lists do not include all the minimum health, safety and maintenance standards and zoning ordinances for rentals. They are offered here as examples and as a general guide for landlords and tenants. For more information, see *Longmont Municipal Code*, Titles 15 and 16, or contact the City of Longmont Code Enforcement (303-651-8695). The *Longmont Municipal Code* is available online at <http://longmontcolorado.gov> If a rental is outside the city limits of Longmont, or outside the County of Boulder, you will need to contact the city or county in which the rental is located, as each jurisdiction determines its own minimum standards.

Obligation of the Landlord to Maintain Habitable Premises C.R.S. §§38-12-501 thru 511

Under a Colorado law applying to all residential agreements and to all rental units, with a very limited number of exceptions, a landlord, by virtue of renting a property, warrants that the premises are fit for human habitation and for the uses reasonably intended by the parties. A tenant may withhold rent from a landlord if, and **only if**, **three conditions are met**:

- The rental unit is unfit for human habitation;
or
- The rental unit contains a condition that materially interferes with the tenant's life, health, or safety;
or
- Does not meet the standards described in C.R.S. §38-12-505:

- Waterproofing of roof and exterior
 - Unbroken windows and doors
 - Plumbing and gas fixtures in good working order
 - Running water and reasonable amounts of hot water at all times, connected to appropriate fixtures
 - Heating fixtures in good working order
 - Electric lighting in good working order
 - Common areas kept reasonably clean and free from infestations of vermin
 - Appropriate extermination in response to an infestation of vermin in a residential unit
 - An adequate number of garbage disposal containers in good repair
 - Floors, stairways and railings maintained in good repair
 - Locks on exterior doors and locks or security devices on windows designed to be opened, maintained in good repair
 - Compliance with all applicable building, housing, and health codes
- **AND** the landlord has received reasonably complete written or electronic notice of the condition and has failed to correct it

If a landlord fails to maintain a habitable premises after proper notice from the tenant or from a code enforcement agency, a tenant has a limited right to have those repairs made by a professional unrelated to the tenant, submit a bill for those repairs to the landlord and deduct the cost of the repairs from the tenant's rent payments. **The tenant must follow the procedure outlined in C.R.S. §38-12-507(1)(e)(I)-(VI) in order to deduct repairs from rent.**

NOTE: C.R.S. §§38-12-506 and 507 contain exceptions and requirements for withholding of rent and describe a specific process a tenant must follow. You cannot simply withhold rent, but must strictly follow statutory procedures. If, as a tenant, you are thinking of seeking remedy under the requirements of this statute, you can call Longmont's Community and Neighborhood Resources (303-651-8444) to discuss your situation or seek advice from an attorney.

Occupancy and Familial Status

Many landlords limit the occupancy of their rental unit to two undefined persons per bedroom. Two undefined persons per bedroom is usually seen as reasonable but is not an absolute rule depending on peculiar circumstances such as size of the bedroom and state and local laws. Under the Fair Housing Act, occupancy restrictions cannot discriminate based on familial status. This means that a landlord cannot include in their advertising "no children allowed", and cannot impose curfew or other rules that target only children. Under HUD guidelines, a reasonable occupancy limit has been described as two persons per bedroom, plus one additional person.

Obligation of the Landlord to Provide Residential Lease Copy and Rent Receipt

A landlord must provide a tenant with a copy of the lease signed by both the landlord and tenant within seven days after the tenant has signed the lease. The landlord can provide the tenant with an electronic copy unless the tenant requests a paper copy. (See C.R.S. §38-12-801).

When a tenant pays rent in person with cash or a money order, the landlord must provide a receipt with the amount and the date of payment at the time the rent is paid. If the landlord receives cash or money order

through the mail and the tenant requests a receipt in writing, the landlord must provide the tenant with a receipt within seven days of the request, which receipt must include the date of payment. (See C.R.S. §30-12-802).

Obligation of the Landlord to Include Name and Address on Lease

A lease must include the name of the landlord/the landlord's property manager/agent, and the address of the landlord/property manager/agent.

If ownership/management of the rental property changes, the landlord must notify all tenants of the name and address of the new owner/manager within one business day of the change. The notification to each tenant can be via email or by posting a notification prominently on the rental property.

(See C.R.S. §38-12-801(2)(a)-(b)).

TENANT RIGHTS AND RESPONSIBILITIES

Pay Rent and Utility Bills on Time

A tenant has a responsibility to pay the rent and other bills, as agreed to in the lease, on time. Late rent payment, even if late by only a day, is grounds for eviction. Keep a record and get receipts from the landlord for any money paid, whether for rent, deposits, repairs, or for anything else. Never pay in cash when you can pay with a personal check or money order. **If you must pay in cash, always get a receipt.**

If you find that you will not be able to pay your rent or utility bills on time, immediately contact the landlord and/or the utility company and explain your situation. Communicate and try to work out a payment arrangement acceptable to everyone. However, never agree to a financial commitment if you know you will have a problem meeting the obligation. Once you agree to a payment arrangement, keep your word. Problems become compounded when a tenant does not communicate promptly with the landlord or utility company, allowing the rent or utility bills to accrue late payment penalties and interest and perhaps making it impossible for the tenant to catch up financially.

Comply with Terms of Lease

In signing the lease, you entered into a binding contract. If you do not comply with its terms you may be evicted. If you do have an unforeseen change in circumstances, discuss a possible lease modification rather than violate the lease and risk an angry landlord or eviction.

Example



Ted Tenant enters into a lease that specifies that guests are not allowed to stay for more than 21 days without written consent of the landlord. Ted's brother, Hugo, moves to town and they agree that Hugo will live with Ted. Ted asks Lynn Landlord for permission to have Hugo live in his apartment. Landlord agrees and they write the agreement, sign and date it, and attach it to the original lease.

Repairs and Maintenance

When repairs and/or maintenance are needed, the tenant should double check the lease to confirm whether it is the landlord or the tenant who is responsible for making those repairs or performing that maintenance.

If the lease does not address responsibility for repairs and maintenance, and the type of repairs or maintenance needed fall outside those duties required of the landlord by law (see page _____ of this *Handbook*: Landlord Rights and Responsibilities), it is presumed that the repairs and maintenance are the responsibility of the tenant.

If, under the lease, a binding agreement, or some other legal duty, the landlord is responsible for repairs and maintenance, and a repair needs to be made, the tenant should first contact the landlord. If the landlord does not act promptly, the tenant should:

1. Present a written list of the needed repairs to the landlord, requesting that they be made by a certain date;
2. Offer to help accommodate the landlord's schedule by arranging to be home when the repair person arrives;
3. Keep a copy of any notes, letters or emails to or from the landlord;
4. Follow up verbal agreements with the landlord with a letter or email confirming the agreement;
5. Allow the landlord a reasonable amount of time to make the repairs; and
6. Send the landlord a written reminder if the repairs are not made in a reasonable amount of time.

Covenant of Quiet Enjoyment

The "covenant of quiet enjoyment" is a common-law doctrine recognized by the courts in Colorado. Tenants have the right under this doctrine to the beneficial or quiet enjoyment of their property. The covenant is breached (or violated) when the rental property becomes unfit for the purposes for which it was leased or the tenant is deprived of the beneficial use of the rental property.

The classic Colorado case describing breach of the covenant of quiet enjoyment involved a situation in which a landlord began construction on the roof of a building immediately adjacent to the rented property, creating so much noise that the tenant was unable to live in a reasonably peaceful way as would have been normally expected. Another example could be lack of heat in a rental home. The tenant's remedy under the covenant of quiet enjoyment, at a minimum, is an abatement of rent. Other remedies could include lease rescission and moving costs. Remedies for breach of the covenant of quiet enjoyment are applied through court action.

Constructive Eviction

A related legal doctrine is "constructive eviction", which is a court-created tenant remedy for a breach of quiet enjoyment. Under constructive eviction, a resident may argue that the conditions causing the breach of quiet enjoyment were so unlivable that the tenant's only remedy was to abandon the rental property. See page 25 of this *Handbook*.

LANDLORD HARASSMENT

Landlord harassment occurs when a landlord or property manager intentionally creates a situation where a tenant is made to feel so uncomfortable that they want to terminate their lease. Landlord harassment is a serious issue. If a tenant or a landlord finds themselves in a situation where they are constantly in conflict, they should attempt to resolve the conflict, and should seek mediation if they are unable to resolve the conflict themselves.

Examples of behavior that might be considered harassment based on the circumstances:

- Shutting off utilities
- Repeatedly entering a residential premise without notice
- Changing the locks when the tenant is not at home
- Intimidating
- Threats to call ICE or other authorities

- Verbal threats and threatening physical harm

It is recommend that both landlord and tenant keep written logs of their interaction.

LANDLORD RETALIATION

A Landlord cannot retaliate against a tenant who has complained to the landlord or to any government agency such as code enforcement about unsafe or illegal living condition that violate the code, or for organizing a tenant association. Retaliatory acts might include as:

- Terminating a tenancy
- Threatening or filing an eviction
- Increasing the rent
- Decreasing services

Under the governing law, a tenant may terminate the tenancy for acts of retaliation by the landlord; timing alone does not prove retaliation (C.R.S §38-12-509). Under (C.R.S §38-12-509) a landlord is prohibited from retaliating against a tenant for alleging a breach of the warranty of habitability, and a landlord may be sanctioned by the court for up to three times the monthly rental amount, plus attorney fees and costs, if a tenant is able to prove retaliation by the landlord.

TERMINATION OF THE LEASE

How is a Lease Terminated

A tenant may voluntarily terminate (end) a lease by giving the landlord proper notice, as required by the lease or by law. When leaving a rental before the end of a lease term, the tenant may be held responsible for rent through the entire term of the lease (*see page 25 of this Handbook, Early Move-out*). A landlord can only remove a tenant prior to the end of a lease term through an eviction, meaning that the landlord **must** go through formal legal eviction proceedings in court (*see page 26 of this Handbook, Involuntary Termination (Eviction)*). A lease may also be terminated if a landlord and tenant enter into a written agreement (signed and dated by both parties) to end the lease early (a “lease termination”, which ends the lease early as of an agreed-to date, or a “lease rescission”, which voids the lease as of the date it was entered into).

VOLUNTARY TERMINATION

Termination of Term Lease

A term lease, or definite term lease, has a definite date on which the lease will end. When the lease expires at the end of the term, the tenant must leave the rental by or on that date unless the landlord and tenant sign a new lease or agree that the tenant may stay in the rental on a month-to-month basis. Neither the landlord nor the tenant need to give notice of termination unless the lease requires such notice. A common practice is to include a clause in a written lease requiring a 30 day notice before the date of termination if the tenant intends to vacate the premises or if the landlord wants the tenant to leave, and if no notice is given, the lease automatically rolls over into a month-to-month lease with the same lease terms as the original term lease.

Termination of Month-to-Month Lease

A month-to-month lease is a rental agreement for a one-month period that is renewed automatically each month until properly terminated by either party. Proper notice to terminate a month-to-month lease is done by providing written notice of the intent to terminate the lease at least twenty-one days before the last day of the rental month. This twenty-one day notification period may be changed to a longer time if the parties have a written lease – a 30 day notice is a common modification. **CITE**

OTHER REASONS FOR EARLY TERMINATION

Domestic Abuse

Under Colorado law, a victim of domestic abuse can terminate a lease without penalty by providing the landlord with evidence of the domestic abuse (physical assault or verbal abuse or harassment) or the threat of domestic abuse, in the form of a police report or a protection order issued by a court. Victims may vacate the premises and can only be held responsible for one month's rent following the month of their departure, which amount is due to the landlord within 90 days after the victim leaves the premises. This statute also prohibits the landlord from terminating a rental agreement or imposing penalties on domestic abuse victims who call the police. As defined by the statute, the relationship between the perpetrator and the victim need not be intimate; a roommate can be the victim of domestic abuse by a fellow roommate. In 2017 the domestic violence statute was amended to include unlawful sexual behavior and stalking. (See C.R.S. §38-12-402)

Early Move-Out

When tenants move out before the end of their lease term, they remain responsible for rent until the property is re-rented or until the lease has expired, unless they have another agreement with the landlord. However, a landlord cannot just sit by and collect rent but must make a reasonable effort to re-rent the property. The tenant may also be responsible for the landlord's reasonable costs of re-renting, such as advertising, and many leases include a clause to that effect. If the landlord has to accept a lower rental amount in order to occupy the property, the tenant may be responsible for the difference between the old and new rent. A lease contract may also specify that the tenant, rather than the landlord, is responsible for finding a new tenant. Additionally, many leases include a "lease termination fee", assessed as liquidated damages (an amount that the tenant agrees to in advance, by the terms of the lease itself, to pay for breaking the promise to live in the rental through the entire lease term).

Right to Move under the Warranty of Habitability

Under Colorado law, a residential rental unit must be fit for human habitation. If landlords fail to make timely repairs as necessary to maintain habitability, a tenant may seek to be released from a lease without further obligation; and if a particular Warranty of Habitability issue reoccurs within six months of a first repair of a habitability problem, a tenant may end the lease without penalty after giving the landlord a 14 day written notice. For those conditions that define habitability, see page 19 of this *Handbook*. The law establishes a specific procedure in order to be released from a lease. If you are considering such an action, you can talk with someone in the office of Community and Neighborhood Resources about your situation (303-651-8444) or seek legal advice. (See C.R.S. §§38-12-501 thru 511).

Constructive Eviction Move-out

Constructive eviction is defined by the court as act or a failure to act by the landlord that so interferes with the tenant's quiet and peaceful enjoyment of the premises that the tenant is forced out. The act or failure to act does not have to be intentional but does have to be the result of circumstances under the landlord's control.

Examples of landlord action resulting in constructive eviction might include:

- The landlord allowing neighbors of a tenant to create ongoing loud noises,
- The landlord allowing an infestation of vermin (mice, roaches, etc.), making it impossible for the tenant to remain in the rental.

Examples of landlord non-action resulting in constructive eviction might include:

- The landlord's failure to provide water, heat, or electricity
- The landlord's failure to make major repairs needed to make a rental inhabitable

A constructive eviction is a matter of interpretation. In all cases of constructive eviction, the tenant must have actually moved. In a contrastive eviction situation the situation must be:

1. Serious
2. Have directly caused the tenant to abandon the premises
3. Because of something the landlord did or did not do
4. Relating to circumstances under the landlords control

When a tenant experiences situations involving, for example, sexual harassment, unreasonable noise made by nearby tenants (only if they are renting from the same landlord), or the landlord is entering the rental premises without proper notice to the tenant, the tenant may have grounds for a constructive eviction. The tenant must provide the landlord with a written complaint describing the particular problem and include a written notification of the tenant's intention to move if the issue is not resolved. Solid documentation is important should the landlord attempt to collect unpaid rent at a later date. A tenant considering a constructive eviction claim against a landlord cannot continue to live in the rental unit. The advice of an attorney should be sought in constructive eviction situations, as these are complicated matters under Colorado law.

Where a situation might rise to the level of constructive eviction. The landlord and tenant should attempt to solve the problem rather than simply abandoning the lease.



Tip: If you are considering moving from the rental before the expiration of your lease term, you should review your lease for authorization to sublet and/or assign your lease, or a clause allowing you to vacate because of business relocation. Under the *Federal Soldiers and Sailors Civil Relief Act* (50 U.S.C. App. §534), individuals serving our country in the military can terminate a rental lease without penalty if they are required to relocate or are called into active service.

Landlord's Duty to Mitigate Damages

Even if a lease states that a landlord may collect all rent for the remainder of the lease term after abandonment by a tenant the landlord still has a duty to use reasonable efforts to mitigate their own damages. There is no specific definition of reasonable but the idea is that the landlord cannot "passively suffer preventable economic loss". That is, the courts require a landlord to take active steps to re-rent their property. Such steps might include:

- Placing an add online
- Placing a sign in front of the property

- Otherwise actively looking for a new tenant

INVOLUNTARY TERMINATION (EVICTION)

The **only** way a landlord can terminate a lease and evict a tenant from any type of rental property is by going through a Forced Entry and Detainer (FED) legal action to obtain a court order requiring the tenant to vacate the property. It is never legal for a landlord to evict a tenant without a court order. Self-help by a landlord is illegal in Colorado. Evictions are governed by Colorado law under C.R.S. §13-40-101 *et seq.*

Reasons for Eviction

A landlord may initiate an eviction action against a tenant for the following reasons:

- Tenant has failed to pay rent
- Tenant has violated a term of the lease
- Tenant has committed a substantial violation while in possession of the rental premises, which may include, for example, a violent or drug-related felony on or near the rental property or an act on or near the rental property which substantially endangers a person or the landlord's property (*see* C.R.S. §13-40-107.5)
- Tenant refuses to leave the rental after the end of the lease, which includes a month-to-month tenant staying on after the landlord has given required notice that the lease will not be renewed at the end of the month

Illegal Evictions

A landlord may not use any form of self-help eviction, including locking a tenant out of a rental property ("lock-out"). Any lease clause giving a landlord the right to bodily evict a tenant or the tenant's possessions, or to change the locks on a rental, is unenforceable as contrary to Colorado law. If a tenant is locked out and uses force to reenter the rental, the tenant can be held responsible for damage caused by the reentry. If a landlord will not negotiate reentry and/or removal of possessions, the tenant should seek legal advice before attempting to re-enter the property. Physical contact or intimidation on the part of either the landlord or tenant should be reported to the police. If the landlord will negotiate reentry or removal of possessions, the tenant or landlord may want to order a police civil standby to ensure no confrontation occurs. A landlord who does lock a tenant out takes the risk that a tenant may file a lawsuit against the landlord for damages. Also, if a tenant is current with rent payments but is locked out of the rental unit, a tenant may regain possession of the rental premises by obtaining a court order through the eviction process, just as a landlord can use the eviction process to gain repossession. (*See* "Lockouts" in the Longmont Police Department Standard Operating Procedures, page 23 of this *Handbook*, Termination of a Lease).

Evictions Using Protection Orders

Sometimes roommates or domestic partners in conflict or landlords attempt to get an immediate eviction of another roommate or tenant by securing a civil protection order through County Court. In order to get a protection order the party seeking the order must allege fear of immediate harm to their body and/or threat to their life. In circumstances where real danger exists, a protection order may be appropriate. However, when someone seeks a protection order as a form of retaliation or expediency, the possibility of heightened

conflict only increases. If a roommate or landlord believes that an eviction is necessary, they should go through the statutory eviction process.

The Eviction Process, Residential and Commercial Leases

1. Tenant Violates Lease

See above, page 26, Reasons for Eviction.



TIP FOR LANDLORDS: If your tenant has not paid rent or is violating a term of the lease, you should first communicate with the tenant, explain the lease violation and discuss a way to get the rent paid or the lease violation cured, before giving the tenant a 10-day Notice. If you need assistance communicating or mediating with your tenant, call Community and Neighborhood Resources at 303-651-8444 and/or legal counsel.

2. “Demand for Compliance or Right to Possession” or “10-day Notice”

Before filing an eviction action in court, the landlord must give the tenant notice of the landlord’s intention to evict the tenant by serving the tenant with a “Demand for Compliance or Right to Possession” notice, also known as a “10-day Notice”. The 10-day Notice states that the tenant must “cure” or fix the lease violation or vacate the property within ten days (not including the date of posting. Weekend days and holidays are included. However, if the tenth day falls on a Saturday, Sunday, or a holiday, the tenant must have through the next business to pay the rent or cure the violation.) The 10-day Notice must be written but does not have to be a formal document. (See page 63, Appendix D of this *Handbook* for an example of a 10-day Notice.)



TIP FOR TENANTS: If you receive a 10-day Notice from your landlord, you should immediately contact the landlord, the Longmont office of Community and Neighborhood Resources for mediation help, and/or legal counsel, to attempt to resolve the issues. Often, you will be able to clear up a misunderstanding or work out a payment plan to avoid eviction.

The 10-day Notice must include the following:

1. The address of the rental property
2. Name(s) of the tenant(s)
3. Date the 10-day Notice is served on the tenant.
4. Explanation of why the landlord is evicting the tenant (“the grounds”). Grounds for eviction can include, for example, nonpayment of rent or violation(s) of a lease term. Be clear and specific which lease terms are being violated and on which date(s) the violation(s) occurred.
5. Amount of rent (plus late fees or other amounts) owed by the tenant, if eviction is for nonpayment
6. A demand giving the tenant ten days to “cure” the lease violation by either paying the past due amount, curing (i.e., fixing) the lease violation or moving out (**Note:** a second 3-day Notice for a violation of the same lease non-monetary provision (called a Notice to Quit for Repeat Violation) does not need to give the tenant a right to cure the violation. For this reason, it is important to be specific regarding which terms the tenant is violating. When posting a Notice to Quit for Repeat Violation, it is a good idea to reference the first 3-day Notice. A tenant must **always** be given a 10 day right to cure for a monetary violation.)
7. The landlord’s signature

Exceptions to the Requirement for a 10-day Notice

Besides the 3-day Notice to Quit for Repeat Violation mentioned above, other exceptions to the requirement of a 10-day Notice are:

1. Non-residential leases - 3-day Notice required
2. Employer-provided housing agreement – 3-day Notice required
3. For landlords owning five or fewer single-family rental homes - 5-day Notice, **only if the lease for the single-family home states that a 10-day Notice period does not apply to the tenancy.**

(See C.R.S. §13-40-104)

Serving the 10-day Notice et al. may be done by the landlord through either:

1. Personal service (leaving the notice with a resident of the rental household over 18 years old), **or**
2. Posting in a conspicuous place where the tenant will have to see it, for example, tacked onto the front door.

As soon as possible after serving the 10-day Notice, the landlord should also mail a copy to the tenant at the tenant’s mailing address, preferably by certified or registered mail. **Before the landlord can initiate an eviction in court**, the 10-day Notice must be posted for ten days, not including the day of posting. Saturdays, Sundays and legal holidays do count for the three days, though if the third day falls on a Sunday, the tenant has through the next business day to pay the rent or fix the violation.

3. If the Tenant Pays the Rent or Fixes the Lease Violation in the 10 Day Period

If the tenant pays the rent or fixes the lease violation within the ten day period, the landlord must accept the money or the cure and cannot evict the tenant. Of course, some lease violations cannot be cured, such as the commission of a substantial violation as defined in C.R.S. § 13-40-107.5 (see page 26 of this *Handbook*, Reasons for Eviction). If the tenant fails to pay or does not surrender possession of the rental by the end of the ten days, the tenant may then be evicted. **NOTE:** Even if a tenant moves out within the ten days allowed by the demand, the tenant is still contractually responsible for past due rent and for rent through the lease term and the landlord may still follow through with the eviction procedure and receive a judgment for any amount owed to the landlord.



Example

Tracy Tenant has not paid rent for two months. Louie Landlord posts a 10-day Notice on Tracy’s door on Monday and mails a copy of it to her mailing address on Tuesday. The 10-day Notice states that Tracy owes \$1,200.00 in rent to Louie. On Wednesday, within the 10-day period, Tracy is able to get the \$1,200.00 together and pays it to Louie. The lease violation - nonpayment of rent - is cured and Louie cannot evict Tracy at this time.

4. Eviction or Forced Entry and Detainer (“FED”) Action in Court

If the tenant does not pay the rent, cure the non-monetary lease violation - or move out - within ten days after posting of the 10-day Notice, the landlord may initiate an eviction, or Forced Entry and Detainer (“FED”) action, in county court. A landlord can represent themselves and does not need to be represented by an attorney in order to initiate an eviction. A landlord can be represented in court by:

1. Themselves
2. An attorney

3. Any member of a closely-held corporation (which means there are three or fewer members of the corporation) that holds the rental property in the name of that corporation or LLC See C.R.S. §13-1-127
4. A property manager, who can initiate an eviction case in the name of the property manager if the property manager signed the lease on behalf of the owner. **Someone who merely signs as an agent of the owner cannot bring an eviction case.**

Remember, though a **power-of-attorney is not good for any purpose in an eviction case. That would be a violation of C.R.S. §13-1-127 Unlicensed Practice of Law.**

See C.R.C.P. rule 317(a)

General Overview of the Eviction Process

A landlord seeking an eviction must properly follow all rules and procedures required by statute. If the rules and procedures are not precisely followed, the Court cannot enter the landlord's request for an order for restitution of the rental property or for a judgment for monies due until the process has been completed properly.

The required forms and other helpful information may be found at the Boulder County Courthouses: Longmont Annex, 1035 Kimbark Street, Longmont, 80501, 720-564-2522; or Boulder County Justice Center, 1777 6th Street, Boulder, 80306, 303-441-3750. They are also on the Colorado Judicial Branch website, Self Help Center (<http://www.courts.state.co.us/chs/court/forms/selfhelpcenter.htm>).

1. **Complete a "Complaint in Forcible Entry and Detainer" and "Summons" at the Courthouse**
The landlord will need to include a copy of the lease and a copy of the 10-day Notice served on the tenant. The landlord is the "Plaintiff" and the tenant is the "Defendant".
2. **File the "Complaint in Forcible Entry and Detainer" and "Summons" and Pay the Filing Fee at the Courthouse**
As of July 2019, the filing fee is \$85.00 if the landlord is asking for possession only or is making a claim for less than \$1,000. If the landlord is claiming more than \$1,000 but less than \$15,000, the filing fee is \$100, and if the landlord is claiming between \$15,000 and \$25,000, the filing fee is \$135 (check with the Court Clerk for the current filing fee, as it is subject to change without notice). (See C.R.S. §13-32-101). When filing the Complaint and Summons, the Court Clerk will set the case for a "return date", which is the date that the landlord and tenant must return to court either for a hearing on the eviction or to request a jury trial. The Clerk will complete the Summons by filling in the time, date and location of the return date. The court date will be between five business days and 10 calendar days from the filing date. (See C.R.S. §13-40-111). Evictions in Boulder County are always held on a Friday, 9 a.m. in Boulder and 10 a.m. in Longmont.
3. **Serve the Tenant With the Complaint and Summons**

The tenant may be served by either
 - a. personal service,
 - or
 - b. by posting and mailing.

Personal service may be done by either

- a. Boulder County Sheriff's Office, Civil Division (5600 Flatiron Parkway, Boulder CO 80301, 303.441.3608), currently \$50.66 to serve in Longmont, plus \$15 for each additional person to be served,
or
- b. a private process server,
or
- c. someone over the age of 18 who is not involved in the case.

Make sure that the Return of Service portion of the Summons is completed by the Individual doing the service. Each tenant (referred to as the "defendant" in the Court eviction action), must be served at least five business days (which do not include the date of service or Saturdays, Sundays or legal holidays) prior to the court hearing.

Service by posting and mailing

Is done by posting the Complaint and Summons in a conspicuous place on the rental premises at least five business days (which do not include the date of service or Saturdays, Sundays or legal holidays) prior to the court hearing and then mailing a copy of the Complaint and Summons to the tenant no later than the next day. Be sure that the Return of Service portion of the Summons is completed.

If the tenant is served by posting and mailing, the landlord may only ask the court for a Writ of Restitution, returning control of the rental property to the landlord. In this situation, if the tenant owes the landlord back rent, damages, late fees, or other amounts, the landlord must either:

- a. ask the Court for an alias summons (a second summons to be served on the tenant in the same eviction case),
or
- b. file a separate law suit against the tenant in Small Claims Court or County Court to receive an enforceable Judgment against the tenant. As of July 2019, for claims up to \$500, the Small Claims Court filing fee is \$31.00, for claims from \$501 - \$7,500, the filing fee is \$55.00 00 (check with the Court Clerk for the current filing fees, as they are subject to change without notice)..

If the tenant is served by personal service, the landlord may ask the court both for a Writ of Restitution and for a Judgment for the amount of any back rent, damages, late fees, court costs or other amounts due from the tenant.

NOTE: Any claim on the part of the tenant that service and notice by the landlord was insufficient is waived by the tenant's appearance in court on the date of the hearing.

NOTE: The prevailing party-either landlord or tenant - can recover reasonable attorney fees, court costs and costs of service. However, a residential landlord or tenant who prevails in court may not recover reasonable attorney fees unless the lease itself contains a clause providing for either party to obtain attorney fees. See C.R.S. §13-40-123

4. Complete and File an Answer at the Courthouse.

- i. The tenant has the right to file an "Answer" to the landlord's Complaint, before or on the return date. As of July 2019, the filing fee for an Answer is \$80 (check with the Court Clerk

for the current filing fee, as it is subject to change without notice). The tenant may also file a Counterclaim for any damages claimed from the landlord, for a filing fee of \$85. A trial on an FED is a trial to the judge. However, either party may request a jury trial by paying a \$98.00 jury demand fee, payable by the Plaintiff at the time of filing the Complaint or by the Defendant at the time of filing the Answer.

5. Appear in Court on the Return Date

- ii. Both the landlord and the tenant should appear in Court. If the tenant does not appear and the landlord can prove to the Court that the lease has been violated, the Court will most likely enter the eviction order even though the tenant is not present. **REMEMBER:** the only person who can tell you that you should not appear in court is the judge. Never rely on the assurances of the other party that your rights will be protected if you don't appear.

6. Be Prepared

- iii. Both the landlord and tenant should go to Court on the return date prepared to argue their case or to negotiate. All paperwork (for example, Complaint, Summons, 10-day Notice, Return of Service, Answer, lease, and any records of payment or documents supporting the landlord's reason(s) for eviction or the tenant's defense(s) should be brought to court. Both the landlord and tenant should be ready to explain to the Court in a brief, concise way why the eviction should (landlord) or should not (tenant) be ordered.

7. To Negotiate Payment or a Move-out Date, Ask the Court for a Mediator

- iv. Mediators are almost always present for FED hearings, in both the Boulder County Court in Boulder and in the County Court Annex in Longmont. A mediator can help the landlord and tenant make an agreement on a payment plan or move-out date. A stipulated agreement made with the help of a mediator can be – and usually is - made an Order of the Court.

The following may occur in Court

- The Court enters a "Judgment for Possession," along with a "Writ of Restitution." The Writ of Restitution is the Court Order directing the tenant to move from the rental within 48 hours of the entry of the Judgment. If the tenant is not out in 48 hours, the landlord can take the Writ of Restitution to the Boulder County Sheriff's Office, which will assist in the forcible removal of the tenant and the tenant's possessions from the rental property.
- If personal service was obtained on the tenant, the landlord will probably be able to get a Judgment against the tenant for the money owed the landlord.
- Tenant and landlord may negotiate an agreement allowing more than 48 hours to move out.
- If the tenant agrees to move from the rental property, the tenant and landlord may negotiate the amount of money owed and a payment plan.
- The landlord and tenant may be able to come to an agreement allowing the tenant to remain in the rental under negotiated conditions.
- If the tenant has filed an Answer, a hearing may be set for a later date, usually within the next week, when both parties will need to return to Court.
- The Court may continue the court date so that the landlord can properly comply with the procedural requirements.

Typical Eviction Timetable

DAY	TYPICAL EVICTION TIMETABLE - NON-PAYMENT OF RENT
-	Nonpayment of rent
1	Landlord serves tenant with 10-day demand to pay rent or move out
11	Tenant must pay rent owed or move out
12	If tenant does not pay or move, landlord may file an eviction action in county court and serve tenant with complaint and summons
	Tenant may file answer. Tenant has at least 5 days, but no more than 10 days, to file an answer. Answer must be filed by return date specified in summons. Trial date set by court. Answer may be filled on return date
7-11	Return Date
14-63	If judgment for possession entered, landlord can have sheriff assist tenant from rental property if not moved out within 48 hours of time order entered. Actual date depends on appointment made between landlord and sheriff. Writ of restitution is valid for 49 days from day issued
10-20	If tenant filed answer, trial may be scheduled within 5 business days of return date
DAY	TYPICAL EVICTION TIMETABLE - SUBSTANTIAL VIOLATION
-	Substantial violation
1	Landlord serves tenant with 3-day demand to move out
4	Tenant must move out in 3 days
5	If tenant does not move, landlord may file an eviction action in county court and serve tenant with complaint and summons
	Tenant may file answer. Tenant has at least 5 days, but not more than 10 days, to file an answer. Answer may be filed on return date. Trial date set by court
7-11	Return Date
14-63	If judgment for possession entered, landlord can have sheriff assist tenant from rental property if not moved out within 48 hours of time order entered. Actual date depends on appointment made between landlord and sheriff. Writ of resolution is valid for 49 days from day issued
10-20	If tenant filed answer, trial may be scheduled within 5 business days of return date

Adapted from Manual A. Ramos, Rights and Obligations: Colorado Landlord-Tenant Law From the Perspective of a Tenant Advocate, Fourth Edition (Continuing Legal Education in Colorado, Inc. 2006).

Eviction from a Hotel, Motel, Inn, Boarding House or Other Temporary Shelter for Transient Guests

The eviction of transient guests from these units can be confusing to lawyers, police, owners, and even judges. Answers regarding eviction in this area are based on interpretation of the Unlawful Detainer Statute, the Landlord Lien Statute and laws regarding fraud. The discussion here is general, indicating some of the legal issues which can be involved. When you encounter a situation of this type, you should seek legal advice for more definitive answers.

The Unlawful Detainer Statute (C.R.S. §13-40-104 et seq.)

The Unlawful Detainer Statute states that a tenant is in unlawful detainer of a rental unit “when a tenant or lessee holds over [in a tenement] pursuant to the agreement under which he holds” and ten days’ notice in writing has been served upon the tenant or lessee holding over, requiring in the alternative the payment of the

rent or possession of the premises. Tenant is defined as “one who leases premises from an owner (landlord) or from a previous tenant, thereby becoming a subtenant” and tenement is defined as “any house, building or structure attached to land and also any kind of human habitation or dwelling inhabited by a tenant.” (*Barron’s Law Dictionary*, 2nd Ed.).

The Unlawful Detainer Statute indicates a specific process that the owner must go through to evict a tenant from a property. (See page 26 of this *Handbook*, The Eviction Process). While the statute does not specifically indicate that the owner of a hotel, motel, inn, boarding house or other rental of temporary shelter to transient guests must follow the statutory eviction process, Colorado case law supports the need for legal eviction when removing a transient guest from a rental.

The Landlord’s Lien Statute (C.R.S. §38-20-102(3)(a) thru (c))

The Landlord’s Lien Statute states, “Any person who rents furnished or unfurnished rooms or apartments . . . as well as the keeper of a trailer court . . . shall have a lien upon the tenant’s personal property . . . on or in the rental premises. Section 1 of the Statute defines the rental of temporary shelter or temporary trailer space as “shelter or trailer space which is rented for a fee for a period of time not exceeding one month, but excluding month to month tenancies which have been in effect for at least four months.” A Landlord Lien is defined by *Barron’s Law Dictionary* as the landlord’s “right to levy upon the goods of a tenant in the satisfaction of unpaid rents.”

In Colorado, the value of the lien shall be for the unpaid board, lodging or rent, and for reasonable costs incurred in enforcing the lien, not including attorney fees.” Under the Landlord’s Lien Statute, a landlord may seize property in a reasonable and peaceful manner. Legal precedent indicates that the Landlord’s Lien is a pre-judgment remedy, while eviction is a post-judgment remedy. Thus, it might be assumed that a landlord cannot use the statutory procedure to assert a lien against the tenant’s property and also lock the tenant out of the property.

Certain property is excluded from the landlord’s lien rights. The landlord cannot assert a lien against small kitchen appliances, cooking utensils, beds, bedding, necessary wearing apparel and personal or business records and documents. Items covered by the lien include household furniture, goods, appliances and other personal property of the tenant and household members. This area of lien law is vague and a landlord should proceed extremely cautiously when exercising lien rights. First, seizure of a tenant’s property might promote physical confrontation between the landlord and tenant. Also, some lower courts have declared the law unconstitutional because it gives landlords rights not given to other creditors and it may be seen as depriving a tenant of due process and equal protection. To ensure that the landlord is proceeding in accordance with the law and not putting themselves at risk of physical confrontation or of damage claims by the tenant, the landlord should seek legal counsel. Tenants who have had property seized by a landlord should also seek legal advice.

Removal of Squatters

In 2018, the Colorado legislature passed the Protecting Home Owners and Deployed Military Personnel act, C.R.S. §§1340.1-101 through 1340.1-102. This bill requires a police officer or another law enforcement person to remove a squatter and to order that the squatter stay off a residential premises if the owner or the owner’s agent follows the procedure outlined in the act. This law is relatively narrow in its application.

A squatter is an unauthorized person who has been given no current or prior consent by the owner, either written or oral, to use the residential premises. The owner in such a situation must have never accepted money or anything of value from the squatter in exchange for permission to remain on the premises. The

procedure for the owner is precise and an owner who needs to remove a squatter from a residential property should consult the police and/or an attorney. **It is important to also note that a relative of the owner or of the owner's agent cannot be a squatter.**

Abandoned Property (C.R.S. §§38-20-116(1))

Personal property is considered abandoned if:

1. The tenant has not contacted the landlord for at least 30 days,
and
2. There is nothing to lead the landlord to believe that the tenant is not abandoning the possessions.

If a former tenant leaves possessions behind, the landlord should make a reasonable effort to contact that tenant. If the landlord is not able to contact the tenant, the landlord may proceed to sell or dispose of the personal property. By law, the landlord must give the tenant at least 15 days written notice by registered or certified mail, addressed to the tenant's last known address, before selling or disposing of the property. If the last known address is the rental property, send the notice to that address. If the tenant has not left a forwarding address and the notice is returned, the landlord should retain the notice, unopened, in a file should the tenant later assert that no notice was given. To further reduce the chance of future liability, the landlord could obtain a Writ of Restitution. (See page 28 of this *Handbook*, The Eviction Process). If the abandoned property is a motor vehicle, because a motor vehicle is titled, the procedure to remove it is different. If that is your situation, it is **advisable to seek guidance from local law enforcement or an attorney.**

SECURITY DEPOSITS

What is a Security Deposit

A security deposit, also called a damage deposit, is any advance deposit of money used to secure the performance of the lease. Residential security deposits are regulated by C.R.S. §38-12-101 *et seq.* There is no statutory regulation of commercial security deposits.

Reasons to Withhold a Security Deposit

A landlord may keep all, or a portion, of the security deposit for any of the following reasons:

- Unpaid rent owed by the tenant
- Unpaid utility bills
- Cleaning required to restore the rental to the condition it was in when the tenant moved in
- Cleaning services such as a professional rug shampoo, agreed to under the lease
- Payment for damages to the rental beyond "normal wear and tear"
- Any other breach of the lease causing financial damage to the landlord

Normal Wear and Tear

Colorado defines "normal wear and tear" as "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 . . . by the tenant or . . . household or . . . guests." C.R.S. §38-12-102(1). "Normal wear and tear" is caused by normal, everyday use. Damage is injury to the premises beyond normal wear and tear, caused by irresponsible unintentional actions or intentional actions (see page _____ of this *Handbook*, Appendix E, Depreciation Schedule).



Example

Normal Wear & Tear

Worn and dirty carpet
Faded curtains
Worn out keys
Dirty window screens
Faded, chipped paint

Damage

Torn, stained, or burned carpet
Torn or missing curtains
Lost keys
Torn or missing screens
Hole in the wall

Typically, if a tenant has caused an unusual amount of damage to a property, the landlord's only recourse would be through a civil small claims court judgment and collection procedures. However, in 2018, a tenant in Boulder was charged with *felony criminal mischief* for causing extensive damage to a rental property resulting from a marijuana grow.

Return of Security Deposit (C.R.S. §38-12-103)

If the tenant has fulfilled all of terms of the lease, has paid the rent in full and on time every month, has left no financial obligation for the landlord to cover, and has caused no damage beyond normal wear and tear, the tenant is entitled to the return of the entire security deposit. No Colorado state law or Longmont ordinance requires a landlord to pay interest on security deposits held by the landlord (Denver and Boulder do require a landlord to pay interest on security deposits).

Tenants should arrange to either collect the security deposit from the landlord in person or leave a forwarding address, so the landlord can mail the security deposit to them. When roommates have co-signed a lease, a landlord may either divide the security deposit reimbursement equally among the tenants or reimburse the entire return amount to one tenant. Ideally, tenants should agree in advance how the security deposit reimbursement is to be divided and provide the landlord with their written, signed agreement.

After a tenant leaves a rental property, the landlord has 30 days (unless a longer period of time, not to exceed 60 days, is agreed to in the lease) to either

1. Return the security deposit in full,
or
2. Return a portion of the deposit along with a written list of expenses incurred by the landlord or damages caused by the tenant and the cost of the necessary expenses or repairs. If the deposit amount is larger than the cost of the expenses or repairs, the landlord must return the balance of the deposit. The landlord is not required to provide the tenant with copies of receipts for expenses or repairs in addition to the written list, though doing so as a courtesy may be appreciated by tenants as helpful clarification.

Tenant's Recourse for Withheld Security Deposits

If the landlord does not either return the entire security deposit or send an itemized list of deductions, along with any remaining portion of the security deposit, within the required time period, the landlord forfeits all rights to withhold any of the security deposit. (C.R.S. §38-12-103(2)). If the landlord does provide a list of deductions and the tenant disagrees with the deductions taken for expenses and damages, or if the landlord has not provided such a list within 30 days (or up to 60 if specified in the lease), the tenant may send a **"Seven-day Demand Letter"** to the landlord, itemizing the charges with which the tenant disagrees and stating that **the**

tenant may sue the landlord for three times the amount of the deposit withheld if the entire deposit or the disputed portion is not returned to the tenant within seven days of receipt of the letter. The Seven-day Demand Letter should be sent certified mail, return receipt requested. Additionally, the tenant should keep a copy of the letter. If the landlord returns the security deposit in full or pays the tenant the disputed portion within seven days, the matter is resolved. (See page _____ of this *Handbook*, Appendix F, for a sample Seven-day Demand Letter.)

A Seven-day Demand Letter must include:

- The address of the rental property
- The dates of the occupancy
- The amount of the security deposit originally paid
- The tenant's current mailing address
- An explanation of the disagreement regarding the portion of the deposit withheld, if applicable

If the tenant does not hear from the landlord within the seven days specified by the demand letter, the tenant can then pursue legal action. A tenant **must** give the landlord a Seven-day Demand Letter prior to pursuing legal action. If the amount claimed by the tenant is \$7,500.00 or less, the tenant may initiate a case through Small Claims Court. As of July 2019, the filing fee for claims up to \$500 is \$31.00; for claims over \$500 and up to \$7,500, the filing fee is \$55.00. If the tenant claims more than \$7,500.00, the tenant has to file in County Court (check with the Court Clerk for current filing fees, as they are subject to change without notice). (See also www.courts.state.co.us/Courts/District/index.cfm?District_ID=20).

SMALL CLAIMS COURT

Tenant and landlords both can bring a case in Small Claims Court. The maximum amount is \$7500. The small claims statute of limitations for cases brought by tenants claiming trebled damages from landlords who do not return the security deposit accounting timely is one year. For all other cases involving money landlords and tenants, the statute of limitation is 6 years. All Small Claims Court cases are heard by a magistrate or a judge, there are no jury trials. Typically, attorneys do not represent parties in Small Claims Court although if a tenant request that an attorney represent them then the plaintiff also has the right to be represented by an attorney. No judgments are entered in small claims court without personal service on the defendant if a defendant does not appear at the hearing after being served, a default judgment can be entered against them. The court do not collect money judgment awarded in small claims court. Collection of money becomes the responsibility of the party awarded the judgment. In Boulder County parties to a small claims court cases are asked to mediate immediately prior to their hearing and if the issues ca not be resolved through mediating then the case is heard by the magistrate or judge. The Colorado Supreme Court website has all the forms plus and helpful small claims handbook: *A Guide from Non-Lawyers* available on the court website.

ROOMMATES

This section has been borrowed from a list of recommendations prepared by the City of Boulder Community Mediation Service. These suggestions are based on past experience and common sense and are not intended to substitute for legal advice.

Many roommates enter into their living-together relationships with high hopes and positive expectations. Especially if roommates are also friends, they may believe that everything will go smoothly and that all they need is "an understanding" between them. However, people change and circumstances change - best friends do not always make the best roommates.

It is wise to treat the mechanics of house sharing as a business relationship in order to protect the personal relationships between roommates.

Forming a New Household

Often, the basis of disputes is poor communication or a misunderstanding of mutual expectations between roommates. To minimize misconceptions and false expectations, we recommend:

Communication

Potential roommates should thoroughly discuss their needs, expectations and the general ground rules they each wish to establish in a shared household PRIOR to signing a lease and moving in together. This applies equally to a situation where a new roommate moves into an established household.

Contract

Roommates should draw up and sign a Roommate Agreement, which spells out their rights and obligations to each other, and including the following information: (See page 68 of this *Handbook*, Appendix H, for a sample Roommate Agreement)

1. Date of agreement
2. Names of roommates
3. Address of rental property
4. Amount or percentage of rent and utilities to be paid by each roommate
5. Total amount of security deposit paid and portion of that deposit paid by each roommate
6. Agreement that each roommate will pay for damages they cause or damages caused by their guests
7. Agreement by all roommates that, if a roommate moves out prior to the end of the lease term, he or she will continue to pay their share of the rent for the lease term unless the landlord agrees to allow a replacement tenant
8. Agreement about who will be responsible for finding, interviewing and deciding on new roommates
9. Agreement that each roommate will pay a specific share of the cost of any repairs, improvements or other costs incurred in the operation of the household or due under the lease
10. Other agreements the roommates think appropriate
11. Signature of every roommate

The Roommate Agreement

A written confirmation of agreement among the roommates. It is not binding upon the landlord unless the landlord also signs the document. The lease is the agreement between tenants who sign the lease and the landlord. Tenants need to pay particular attention to their joint and several liability to the landlord, as explained below on this page. When inevitable problems do arise, roommates should talk to each other and try to work them out at the time they occur rather than waiting until those small problems build up into irresolvable resentments.

Changing Roommates

One of the most common problems occurs when one roommate in a household wants to move out. When a roommate leaves before the end of a lease term, good communication and great care are needed to minimize confusion and to prevent exposing the remaining roommates to additional financial obligations.

Joint and Several Liability

Each tenant who has signed the lease is responsible to the landlord for the rent for the entire lease term, whether living on the premises or not. If more than one person has signed the lease, each person individually is responsible for paying the rent in full, and also all persons collectively are responsible for paying the rent in full. If one roommate moves out and does not pay their share of rent owed, all other roommates must pay their individual rent portion, plus any amount not paid by the departed roommate. If the rent is not paid to the landlord in full, they will all be subject to eviction for nonpayment of rent. The remaining roommates must then try to collect whatever they can from the departed roommate for rent paid on his/her behalf.

Procedure When One Roommate Moves Out

The following is a list of procedures for departing roommates, which may help prevent problems. If you are a roommate who is planning to move before the end of the lease term, you should:

1. Talk to your roommates about your intention to move.
2. Make sure to understand how the lease might affect your decision to leave:
 - a. Is subletting/assignment prohibited? Even if the lease prohibits subletting, the landlord cannot unreasonably refuse to sublet.
 - b. Is the permission of the landlord required before you can sublet or assign?
 - c. Does the landlord's permission have to be in writing?
 - d. Are there special conditions that must be met before subletting or assigning?
 - e. Does the lease say that only those persons named in the lease can occupy the premises?
3. Discuss with your roommates how to arrange for a replacement roommate:
 - a. What type of person is acceptable to the other roommates (reasonable criteria)?
 - b. Who will arrange and pay for advertising?
 - c. Who will receive calls and show the unit?
 - d. What kind of agreement can you make with your other roommates to continue paying rent until a new roommate is found and moves in?
4. Contact your landlord to find out how the landlord would like to handle:
 - a. Approval of a new tenant
 - b. Old and new tenants' relationship to the lease
 - c. Old and new tenants' security deposits.

Note: Even if the lease does not require the landlord's permission to sublet, it is to the tenants' benefit to communicate and work things out with the landlord.

TYPES OF SUBLETTING AND ASSIGNMENT ARRANGEMENTS

There are many versions of subletting/assignment/replacement. Landlords and tenants may wish to negotiate with each other to determine which version works best in their particular situation. Below are a few options. The landlord is not obligated to accept any of these options but, again, may not **unreasonably** refuse.

Option A: The landlord terminates the old lease. A new lease is signed between the landlord and the remaining tenants, and including the new tenant. Once the new lease is signed, the departing tenant has no further liability for rent. The landlord returns the old security deposit, less damages, and collects a new deposit from the remaining tenants and the new tenant. This alternative is probably the cleanest arrangement. However, few landlords do this, as it involves substantial work on the landlord's part.

Option B: The landlord amends the existing lease, adding the new tenant's name and removing the departing tenant's name. The departing tenant has no further liability for rent. The new tenant pays the departing tenant an amount of money equal to the departing tenant's security deposit. The new tenant now assumes all liabilities of the departed tenant, **including liability for previous damages**. The landlord will then owe any security deposit refund to the new, rather than the departed, roommate. This transaction should be documented **in writing** in an agreement signed by old roommates, the new roommate, and the landlord.

Option C: The departing tenant sublets to the new tenant. The departing tenant remains on the lease and is liable for all lease obligations for the remainder of the lease term. Below are some examples of ways in which this option might work for the involved parties.

1. The new tenant signs a sublease agreement and pays the deposit to the departing tenant, who retains the new tenant's deposit. In this case the landlord retains the original tenant's security deposit. When this option is used, the original tenant remains liable for all rent and damages until the end of the lease term. If the new tenant does not pay rent, the other roommates and the landlord can look to the original tenant for the payment. Due to "joint and several liability," the landlord can also look to the other remaining tenants for the balance of money owed. At the end of the lease term the landlord returns the deposit, less damages, to the original tenant and the original tenant returns the deposit, less damages, to the new tenant. This may prove to be an unworkable option if the whereabouts of the original tenant are unknown or far away or if the original tenant is not cooperative, making collection of rent or other obligations difficult for the new tenant, the remaining roommates or the landlord.
2. The new tenant pays a deposit to the landlord and the landlord retains the deposit of both the original tenant and the new tenant until the end of the lease term, at which time the deposits are returned through the ordinary procedure.
3. The new tenant pays a new deposit to the landlord and the landlord returns the deposit paid by the original tenant.

Option D: A hybrid or combination of the above options and/or other agreements worked out between the parties (e.g., a departing tenant might subsidize a new tenant's rent; a departing tenant might pay a fee to the remaining tenants with the agreement that they will secure a new roommate.)

REMEMBER: When you are involved in a "joint and several liability" relationship and money is withheld from your deposit, the landlord does not have to determine who is responsible for damages or expenses. Each time

a tenant is replaced, it is in the best interest of everyone to do a new walk-through of the unit to ascertain damages before the new tenant moves in.

It is wise to explore these options with your landlord when signing a lease and to additionally specify in a separate Roommate Agreement exactly which procedure will be used if a roommate moves.

Note: In these alternatives, departing tenants may not substitute their security deposit for rent payment, in the absence of an agreement allowing them to do so.

MEDIATION

Mediation is often a good way to resolve roommate disputes if discussions fail. Where there has been a turnover of roommates, it may be difficult to sort out legally who is responsible to whom, for what, if an agreement was not made in advance. Mediation provides an opportunity for old and new roommates to identify issues and discover a solution that works for them. It is important to be sure that all involved parties participate in the mediation process. Reaching agreement may be impossible if individuals integral to the dispute are not available. **The City of Longmont Mediation Services can be reached at 303-651-8444.**

CITY OF LONGMONT CRIME FREE MULTI HOUSING PROGRAM

Keeping Illegal Activity Out of Rental Properties

The purpose of the program is to develop a strong partnership between the Longmont Police Department and various multi-family apartment communities to reduce criminal activity, reduce the fear of crime, and enhance the quality of life for citizens.

The crime free housing program in the City of Longmont requires management to have tenants sign a "crime free lease addendum." If the addendum is violated, management has the tools to proceed with immediate evictions of problem tenants. Calls for service are provided without charge to management on a weekly or monthly basis. Consultation and contacts to the Crime Free Housing Team are provided and encouraged. The current program also asks that management complete a full background and credit check of prospective tenants.

The certification process includes the following:

STEP 1: A representative from the apartment community (owners, maintenance and management are encouraged) are required to attend an eight hour presentation that is provided by the Longmont Police Department. Depending on response, the training will take place in one, eight hour block, or two four hour blocks on separate days. Topics will include education on apartment management including eviction and rule making, background and credit investigation assistance, **Crime Prevention Through Environmental Design** information, legal discussion with an attorney, and information on drug, gang, and fraud issues. Attendance is required every other year, with one exception: If a particular manager or management company has already gone through the eight hour training prior, they only have to complete a four hour refresher every other year. There is no charge for the class. The apartment community receives a certificate of completion after attending the presentation.

STEP 2: The property must become compliant with basic requirements during a Crime Prevention Through Environmental Design on site survey. A member of the Longmont Police Department

completes this survey at no charge. Crime Prevention Through Environmental Design (or CPTED) is defined as the use of the physical environment to reduce criminal activity and the fear of crime in an apartment community. During a CPTED survey, basic lighting, landscape and security (door and window locks) features are checked. Complying with the CPTED survey is a measure taken by management to reduce criminal activity and the fear of crime in the community. More specific information on what is checked during the survey is available with your specific Beat Support Team Officer. After Step 2 is completed, the property receives another certificate.

STEP 3: On a yearly basis, apartment management is required to hold a community meeting, where all employees, owners, tenants and management are invited. There is a requirement of some type of food and drink to be provided by management. A Crime Free Housing Officer will also be present for the meeting. The meeting is an open forum where employees and tenants can voice their concerns about public safety within the apartment community. The Crime Free Housing Officer will provide attendees with statistical information, crime trends, crime prevention tips, etc. to help make the apartment community safer. Again, once this step is completed, the property receives another certificate.

Once these three steps are completed, the apartment community receives a certificate of completion of the City of Longmont Crime Free Housing Program, and will receive signs with the Crime Free Logo posted on page one of this flyer. The apartment community can place these signs at entrances of their community, within the leasing office, etc. This creates a marketing advantage to apartment communities trying to attract quality, law-abiding tenants. The signage also works against criminals looking to find a place to live where they can continue criminal activity.

Crime Free Housing Officers in charge of the program have received specialized training in a proven program. This program is widely used in 40 states and Canada. The Longmont Police Department looks forward to building valuable partnerships within the City of Longmont, and we believe this program is an excellent example of what these partnerships can accomplish. If you have questions, please contact the Crime Free Housing Team at 303-591-5060.

ADDITIONAL RESOURCES

HUD tenant rights, laws, and protections Colorado Page www.hud.gov/states/colorado/renting/tenantrights
Colorado renters rights from the Colorado apartment association
www.Caahq.org/main/Colorado-renters-guide

Frequently asked questions for landlords about section 8 vouchers

www.bouldercounty.org/families/housing/frequently-asked-questions/#landlordsfaq

Denver Metro Fair Housing Center

www.dmfhc.org

Colorado Civil Rights Division

www.colorado.gov/pacific/dora/civil-rights/housing/discrimination

Colorado Cross Disability Coalition

www.ccdconline.org

Colorado Legal Aid

Coloradolegalservices.org

