Renter's Rights

Fall 2023

COLORADO LEGAL SERVICES

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INTRODUCTION

These materials are for informational purposes only and are not all-inclusive. Instead, this is a brief overview of your rights as a tenant. The information contained in this packet is not legal advice. Housing issues can be complex and require a factual and legal analysis before legal advice can be provided.

If you are low-income or a senior citizen in need of legal advice or assistance in a housing matter, you may apply for services at Colorado Legal Services by calling 719-471-0380, applying online at coloradolegalservices.org, or applying in person at 102 S. Tejon St. Ste. 430 Colorado Springs CO 80903. If you would like to apply in person, please call ahead to confirm application hours.

PRE- MOVE-IN TIPS

- PUT EVERYTHING IN WRITING

-When you are renting an apartment or a home, you are entering into a contract with your landlord.

-It does not matter if your landlord is a corporation, the property owner, a family member, or friend: you are entering into a business relationship when you rent a place to live.

-Putting every agreement in writing and having it signed by you and the landlord protects you, as a tenant. Whether it is an alteration to the lease term, an addendum to the lease, or an “understanding” with your landlord, the new agreement should be put in writing and signed by you and the landlord. In the event of an unforeseen conflict with your landlord, you will want to defend yourself and support your position with documentation. In some instances, this can prevent an eviction.

-Keep in mind: oral agreements are very difficult to prove in court and may not be enforceable. Putting everything in writing is the best practice for you as a tenant.

MOVING IN

Moving into a new residence can be an exciting time. It can represent a new stage in your life, a new phase of a relationship, or a new chapter for your family. It can also be a hectic time with planning to move into the new residence, unpacking, and making the residence your new home.

During this exciting time, it is important to keep track of certain things to protect yourself from unwanted surprises throughout your tenancy. The following are some things to remember as you are preparing for your new residence.

- APPLYING FOR A NEW RESIDENCE

The "Rental Application Fairness Act" covers what landlords are allowed to do during the application process and how applicants can respond if the landlord does not follow the law.

When landlords charge an application fee, they must only charge a fee for the actual cost of application processing. Landlords cannot charge different amounts for different applicants. In addition, landlords shall provide a disclosure of the anticipated or actual expenses of processing an application. Lastly, landlords shall provide an applicant with a receipt and make good faith efforts to return any remaining money to the applicant.

In reviewing the application, there are limits to the information that landlords are allowed to consider. For example, when reviewing rental or credit history, a landlord cannot consider any information that is 7 years or older. Further, landlords cannot consider or inquire about an applicant's amount of income, except to ensure that the applicant's income does not exceed 200% of the applicant's prospective rent. Additionally, landlords cannot consider an applicant's credit score, an applicant's adverse credit event(s) if any, or an applicant's lack of credit score (unless the landlord is required by federal law to consider credit score or lack thereof). However, a landlord may inquire about an applicant's income to ensure that an applicant qualifies for an income restricted unit. If a landlord is reviewing criminal histories, a landlord shall not consider any arrest record from any time, only convictions. A landlord shall not consider criminal convictions that are older than 5 years EXCEPT for methamphetamine related convictions, convictions that require the applicant to register as a sex offender pursuant to C.R.S. § 16-22-103, homicide related offenses, or stalking.

Finally, if a landlord denies an application, the landlord shall provide the applicant with a written notice of the denial. This notice shall state the reason for the denial. The

landlord shall make good faith efforts to provide the applicant with the written denial within 20 calendar days of the landlord's decision to deny. As a tenant, it is the best practice to provide the potential landlord with a good mailing address so that you can receive any written denial.

If a landlord does not follow the law regarding applications, then the denied applicant may have a cause of action against the landlord. A wrongfully denied applicant can seek three times the amount of the application fee plus court costs and reasonable attorney fees. Further, under newly passed laws, a landlord may be subject to a $50 penalty for a violation and then an additional $2,500.00 statutory penalty if the violation is not cured after being placed on written notice by the applicant. Before filing an action against a landlord, an applicant must notify the landlord of their intent to pursue legal action at least seven days before filing the action and give the landlord an opportunity to cure the issue. It would be best to seek legal advice before starting a legal action because if there is a meritless claim brought by an applicant that applicant will be responsible for the landlord's court costs and attorney fees.

- PORTABLE TENANT SCREENING REPORT

The Colorado legislature has enacted new laws that went into effect in September 2023 which provide applicants with a way to avoid paying multiple application fees by providing landlords with a portable tenant screening report.

A portable tenant screening report is a consumer report which is prepared at the applicant's request that includes information provided by a consumer reporting agency about the applicant and the date through which the provided information is current.

The information included in the report includes an applicant's name, contact information, verification of employment, verification of income, last known address, rental and credit history for each jurisdiction listed in the report, and criminal history check for convictions.

Landlords are required to accept the report from an applicant. Landlords may require that the report be completed within the previous 30 days, that the report be made directly available to the landlord at no cost, and/or a statement from the applicant that there has not been a material change in the information in the report.

Landlords are not allowed to charge an applicant a fee to access or use the report. Additionally, landlords must advise an applicant that they have the right to use a screening report and that the landlord cannot charge an application fee if a screening report is used or charging a fee to use the report.

A landlord does not have to accept a screening report when the landlord does not accept one application/fee at a time AND the landlord refunds the total fee to each applicant within 20 days after written application denial.

- BAN ON INCOME DISCRIMINATION

Pursuant to Colorado Revised Statute § 24-34-502, it is unlawful to refuse to rent or lease, refuse to show housing for rent or lease, refuse to receive and transmit any bona fide offer to rent or lease, or otherwise make unavailable or deny or withhold from another person any housing for rent or lease because of a person's source of income.

Additionally, it is unlawful to discriminate in the terms, conditions, or privileges pertaining to the rental or lease of any housing, or in the furnishing of facilities or services in connection therewith, because of a person's source of income.

"Source of income" means any lawful and verifiable source of money paid directly, indirectly or on behalf of a person including money from any lawful profession/occupation and/or income or rental payments derived from any government or private assistance, grant, or loan program.

Landlords and property management companies are barred from producing any notice or advertisement which contains any limitation, specification or discrimination based on a person's source of income. Additionally, it is unlawful to represent to another person that housing is unavailable, when it is in fact available, for the purpose of discriminating against a person's source of income. Lastly, the law bars any person from profiting, or inducing or attempting to induce another person to rent any housing by indicating to the person that only certain types of incomes live in the neighborhood.

These prohibitions do not apply to landlords with five or fewer units of housing for rent or lease. Furthermore, if a landlord owns five or fewer single family rental homes and no more than five total rental units including any single family rental homes, then the landlord is not required to accept federal housing choice vouchers for any of the five single family rental homes.

Lastly, landlords are still permitted to check the credit of a prospective tenant. This is not an unfair housing practice so long as the landlord checks the credit of every prospective tenant.

- REVIEWING THE LEASE

Before you sign a lease, it is important that you take time to thoroughly review your new lease. Read each and every part of the lease before you sign. It is crucial that you know and understand what your responsibilities as a tenant will be in your new residence.

As you are reviewing the lease, pay special attention to fees. Most leases include fees for late payment of rent, repair fees, legal fees, pet fees, etc. Having a clear understanding of what may become your financial responsibility will make your tenancy smoother and will allow you to make sure you do not fall behind in your rent.

Make sure you understand the whole lease as it is written. Anything your landlord tells you that is not in the lease is probably not enforceable because the written lease sets out the terms of your agreement. Because of this, if you have concerns, it is the best practice to have an attorney review the lease before you sign it. You landlord might not explain confusing portions of the lease with your best interests in mind. An attorney would be able to provide you with a neutral an informed interpretation.

Make sure that the written lease is accurate. If your landlord tells you that any terms of the lease are different or waived, you should make the correction to the written lease and have both parties initial the change. If there is a discrepancy between what the landlord told you and what is in writing, the written lease will control. For example, if your landlord says you do not have to pay a pet deposit, you both should remove any mention of the requirement to pay a pet deposit from the written lease.

Written leases must include a statement indicating the landlord's authorized agent's name, the method for electronic notice of the warranty of habitability, and a statement regarding Colorado law on source of income discrimination. Make sure this information is included in your lease. It is important that you have a point of contact for disputes and a place to send written notices or demands to your landlord.

Some lease clauses are prohibited by law. You should be aware of these when you are reviewing your lease. These prohibited lease clauses include:

- A lease clause which assigns a penalty, that is more than simply potential costs, to the tenant for an eviction notice or an eviction action being filed is unenforceable.
- A lease clause which only awards attorney fees to the landlord in an eviction case is unenforceable. Attorney fees are only recoverable if:
    - The winning party (landlord or tenant) can recover attorney fees

    - The ability to seek attorney fees following a lawsuit is disclosed in the lease,
    - A judge determines that the party seeking the attorney fees is the prevailing(winning) party and
    - A judge determines that the requested attorney fees are reasonable.
- A lease clause which waives/gives up the right to a jury trial for a damages hearing , or that waives the ability to join a joint/collective/class claim or action, or that waives the implied covenant of good faith and fair dealing, the implied covenant of quiet enjoyment, or mandatory mediation prior to a forcible entry and detainer action being filed is unenforceable.
- A lease clause which applies a fee/damage/penalty to a tenant for not providing a notice of nonrenewal is unenforceable, except for the actual damages cause by the tenant's lack of notice of nonrenewal.
- A lease clause which characterizes any payment set forth in the rental agreement as rent except for the amount set for the actual occupancy of the residence is unenforceable.
- A lease clause which requires the tenant to pay a markup/fee for a service the landlord is billed by a third party which is greater than 2% of the actual amount that was billed or up to $10 is unenforceable.
- A lease which allows a subsidy provider to pursue an eviction for nonpayment of utilities alone is unenforceable.
- A lease which allows a landlord to attempt to recover a landlord's costs from the mediation is unenforceable.

- LATE FEES

There are limitations and restrictions on late fees for residential tenants. Late fees must be disclosed in a rental agreement in order for a late fee to be imposed upon a tenant.

A landlord may not charge a tenant a late fee unless the rent is late by at least 7 calendar days. Landlords are prevented from charging a late fee that is more than $50, or 5% of the amount of rent that is past due, whichever amount is greater.

Additionally, landlords are prevented from removing or excluding a tenant from a dwelling or starting an eviction case for failing to pay late fees. Landlords cannot terminate a tenancy based upon the tenant's failure to pay a late fee to the landlord. A landlord cannot charge more than one late fee for late rent, except that a landlord may charge multiple late fees so long as the total amount is no more than $50 or 5% of the late rent. Landlords shall not charge interest on a late fee, recoup a late fee from a rent payment made to a landlord,

or charge a late fee unless the landlord provides the tenant with notice of the late fee within 180 days of the late payment.

If your lease contains a provision that is not consistent with the late fee law, then the lease provision is unenforceable. If your landlord does not follow the law regarding late fee limitations, then your landlord has seven days to cure the violation of the improper late fees. If your landlord fails to cure the violation, then you may have a claim for a lawsuit against your landlord. In such a lawsuit, you may seek compensatory damages for the injury or loss suffered, a penalty of $150-$1000 for each violation, costs including reasonable attorney fees, and other equitable relief the Court finds appropriate.

A violation of the laws regarding late fees is a defense in a forcible entry and detainer (eviction) action.

Lastly, late fees are distinct from rent payments and landlords are prohibited from taking late fees out of a rent payment made by a tenant.

- LENGTH OF THE LEASE

Every lease lasts for a set period of time, which is called “the term” of the lease. In some leases, after the initial period of time expires, the lease will renew automatically for either the same term or on a month-to-month basis. Please review your lease to ensure that you comply with notice requirements to renew the lease or provide notice that you do not wish to renew the lease. If you think these provisions are unusually onerous, please consult with an attorney well in advance of the end of the lease.

If you are on a month-to-month lease, you or your landlord can choose not to renew the lease for an additional month for any reason, as long as you or your landlord provides proper notice of the lease termination pursuant to Colorado Revised Statute § 13-40-107. When you are on a month-to-month lease, you or your landlord must give 21 days’ notice of the lease termination For example, if your landlord wants to terminate your lease after the month of September, you must be given notice on or before September 9. You or your landlord can terminate the tenancy without cause on a month-to-month lease.

- GETTING A COPY OF YOUR LEASE

After you have carefully reviewed and signed your lease, you should request a copy of the lease for your own records. It is important to always have a copy of your lease. If there is a dispute over the terms of the lease, you will want to have the proper documentation to support your argument or to defend yourself against an attempted eviction.

Landlords cannot refuse to provide a tenant with a copy of the lease. Pursuant to Colorado Revised Statute § 38-12-801, your landlord must provide you with a copy of your lease if the lease is in writing. This copy must be signed by both you and your landlord and your landlord must give you a copy within seven days after you sign the lease. Your landlord can give you an electronic copy but must give you a paper copy if you request a paper copy. While not required, it is a good practice to have all parties initial each page of the lease as well.

- ORAL LEASES

If your lease is an oral lease, your landlord may refuse to put the lease in writing. Oral leases, while not preferred, are legal in Colorado. The maximum term for an oral lease is one year but oral leases are often viewed by the courts to be a month-to-month lease. It would be in your interest to try to get any oral agreements put in writing and signed by you and your landlord.

- SECURITY DEPOSIT

In addition to signing the lease, one of the first things you will have to do to in order to move into your new home is to pay money to secure the rented residence. Part of this payment is likely to include a security deposit. Beginning in 2023, landlords are not able to charge a security deposit which is greater than two months of rent.

For the purpose of the initial move-in, make sure you receive a receipt from your landlord for the payment of the security deposit. This documentation may become necessary in the event there is ever a dispute over the security deposit being withheld by your landlord.

If you are renting in a mobile home park, the security deposit cannot be greater than one month's rent.

- TAKE PICTURES

The very first thing you should do when you walk into your new unit is to take photographs of the entire residence, including photographs of all damages you see. You may want to provide a copy of the photographs and documentation to your landlord. This documentation may become important after you move out of the residence. When you move out, the last thing you should do is take pictures of everything again.

- WALKTHROUGH

With a signed lease and the initial deposit paid, there is one more task you should complete before moving into your new home: a walkthrough with your landlord. A walkthrough gives you the opportunity to document the condition of the residence, including any damage, prior to moving into the new residence. You should be as thorough and critical as possible. Walkthroughs are not required by law. However, this practice may help you and your landlord to stay on the same page when it comes to the condition of the unit.

At the end of your rental time period, when you are moving out of your residence, your landlord will again do a walk-through of your residence and will withhold portions of your security deposit for any damage beyond normal wear and tear. If you want to challenge this withholding, documentation of the damage present when you moved in will be very helpful in supporting your position that your landlord is wrongfully withholding some or all of your security deposit.

- LANDLORD'S DUTY TO DELIVER POSSESSION

Now that you have signed a lease and paid the deposit, you have established a landlord-tenant relationship with your landlord. At this stage, it is your landlord's duty to provide you with access to your new home. It is your landlord's duty to deliver possession of the property. Unless there is a separate agreement, you have a right to the possession of your new residence to the exclusion of others.

ONCE YOU ARE IN YOUR HOME

Once you are in your new residence, you should keep in mind the following points to ensure your tenancy continues without any problems. This list, however, is not exhaustive. If you have issues once you are in your home, you may want to contact an attorney to see what your options are.

- DUTY TO PAY

A lease agreement generally requires a tenant to pay their rent to their landlord once every month. It is your obligation to ensure that you pay your rent when due as set out in your lease. Failure to pay rent could put you at risk for an eviction. While your lease is in effect, you need to continue to pay rent in accordance with the terms your lease.

- RENT RECEIPTS

Some tenants pay their rent with money orders or in cash. Colorado law gives such tenants the right to receive a receipt for rent.

If you pay your rent with cash or a money order in person, your landlord must write a receipt immediately for your rent payment. If you pay your rent by mail with cash or money order, you may request a receipt from your landlord. Your landlord must give you a receipt within seven days after you make the request.

You should request and keep all receipts for each month's rent. Receipts can be used as proof that you paid rent in the event there is ever a dispute.

- RENT INCREASES

If you do not have a written rental agreement with your landlord, Colorado law does limit your landlord's ability to increase your rent.

Pursuant to C.R.S. § 38-12-701, if you do not have a written rental agreement then your landlord is only able to increase your rent after giving you 60 days' written notice regarding the rent increase.

Additionally, your landlord is not able to serve you with a notice to quit, pursuant to C.R.S. § 13-40-107, with the primary purpose of increasing rent without providing 60 days' written notice.

- RULES AND REGULATIONS OF YOUR RESIDENCE

In addition to the written lease, many rental units have written rules and regulations that apply to the rental units and common areas. You should request and review a written copy of these rules and regulations.

These rules and regulations are part of your lease. If you do not familiarize yourself with your residence's rules and regulations, you could unknowingly violate them. Because the rules and regulations are a part of your lease, a violation of the rules places you at risk for an eviction. To avoid this risk, ensure that you receive a copy of the rules and regulations that will apply to you in your new residence and make sure to review them, so you know what is expected of you as a tenant.

WARRANTY OF HABITABILITY

While you are living in your residence, there may be problems with the residence such as broken appliances, electrical issues, or water issues. In some cases, these issues are so severe that it renders your residence uninhabitable.

- WHAT IS UNINHABITABLE?

When your landlord rents a residence to you, your landlord is certifying that the residential premises is fit for human living. This is called the Warranty of Habitability.

Your landlord breaches the Warranty of Habitability when the following factors exist:

- The residence is uninhabitable or otherwise unfit for human habitation or in a condition that materially interferes with your life, health, or safety; and

- Your landlord has received reasonably complete written or electronic notice of the condition and has failed to commence remedial action by employing reasonable efforts within the following period after receiving the notice:

-24 hours for a condition which materially interferes with your life, health, or safety;

-96 hours for other applicable conditions.

You must give your landlord permission to enter the premises to make repairs. If you do not give your landlord permission to enter the premises to make repairs, then the timeline(s) for starting the repairs do not apply because you did not give your landlord permission to enter the residence for the repairs.

- YOUR RESIDENCE IS UNINHABITABLE IF THE FOLLOWING IS PRESENT:

-There is mold that is associated with dampness, or there is any other condition causing the residential premises to be damp, which condition if not remedied would materially interfere with the health or safety of the tenant, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their proper functioning and intended use. This means that, for example, if there is minor mold in the bathroom caused by failure to clean after a shower your home is probably still habitable. But if, for example, the hallway wall is damp and moldy because the roof is leaking, your residence may not be habitable.

- YOUR RESIDENCE IS UNINHABITABLE IF IT SUBSTANTIALLY LACKS ANY OF THE FOLLOWING CHARACTERISTICS:

-Functioning appliances that conformed to applicable law at the time of installation and that are maintained in good working order.

-Waterproofing and weather protection of roof and exterior walls maintained in good working order, including unbroken windows and doors;

-Plumbing or gas facilities that conformed to applicable law in effect at the time of installation and that are maintained in good working order;

-Running water and reasonable amounts of hot water at all times furnished to appropriate fixtures and connected to a sewage disposal system approved under applicable law;

-Functioning heating facilities that conformed to applicable law at the time of installation and that are maintained in good working order;

-Electrical lighting, with wiring and electrical equipment that conformed to applicable law at the time of installation, and that is maintained in good working order;

-Common areas and areas under the control of the landlord that are kept reasonably clean, sanitary, and free from all accumulations of debris, filth, rubbish, and garbage and that have appropriate extermination in response to the infestation of rodents or vermin;

-Appropriate extermination in response to the infestation of rodents or vermin throughout a residential premises;

-An adequate number of appropriate exterior receptacles for garbage and rubbish, in good repair;

-Floors, stairways, and railings maintained in good repair;

-Locks on all exterior doors and locks or security devices on windows designed to be opened that are maintained in good working order; or

-Compliance with all applicable building, housing, and health codes, the violation of which would constitute a condition that materially interferes with the life, health, or safety of the tenant.

- WHAT APPLIANCES ARE COVERED BY THE WARRANTY OF HABITABILITY

Colorado's legislature has defined appliance to mean a refrigerator, range stove, or oven that is included within the home by your landlord for your use. The appliance, and your intended use of the appliance, must be set forth in the lease itself.

The law does not require a landlord to provide any appliances and these protections only apply to those appliances that are part of a written agreement between you and your landlord or are otherwise actually provided to you by your landlord at the beginning of your tenancy in the home.

- BED BUGS

Tenants have more defined protections when it comes to bed bug infestations following the enactment of "Bed Bugs in Residential Premises". The new laws are not new areas but rather expand upon the existing protections in the Warranty of Habitability.

Tenants have a duty to promptly notify their landlords when they know or reasonably suspect that their residences contain bed bugs. If the tenant sends an electronic notice to its landlord, he or she must send the notice to the email address, telephone number, or electronic portal specified in the rental agreement or in past communications. If the written agreement does not have an electronic notice provision, then the tenant shall submit the electronic notice to the landlord in the same way that the landlord has previously communicated with the tenant. The tenant shall retain sufficient proof of delivery of the electronic notice.

After receiving the notice from a tenant, landlords have 96 hours to complete the following:

- Obtain an inspection of the dwelling by a qualified inspector and may enter the dwelling unit or any contiguous unit for the purpose of allowing an inspection.

The landlord must provide the tenant with at least 48 hours' notice prior to entering the residence. If the inspection confirms the presence of bed bugs, then the landlord shall also have an inspection done on all contiguous dwelling units. These inspections should happen as promptly as is reasonably practical.

The landlord must provide written notice to the tenant within 2 business days after the inspection regarding whether the dwelling unit contains bed bugs. The notice must also contain a section informing the tenant that if the tenant remains concerned that the unit contains bed bugs, the tenant may contact the local health department to report such concerns. A tenant may waive this notice requirement.

The inspection must be performed by a qualified inspector. The qualified inspector may conduct an initial visual and manual inspection of bedding and upholstered furniture. The inspector may have access to the tenants' personal belongings as deemed necessary and reasonable.

If the qualified inspector finds bed bugs following an inspection, then the inspector shall provide a report to the landlord within 24 hours. Within 5 business days after the date of the inspection, the landlord shall begin to treat the presence, including pest control agents to treat the infected unit and any contiguous unit. Even if the dwelling unit is infested with bed bugs, a landlord does not have to provide the tenant with alternative lodging while the unit is being treated.

If any furniture, clothing, equipment, or personal property contains bed bugs, then the qualified inspector shall advise the tenant that the item(s) should not be removed from the dwelling. Further, the tenant should not dispose of any of the items in a common area where they will pose a risk of infestation to other dwelling units.

A landlord who fails to follow the rules will be liable to the tenant for the tenant's actual damages.

A tenant who fails to comply with the requirements of the bed bug inspection or treatment may face adverse action. A landlord may apply to court for injunctive relief against a tenant who refuses to provide reasonable access to the dwelling unit or fails to comply with a reasonable request for inspection or treatment of a dwelling unit.

If a court finds that a tenant has unreasonably failed to comply with the tenant's obligations regarding bed bugs the court could issue a temporary order. The order could include:

- Granting the landlord access to the dwelling unit,
- Granting the landlord the right to engage in bed bug inspection and treatment measures in the dwelling unit; and
- Requiring the tenant to comply with specific bed bug inspection and treatment measures or assessing the tenant with costs and damages related to the tenant's noncompliance.

If a landlord complies with these laws, then the landlord is also complying with the warranty of habitability at the same time.

- WHAT IS ELECTRONIC NOTICE?

The Colorado Warranty of Habitability now specifies that electronic notice is sufficient \notice of an uninhabitable condition in your home.

Electronic Notice means notice by email, text, or an electronic portal or management communication system. The Electronic Notice shall be sent in a manner that the landlord usually uses to communicate with the tenant. This means that if your landlord typically texts you then you can send the Notice via text, you can send notice via text.

If you provide electronic notice, you keep a copy or confirmation that it was sent and received.

- WHAT TO DO IF YOUR RESIDENCE IS UNINHABITABLE

To initiate your rights under the Colorado Warranty of Habitability, you MUST make a written demand for repairs. The demand must be in writing or an electronic notice. If it is not in writing or it does not follow the electronic notice requirements, it is not a sufficient notice. Generally speaking, a work order does not qualify as a demand for warranty of habitability purposes. If you are placing a work order for an issue that also makes your residence uninhabitable, you can make a demand pursuant to the warranty of habitability at the same time. Telling your landlord about a problem in person is not sufficient notice to invoke the Warranty of Habitability.

To begin, send your landlord a Breach of the Warranty of Habitability Demand Letter. If you are sending the Demand in a physical writing, send the letter via with some sort of tracking to ensure that it is received. You will want proof that your letter was received by your landlord. This avoids any claim that the letter got lost in the mail. If you are sending the

Demand as an electronic notice, make sure you send it to the address specified in the lease and retain a sent copy. Also, make sure that you keep a copy of the letter for your own records.

Within 24 hours of receiving your demand, your landlord must give you a response. Your landlord's response must state its intent to fix the problem, an estimate of when the repairs will begin, and an estimate of when the repairs will end.

You can find a sample Breach of the Warranty of Habitability demand letter at the end of this packet.

- STRICT COMPLIANCE REQUIRED IN A WARRANTY OF HABITABILITY NOTICE

Based upon a recent Colorado Appellate Court decision, it is critical that tenants be specific in any notices regarding uninhabitable conditions in the residence.

A tenant must include explicit/specific permission for a landlord or a landlord's agent to enter the residence to be able to start the repair work on the uninhabitable condition. If a tenant does not include this permission in the notice, then the landlord does not have to begin fixing the problem within either 24 or 96 hours.

If you are unsure whether your notice contained such permission, you should review the copy in your records. If you are unsure or if your notice does not include such permission, it may be beneficial to provide a new notice with the permission.

- WHAT HAPPENS IF YOUR LANDLORD TAKES STEPS TO FIX THE PROBLEM?

If your landlord takes steps to fix the problem within either 24 or 96 hours, depending on the type of problem, then the lease continues, and you are still responsible for all your obligations contained in the lease.

- DOES MY LANDLORD HAVE TO PROVIDE AN ALTERNATIVE RESIDENCE WHEN MINE IS UNINHABITABLE?

If your residence is uninhabitable because there is a condition which materially interferes with your life, health, or safety, and you make a request then your landlord shall provide you with either a comparable dwelling unit or a hotel room of your landlord's choice. This alternative residence will be at no cost or expense to you, but you must continue paying your rent according to the terms of the lease.

Please keep in mind that your landlord is not necessarily responsible for any other expenses related to relocation.

- WHAT DOES MY LANDLORD HAVE TO DO IF THERE IS MOLD IN MY RESIDENCE WHICH MAKES IT UNINHABITABLE?

Recent changes to the Colorado Warranty of Habitability include special procedures for dealing with mold that makes your residence uninhabitable. If your residence is uninhabitable due to mold associated with dampness, or there is another condition causing dampness and if the issue is not fixed it will materially interfere with your life, health, or safety then your landlord must take action.

Within 96 hours of receiving the notice, a landlord must install containment to stop active sources of water and a high-efficiency particulate air filtration device to reduce your exposure to mold.

A landlord must maintain the containment and, within a reasonable amount of time, take the following steps: establish protections for workers and tenants, eliminate or limit moisture sources and dry all materials, decontaminate or remove damaged materials, evaluate whether the problem has been fixed, and reassemble the premises to try to prevent recurrence.

- WHAT HAPPENS IF YOUR LANDLORD DOES NOT FIX THE PROBLEM?

If your landlord does not make repairs to your residence there are a few routes that you, as a tenant, may take which may produce differing results.

First, the tenant can break the lease and move. To do so, you must vacate the residence and return possession of the residence back to your landlord between 10 to 30 days after giving your landlord written notice of the uninhabitability. It is a good practice to also provide your landlord with a second letter indicating that you are returning possession of the residence because the repairs were not completed to make the residence habitable. Keep a copy of the letter for your records and send it certified mail so that you have proof that your landlord received it.

Second, you can seek injunctive relief for a breach of the Warranty of Habitability. If you prevail in an action of this nature, the court will assess actual damages at the time of the injunctive relief. Even in this situation, the injunctive relief will not go into effect if the landlord pays to the court the actual damages determined by the court. You, as the tenant, can request the money be released to you, but this will not force your landlord to fix the problem.

Third, you can deduct rent, in very limited circumstances, in the amount it will cost to repair or remedy the issue that makes your residence uninhabitable. In order to successfully

deduct rent, you first need to make sure this option applies in your case. If it does apply, you must follow the process exactly. If you do not follow the process correctly, your landlord may be able to evict you for nonpayment of rent and may be able to seek a money judgment for twice the amount of what you withheld. Because there is a complicated process to withhold rent, it would be best to obtain legal assistance before to deducting the cost of repairs.

Tenants may be able to force their landlords to make the repairs by taking legal action for an uninhabitable residence. If a tenant files a lawsuit for the breach of warranty of habitability, asserts the warranty of habitability as a defense in an eviction action or as a counterclaim, a Court may order the landlord to make repairs and correct the conditions that created the breach of the warranty of habitability. This is in addition to recovering monetary damages for actual damages and/or the reduction in the residence's rental value.

If you believe that your residence does not meet the minimum standards for structural safety, you can contact the Colorado Springs Planning and Community Development Neighborhood Services Office at 719-444-7891. If you would like to report a health code violation, you can contact the Department of Health at 719-578-3199.To report a code violation within the city of Colorado Springs; contact Code Enforcement at 719-444-7891. For El Paso County residents, you may contact the El Paso County Planning and Community Development Department at 719-520-6300.

- WHAT CAN I DO IF MY RESIDENCE BECOMES UNINHABITABLE FOR THE SAME REASON AFTER IT HAS BEEN FIXED?

The warranty of habitability includes a provision for what you, as a tenant, can do if your residence becomes uninhabitable for the same reason after the problem has been fixed.

If your residence becomes uninhabitable for the same reason within 6 months after it had been remedied, you may be able to simply terminate your lease with 14 days' written notice to your landlord. If the condition that makes your residence uninhabitable is related to appliances, then your landlord will have that 14-day period to cure the problem. Except for appliance problems, your landlord does not have the right to cure the issue and continue the lease when the same situation arises within a six-month period.

- ARE THERE ANY EXCEPTIONS TO THE WARRANTY OF HABITABILITY?

There are very limited circumstances in which the warranty of habitability does not apply to your residence. If you do not receive any kind of housing assistance, you and your landlord may agree in writing to perform specific work to the residence in lieu of the protections of the warranty of habitability.

This agreement must be in a separate writing itself, signed by both you and your landlord, and supported by adequate consideration, such as a reduced rent. For this agreement to be valid, you must have the skills that are needed to do the work. Lastly, if the work that you agreed to do becomes the basis for your residence becoming uninhabitable you are not able to use the protections within the warranty of habitability.

- IS A BREACH OF THE WARRANTY OF HABITABILITY A DEFENSE TO EVICTION?

In some cases, tenants may use the warranty of habitability as a defense to evictions. Your landlord shall not increase rent, decrease service, threaten eviction or start an eviction action in retaliation for making a good faith complaint to the landlord or governmental agency claiming that the home is uninhabitable, that the home materially interferes with the life, health, or safety of the tenant, or for tenants organizing or becoming a member of a tenant's association.

If your landlord brings an eviction action in retaliation then you can use a breach of the warranty of habitability as a defense for claimed nonmonetary violations, notice to quit, or notice to vacate.

In addition to being able to use the warranty of habitability as a defense to an eviction, you may terminate your lease if your landlord retaliates against you for the above stated reasons. Beyond terminating the lease immediately, you can seek damages for the breach of the warranty of habitability in a lawsuit you file or as a counterclaim in an eviction case.

SECURITY DEPOSIT

- WHAT IS A SECURITY DEPOSIT?

A security deposit is money paid to the landlord at the beginning of the rental period which is held by the landlord and can be used to pay for damages to the residence caused by the tenant. Beginning in 2023, landlords are not able to charge a security deposit which is greater than two months of rent.

- MOBILE HOME PARK SECURITY DEPOSITS

A homeowner in a mobile home park can be charged a security deposit but that deposit cannot be greater than one month rent. This protection does not apply to tenants whose residence does not receive the protections of the Mobile Home Park Act.

- WHEN CAN MY LANDLORD WITHHOLD MY SECURITY DEPOSIT?

Your landlord can withhold a portion or all of your security deposit for damages beyond “normal wear and tear”.

In addition to damages beyond “normal wear and tear” your landlord may retain a portion or all of your security deposit for nonpayment of rent, abandonment of the premises, or nonpayment of utilities/repair work or cleaning contracted by you.

- WHAT IS “NORMAL WEAR AND TEAR”?

Normal wear and tear is the usual deterioration which occurs when living in a residence. Normal wear and tear does not include damages caused by carelessness or intentional destruction of the property, such as punching a hole in the wall.

- WHAT ARE YOUR OBLIGATIONS WHEN YOU MOVE OUT?

When you move out of your home, there are a few steps you should take to protect your interests and security deposit.

First, you should clean your residence and get it as close to its move-in condition as possible. If your lease has a list of cleaning charges for certain items, it is important to refer to this list.

Once you clean your residence, you should conduct a walkthrough to document any damage to the residence. If there was damage at the beginning of your tenancy that you had already documented, make sure to take new pictures to show that the damage has not worsened throughout your tenancy.

Finally, the last thing you should do in the moveout process is return the keys to your landlord AND to give your landlord a forwarding address. If you do not give your landlord a forwarding address, your landlord does not have a duty to find you and will probably mail your security deposit to your old address.

- HOW LONG DOES MY LANDLORD HAVE TO RETURN MY SECURITY DEPOSIT?

Colorado law gives your landlord up to 30 days to return your security deposit in full or return a partial amount along with a written statement itemizing the reasons for keeping part of your deposit. This 30-day period can be extended up to 60 days if the lease allows for such an extension.

- WHAT HAPPENS IF MY LANDLORD DOES NOT RETURN MY SECURITY DEPOSIT?

If you have given your landlord a forwarding address and your landlord does not return the deposit or send a written statement explaining why your landlord is keeping the deposit within the amount of time allowed by the lease, your landlord is wrongfully withholding the security deposit.

The first step is to send the landlord a demand letter asking for the security deposit and stating that if the landlord does not return the funds or a detailed explanation of any withholding within seven days, you will file an action in which you will seek three times the amount of the security deposit. Keep a copy of the letter and send it certified mail so that you have proof that your landlord received it.

In response to your demand letter, your landlord may refund all the money owed to you or refund a portion of the money owed to you, or refund none of the money owed to you. It is also possible that your landlord will return part of the security deposit via check with a restrictive endorsement. A restrictive endorsement means that if you cash the check, you are agreeing that you are not disputing the landlord's action regarding your security deposit. If you cash this check, you may be prevented from seeking the remainder in litigation.

If you receive a partial refund with a restrictive endorsement, you have two choices: cash the check and thereby waive your right to challenge the landlord's action or return the check and sue your landlord. If you feel that the partial refund is inadequate and you wish to pursue a larger amount in court, do not deposit or cash the check.

If you do not receive a satisfactory response to your demand letter, your next step is to file suit in Court against your landlord to recover your security deposit that has been wrongfully withheld. This suit may be filed in County Court or Small Claims Court. Small Claims Court is designed for disputes less than $7,500.00. Small Claims Court procedures

are simplified with the intention that attorneys are generally not needed in Small Claims Court.

There are two relevant timelines for filing a complaint in Small Claims Court:

- One year: If you file your complaint within one year of the date that your security deposit is due and the court determines that your landlord did not follow the law, you may recover up to three times the amount of the deposit, plus attorney fees and costs.

- Six years: If you file your complaint between one and six years of the date that your security deposit is due and the court determines that your landlord did not follow the law, you may only recover the amount of the deposit.

TERMINATING YOUR LEASE EARLY

Tenants sometimes want or need to break the lease. This may be due to a new job or a family situation. Colorado law generally does not permit tenants to break their leases without penalty.

- WHEN CAN A TENANT TERMINATE THEIR LEASE EARLY?
    - Warranty of Habitability
        - As previously discussed, if your landlord has breached the Warranty of Habitability one of your two options, as a tenant, is to break the lease. However, to break your lease, you must follow the steps outlined above and give your landlord an opportunity to fix the problem before you can break the lease.
        - If there is a second instance of uninhabitability of your residence you may terminate the lease with 14 days' notice except that if it related to appliances, then your landlord may cure the problem within 14 days.
    - Domestic Violence
        - If you are a victim of domestic violence, domestic abuse, stalking, or unlawful sexual behavior, you may be able to terminate your lease early.
            - To terminate your lease early because you are a victim of domestic violence, you must notify your landlord in writing.
            - Your letter should include a statement that you are the victim of domestic violence, domestic abuse, stalking, or unlawful sexual behavior and a statement that you are going to vacate your residence due to fear of imminent danger for yourself or your children because of the domestic violence, domestic abuse, stalking, or unlawful sexual behavior.
            - In addition to this written statement, you must also provide documentation of your status as a victim to your landlord, such as a police report written within the prior 60 days, or a valid protection order.
        - Finally, if you utilize this procedure to terminate your lease early, you may have to pay your landlord one month's rent within 90 days of vacating your residence early. Your landlord does not have to return your security deposit until this money is paid.
        - However, if your landlord rents your unit quickly, the landlord cannot accept rent from you and a new tenant for the same month.

- Military orders
  - If you are a member of the military and are posted outside of the area, you can terminate your lease early. Most leases in the Colorado Springs area will contain some sort of “military escape clause” for this situation. If you are in the military, you should ensure that your lease has this provision. If it does not, you should discuss this with your landlord or JAG prior to signing a lease.
- Act of God
  - Finally, an “act of god”, such as an earthquake, flood, fire, etc. can terminate the lease early.
  - One key exception is that you, as the tenant, will be liable for the damage if you negligently cause a fire, flood, or other damage to the home.
- Landlord Retaliation
  - As mentioned above, you, as a tenant, can terminate your lease for retaliation, as defined by statute, and seek additional damages.

MOBILE HOME PARK ACT

Colorado's Mobile Home Park Act (MHPA), C.R.S. 38-12-200.1, et seq., governs the rules that apply to your home if you own your mobile home and rent the lot. The park must have cause or reason pursuant to the Mobile Homes Park Act to terminate your tenancy. The MHPA does not apply if you are also renting the mobile home.

The MHPA requires a written lease or rental agreement before any tenancy. In some instances, the written rules and regulations governing the park may be contained within the written lease. A termination of your tenancy must be for cause. This "cause" may be an alleged violation of the rules and regulations of the park. In addition to keeping a copy of the rules and regulations, always keep a copy of your lease in an accessible place.

- For a tenancy to be terminated for cause, one of the following situations must be present:

    - Your home and/or lot does not comply with local ordinances and state laws and rules relating to mobile homes and mobile home lots after receiving proper notice from the park and not fixing the problem and bringing the home/lot into compliance.
    - You have not followed the written rules and regulations of the mobile home park that are enforceable pursuant to C.R.S. § 38-12-214(1), are necessary to prevent material damage to real or personal property or to the health or safety of one or more individuals and the rules and/or regulations were established by the management in the rental agreement at the inception of the tenancy or amended after the inception of the tenancy with the home owner's consent or without the home owner's consent after providing 60 days written notice after receiving proper notice from the park and not fixing the problem and bringing the home/lot into compliance.
    - The park is condemned or the park changes use.
    - You knowingly made materially false or misleading statements on an application for tenancy.
    - Your conduct, or the conduct of a guest/friend, unreasonably endangers the life of a person in the park.
    - Your conduct, or the conduct of a guest/friend, maliciously damages or destroys the property of a person in the park.

  - Your conduct, or a guest/friend's conduct, materially harms or threatens real or personal property or the health, safety, or welfare of one or more individuals or animals, including pet animals, and constitutes certain felony offenses.
  - Your conduct, or a guest/friend's conduct, was the basis for an action that declared the mobile home or any of its contents a class 1 public nuisance pursuant to C.R.S. § 16-13-303.

- If the park intends to change any rules or regulations, it may do so with either your consent or without your consent. If the park attempts to amend the rules without your consent, it is required to notify you 60 days before the intended rule change is to go into effect.
- If the park alleges that a homeowner has violated a park rule or is not in compliance, the park must first provide the homeowner with a 90-day cure period to come into compliance.
- The time to cure the alleged noncompliance and the time to sell or remove the home can run at the same time.
- A new rule is only enforceable against you if:
  - Its purpose is to promote the safety or welfare of the homeowners, protect and preserve the premises from abuse, or make a fair distribution of services and facilities held out for the homeowners generally,
  - It is reasonably related to a legitimate purpose for which they are adopted,
  - They are not arbitrary, capricious, unreasonable, retaliatory, or discriminatory in nature,
  - They are sufficiently explicit in prohibition, direction, or limitation of the homeowner's conduct to fairly inform him of what he must or must not do to comply.
  - They are established in the rental agreement at the beginning of the tenancy, amended subsequently with the consent of the homeowner, or amended without consent after providing 60 days' notice.
- When a mobile home is owned by a person other than the owner of the mobile home park in which the home is located, the home is a separate unit of ownership. Rules or regulations that impose restrictions or regulations on that separate unit that are adopted after the homeowner signs the rental agreement and without the homeowner's consent are presumed unreasonable.

- LATE FEES AND RENT INCREASES

While mobile home parks are able to charge homeowners late fees, those fees must be disclosed in the written rental agreement. Additionally, a late fee cannot be charged until at least 10 days after the rent is due and the date of late fees must also be included in the written rental agreement.

Park management is able to raise your lot rent as a homeowner in a mobile home park but there are new limitations on the frequency of such rent increases. If you have lived in your home for a twelve month period of consecutive occupancy, then the park can only increase the lot rent once during that 12-month period of consecutive occupancy.

- CHANGE IN THE USE OF PARK AND HOMEOWNER REMEDIES

If a park intends to change the use of the park which would result in displacement of one or more homeowners in the park, then the landlord must provide the homeowners with:

-Payment of relocation costs to location within 100 miles of by road of the park or

-A binding offer to purchase the home for the greater of $7500 for single-section mobile home, $10,000 for a multi-section mobile home, or 100% of the in-place fair market value as determined through the appraisal process laid out in the statute.

- RIGHT TO PRIVACY IN A MOBILE HOME PARK

Park management has no right to enter a mobile home but may enter if they first obtained written permission from the homeowner, if the entry is to complete statutory duties, or if the home has been abandoned. Homeowners may take back the permission to enter at any time.

Park management does have a duty to maintain the lot site and, to be able to carry out that duty, the park is able to enter the lot site without the owners' written permission. However, Management is required to make reasonable efforts to notify the homeowner of its intention to enter the home at least 48 hours before entering the space.

MOBILE HOME PARK DISPUTE RESOLUTION ACT

The Mobile Home Park Act Dispute Resolution and Enforcement Program is intended to reflect the unique relationship between homeowners and park management and to provide parties with a less costly and more efficient way to resolve disputes short of a forcible entry and detainer action.

The Colorado Division of Housing must provide educational materials about the program in both Spanish and English to the public and to parks. These materials include, but are not limited to, a notice summarizing homeowner rights and responsibilities, provide information on how to file a complaint with the division, describe homeowner protections, provide a toll-free phone number and a website with additional information. The Division will also distribute these materials, ensure that the landlord post the notice in the park, and enforce a penalty if the notice is not appropriately posted.

- COMPLAINT PROCESS

Any party, park management or homeowner, may file a complaint with the Division. Once the complaint is received, the Division will investigate the complaint. If appropriate, the Division will facilitate negotiations between the parties.

If the parties are unable to come to an agreement, the division shall make a written determination of whether there was a violation. The determination must state the basis for the determination, the violation, the necessary action(s) to cure, the time to cure, the penalties for not taking the necessary action(s), the process for contesting the determination, and penalties. If the determination is that there is not a violation, the written determination must include the basis for this decision and the process for contesting the decision.

The party found in violation has seven days to comply with a notice of violation. If the party fails to comply, the Division has the authority to impose financial penalties for each day that the party fails to come into compliance with the Division's order. In addition to monetary penalties, the Division can also issue a cease-and-desist order to stop an unlawful practice. Additionally, the Division can order a party to take actions like refund money, file documents that correct a violation, or taking action to correct a violation.

A party may appeal the decision by requesting a hearing before an administrative law judge. The judge shall hear testimony and receive evidence to decide whether the Division's decision is supported by a preponderance of the evidence. Finally, the judge shall enter an appropriate order within thirty days after the hearing and immediately send copies of the order to the parties.

FORCIBLE ENTRY AND DETAINER

Forcible Entry and Detainer (FED) means eviction. The following information is a brief overview of the procedural aspects of a forcible entry and detainer action. This material discusses the procedures of a FED only and does not address possible defenses. If you are facing an eviction, contact an attorney.

- A landlord can evict a tenant for cause for the following reasons:
    - A landlord can evict a person when the person enters onto vacant or unoccupied land without right or title. This situation is commonly referred to as squatting.
    - A person can be evicted when they wrongfully enter onto land that someone else has a right to.
    - When a lease expires or has been terminated by either party and the tenant remains past the expiration or termination date of the lease, the landlord has cause to evict the tenant.
    - If a tenant fails to pay rent, the landlord can begin eviction proceedings if the tenant stays in the residence after being served notice by the landlord. Most notices must give ten days to pay rent. The notice period is 5 days for "exempt residential agreement. The notice period is 3 days for nonresidential & employer provided housing.
        - "Exempt residential agreement"
            - Means a single-family home rented by landlord who owns five or fewer single-family rental homes and provides notice in the agreement that the 10-day notice period does not apply.
        - CARES Act
            - The CARES act was passed into law on March 27, 2020, by the United States Congress and provides some tenants with an enhanced notice period. If the tenant's property is one which participates in a federal housing program or has a federally backed mortgage, then the property is a "covered dwelling" or a "covered property" and is subject to the CARES act. A tenant in this type of residence has a right to a 30-day demand for compliance instead of 5 or 10 days.
    - If a tenant commits a substantial violation of the lease, the landlord may have cause to evict the tenant if the landlord serves the tenant with a notice of the violation and the tenant fails to cure the violation and remains in the home.

        - Substantial violation means any act or series of acts by the tenant or tenant's guests that occurs on or near the premises and endangers the landlord's property or any person living on or near the premises.
        - A substantial violation can also occur when a tenant or a tenant's guest commits a violent or drug-related felony offense on or near the premises.
        - Finally, a substantial violation can occur when a tenant or tenant's guest commits a crime on the premises and that criminal offense carries a potential sentence of 180 days of jail and has been declared a public nuisance under state law or local ordinance.
    - If a tenant violates a condition or provision of the lease, the landlord is required to give the tenant notice of the violation. If the tenant receives this notice, fails to cure the violation, and stays past the date on the notice, then the landlord may have cause to initiate eviction proceedings.
    - There are multiple bases for cause for evictions when the original property owners sell the property to a new owner.
- An eviction starts with notice to the tenant. The notice may be posted on your door or handed to you and will give you a deadline to correct a problem, like failure to pay rent.

- MANDATORY MEDIATION

For some tenants and landlords in Colorado, the parties must attempt mediation before a forcible entry and detainer (eviction) case can be filed against the tenant.

The mediation required must be conducted by a trained neutral third party with the purpose of assisting the parties in reaching their own solution. Tenants who receive supplemental security income, social security disability income, and/or cash assistance through the Colorado works program created in part 7 of article 2 of title 26(TANF) and notify their landlords of this assistance in writing will have placed their landlords on notice of their eligibility for the mandatory mediation.

Landlords are required to participate in mediation unless the landlord is a 501(c)(3) organization which offers mediation opportunities to tenants prior to filing an eviction or the landlord has 5 or fewer single family rental homes and no more than 5 total rental units.

Landlords are required to begin the mediation process by first asking the tenant if they receive the assistance which triggers the mediation requirement. Once a tenant provides written notice of the receipt of assistance then landlords are required to schedule

mediation. Landlords may contact the office of dispute resolution to schedule the mediation and the mediation shall be scheduled for the first available date no later than 14 days after the request (availability permitting).

Tenants do not have to pay for their portion of the mediation, but a landlord is required to pay for its portion of the mediation. Failure to comply with the mediation requirements does provide tenants with a defense against an eviction and could lead to a dismissal of an eviction case if the mediation laws are not followed prior to filing an eviction case.

- Second the landlord files a "Summons and Complaint."
    - This may be personally served upon you, or it may be posted on your door and mailed to you.
    - The Summons tells you when to go to court if you want to contest the eviction and file an Answer.
        - The Summons must also contain a signed affidavit attesting to compliance with any mediation requirements in the case.
    - The Complaint explains why the landlord seeks to evict you.
    - An Answer is your response to your Landlord's Complaint.
    - Your Answer must state a legal defense to the eviction. You must file an Answer if you want to fight the eviction.
    - It does cost money to file an Answer, but you can ask the court to waive this fee. If you do not have a lot of money, you should ask the court for a Motion to File without Payment of Filing Fees and Finding and Order Concerning Filing Fees. If you ask, the court clerk will give you this form. Submit these forms with your Answer to request that the Court waive or reduce your fees. Bring proof of your income to show the clerk in support of your request to waive the Answer fee.
- If you file an Answer with a legal defense, the court will schedule your case for trial and the law requires that the trial be scheduled within 7 to 10 days after the filing of an answer.
- If you do not file an Answer by the end of the business day on your summons return date, the court may issue a default order granting the landlord's request.
    - If you want to challenge the eviction, you must appear at the time and date of trial.
    - At the trial, you must present your evidence against the landlord's claims and in support of your defense.

    - If your case is going to trial, your landlord is required to provide you with a form to request any documents in your landlord's possession that is relevant to the case.
- If the Court ultimately rules in your landlord's favor, the scope of the Court's order will depend upon how you received notice of the eviction proceeding.
    - Personal service occurs when you are personally handed the Summons and Complaint by another person.
    - Without personal service, the Court will only be able to issue an order for possession of the residence.
        - This means that the Court would order you to turn over possession of the apartment to your landlord but would not have the ability to issue any sort of money judgment against you.
    - If your landlord does achieve personal service, then the Court could impose a judgment for money owed in addition to possession of the property. Usually, hearings about money owed are held at a later date, after the hearing on possession.
- If you do not file an Answer or do not appear at your return date or at your trial, you will automatically lose your case. The court will enter a default judgment against you, and 48 hours later the Writ of Restitution will issue.
    - The Writ of Restitution allows the landlord to contact the Sheriff to move you out of your residence. When a judgment for possession is entered against you, the law affords you at least 10 days from the date of the judgment before the Sheriff can remove you and your personal property. If you do not go to court or file an answer on your initial answer date, you will have at least 10 days to move out of your residence.
        - For tenants who receive supplemental security income, social security disability income, or cash assistance through the Colorado works program created in part 7 of article 2 of title 26(TANF) the Writ of Restitution cannot be used to remove a tenant from the property until 30 days after the judgment for possession happens in the eviction case. The 30-day Writ of Restitution does not apply to cases based upon a finding of a substantial violation or for landlords who own 5 or fewer single family rental homes and no more than 5 units.
    - You may call the civil division of the Sheriff's office of the county where you live to find out when a Sheriff's officer will come to your residence to evict you. It is a good idea to be out of the house before the Sheriff gets there. The Sheriff (or your landlord, under the Sheriff's supervision) will remove you and

your belongings from the premises. They will be put your belongings out on the street. Neither the Sheriff nor your landlord have any obligation to make sure that your belongings are safe after they are put out on the street.

- EVICTIONS IN MOBILE HOME PARK
    - If you own your home in a mobile home park and are evicted, the law treats you differently than tenants renting apartments, single family homes, or tenants who rent mobile homes in mobile home parks.
    - Following a trial, if the court rules in favor of the landlord, then the court will immediately issue a writ of restitution which the landlord can take to the sheriff.
    - Even though the writ of restitution is issued immediately, it may not be executed for 30 days following the judgment. This means that the sheriff cannot remove you from the park for at least 30 days.
    - As a homeowner in the park, you can pay a pro rata share of the rent to extend the time from 30 days up to 60 days.
    - During that 30–60-day period, the homeowner must sell or remove the home from the park.
    - If you are unable to move or sell the home in the time allowed by the writ of restitution, then the park and the sheriff have the right to take possession of your home for removal and/or storage.
    - The park has the right to charge storage fees if your home is not moved.
    - The park and the sheriff are only liable for damage to the home if they damage it by acting through “gross negligence or willful and wanton disregard of the property rights of the owner”.
    - The homeowner (and anyone else with a financial interest) remains responsible to prevent freezing, wind damage, and weather damage.
    - Any charges for storage or removal remain with the home itself. This means that whoever ultimately claims the home will owe that money to the person or entity who has paid those costs up front.

- UNLAWFUL EVICTIONS

Your landlord must use the court process for an eviction unless there is a mutual agreement between you and your landlord or if you have abandoned your residence. Abandoning a residence is shown when you return the keys, substantially remove your personal property from the residence, you provide notice to your landlord, and/or you have

an extended absence from your residence while rent remains unpaid. These actions must cause a reasonable person to believe that you have permanently surrendered possession of your residence.

If your landlord willfully terminates your utilities, removes the doors or windows or locks to the residence (other than for repairs), or causes the termination of heat, running water, hot water, electric, gas, or other essential services then you may have a claim against your landlord for an unlawful eviction.

If you bring a lawsuit against your landlord for an unlawful eviction and you win the case, then you must be awarded your actual damages AND either $5,000 or three times your monthly rent (whichever amount is greater. Additionally, the court may order that possession be given back to you, meaning that your tenancy at the residence will resume after the lawsuit.

FAIR HOUSING

Colorado's Anti-Discrimination Act of 1957 prohibits discrimination based on the following protected classes: race, color, disability, sex, sexual orientation (including transgender status), national origin/ancestry, religion, creed, marital status, and/or familial status

In addition to Colorado's legal protection for protected classes, Title VIII of the Civil Rights Act of 1968, with the Fair Housing Amendments Act of 1988, known as the Fair Housing Act, also applies to Colorado landlord/tenant relationships.

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and handicap.

- REASONABLE ACCOMMODATION

-One type of discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.

-A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling. This enjoyment extends to the public and common use spaces of the building. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

-Your landlord can deny a request for reasonable accommodation in certain situations. Your landlord can deny a reasonable accommodation request if it was not made by or on behalf of the person with a disability. Frequently, the denial is based upon a determination that the accommodation is not a "reasonable" request in the eyes of the landlord.

Reasonable means, in this context, that the accommodation does not cause the landlord an undue burden or fundamentally alter the nature of the program.

- How do I make a request for a reasonable accommodation?
    - If you are a tenant in public housing or a Section 8 voucher recipient, the Colorado Springs Housing Authority's website has reasonable accommodation forms available to tenants.
    - You can find a sample letter that can be used as a template at the end of these materials.

- EXCEPTIONS TO THE FAIR HOUSING ACT
    - There are some exceptions to the Fair Housing Act.
        - The Act does not apply to owner-occupied buildings with 4 units or less, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

The issue of what constitutes discrimination based on a protected class is often a contested issue in court. If you believe that you have been discriminated against you should contact U.S. Department of Housing and Urban Development, the Colorado Springs Housing Authority, Colorado Legal Services, and/or the Colorado Springs Civil Rights Division.

- BAN ON INCOME DISCRIMINATION

In addition to the protected classes listed above in this section, the Colorado legislature has also banned discrimination based upon the source of income.

Source of income means any lawful and verifiable source of money paid directly, indirectly, or on behalf of a person including:

- Income derived from any lawful profession or occupation; and
- Income or rental payments derived from a government or private assistance, grant, or loan program.

Landlords are not able to treat a tenant or potential tenant differently based upon the person's source of income. Additionally, landlords are not able to deny a tenant a residence simply because the tenant uses a housing choice voucher if the laws apply to the landlord.

Not all landlords are subject to the Fair Housing protections for tenants. If a landlord owns 5 or fewer single-family residences and no more than 5 total rental units then these laws do not apply to this type of landlord.

WARRANTY OF HABITABILITY DEMAND LETTER

Sent Via Certified Mail and USPS First Class Mail

Date:

To: _____
Landlord's name

_____
Address

From: _____
Tenant Name

_____
Tenant's Address

Pursuant to Colorado's Warranty of Habitability Law, CRS §§ 38-12-501 et seq., I am notifying you that the residence I am renting contains one or more uninhabitable conditions and is unsafe within the meaning of CRS §38-12-505(1) as explained below. I am requesting that you remedy the condition(s) without delay.

□ The residential premises are in a condition that materially interferes with my life, health, or safety, specifically:

□ There is mold that is associated with dampness, or there is any other condition causing the residential premises to be damp, which condition, if not remedied, would materially interfere with my health and safety, excluding the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their proper functioning and intended use,
specifically:

□ The residence lacks functioning appliances that conformed to applicable law at the time of installation and are maintained in good working order, specifically:

□ Waterproofing and/or weather protection of the roof and/or exterior walls are not in good working order and/or there are broken windows and/or doors, specifically:

□ Plumbing or gas facilities did not conform to the applicable law in effect when they were installed and are not maintained in good working order, specifically:

□ There is no running water and/or insufficient amounts of hot water and/or it lacks appropriate fixtures connected to a sewage disposal system approved under applicable law, specifically:

□ There is no or insufficient heat and/or the heating facilities do not comply with the applicable law at the time of installation, and they are not maintained in good working order, specifically:

□ The electrical lighting is defective in that its wiring and electrical equipment did not conform to applicable law at the time of installation and/or it is not maintained in good working order, specifically:

□ The common areas under your control as the landlord are not kept reasonably clean, sanitary, and free from the accumulation of debris, filth, rubbish, and garbage and/or has not undergone appropriate extermination though there is an infestation of rodents and/or vermin, specifically:

□ My rental home is infested with rodents and/or vermin and you have not appropriately exterminated, specifically: □ insufficient (not enough) exterior garbage receptacles for my apartment, specifically: □ Floors, stairways and railings are not in good repair, specifically:

□ Locks on one or more of my exterior doors and/or windows are not in good working order, specifically:

□ The rental property is not in compliance with all applicable building, housing and health codes in a way that is dangerous or hazardous to my life, health and/or safety, specifically:

□ The rental property is otherwise unfit for human habitation, specifically:

I believe the issue described above presents a materially dangerous or hazardous condition to my life, health and/or safety. I am hereby directing you to cure the problem. Please be advised, if you fail to repair such conditions within a reasonable time, it will constitute a breach of our lease agreement and the Warranty of Habitability and I may elect to terminate our lease agreement, seek injunction relief from the court or otherwise avail myself of all remedies afforded by Colorado law.

I give permission to the landlord or landlord's authorized agent to enter my residence for the purpose of commencing remedial action on the condition which makes my residence uninhabitable.

Sincerely,

_____

SAMPLE 7 DAY LETTER #1

NOTE: FOR RENTERS WHO DID RECEIVE A WRITTEN STATEMENT WITHIN THIRTY (OR SIXTY, DEPENDING ON LEASE) DAYS OF MOVING OUT, BUT WHO DO NOT AGREE WITH THE LANDLORD'S CLAIMS FOR DAMAGES

One copy sent certified mail to landlord; one copy retained by tenant(s).

_____, 202_

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Name of Landlord or Manager
(Or Registered Agent if owned by a corporation)
Address
City, State, Zip Code

Dear _____:

I(We) ___(Your name(s)_____ was(were) the tenant(s) at __(address)_____ until ____(date)_____. $_(amount) was paid by me(us) as damage/security deposit.

I(We) have received your letter of ___(date)_____ and do not agree with the deduction listed for the following reasons:

(State reasons)

Kindly send the amount of $_____ to me(us) at within seven (7) days of your receipt of this letter. If the amount is not refunded, we intend to file suit under Colorado Revised Statutes 38-12-103 asking for treble damages.

Very truly yours,

SAMPLE SEVEN-DAY LETTER #2

NOTE: FOR RENTERS WHO DID NOT RECEIVE A WRITTEN STATEMENT AFTER 30 DAYS OF MOVING OUT.

One copy sent certified mail to landlord; one copy retained by tenant(s).

Date

Name of Landlord or Manager:
(Or Registered Agent if owned by a corporation)
Address
City, State, Zip Code

CERTIFIED MAIL: Return Receipt Requested

Dear _____:

I,(We) (your name(s)) was(were) the tenant(s) at (address) from (date) to (date). $_____ was paid by me/us as a damage/security deposit.

It has been more than 30 days [or 60] since (date). Kindly send the full amount of $_____ to me/us at (your address), within seven (7) days of your receipt of this letter. If the amount is not refunded, we intend to file suit under Colorado Revised Statutes 38-12-103 asking for treble damages.

Yours very truly,

Dear (Landlord):

I am a current tenant of (address or complex name). I suffer from a disability that requires a reasonable accommodation to allow me and my family an equal opportunity to use and enjoy my residence.

The Fair Housing Act, 42 U.S.C.A. §3604(f) allows for a reasonable accommodation to change, adapt or modify a policy which will allow a qualified person with a disability an equal opportunity to use and enjoy his or her residence. (Address or complex name) is an apartment community that is subject to the mandates of the Fair Housing Act. Furthermore, a denial of a request for a reasonable accommodation without explanation or without further discussing the request for a reasonable accommodation is a violation of the Fair Housing Act.

I am requesting (Address or complex name) accommodate my disability by providing _____(specific request as to what accommodation is requested)____.

To prevent me and (complex name) from being unduly stressed, I am requesting that (complex name) provide_____(specific request)_____. The health and welfare of all will be properly safeguarded if (complex name) provides this accommodation.

Respectfully,

_____

Improper Late Fee Letter

Date

Name of Landlord or Manager:
(Or Registered Agent if owned by a corporation)
Address
City, State, Zip Code

Dear _____:

I,(We) __(your name(s)_____am(are) the tenant(s) at _____(address)_____. On __(date)__, you charged me(us) $_____ in late fees for a late rental payment for the month(s) of _____.

Please be advised that this late fee is in violation of C.R.S. § 38-12-105 because the late fee is/was:

[ ] charged before the rent payment was 7 days late
[ ] greater than $50 or 5% of the past due rent
[ ] not disclosed in the written rental agreement
[ ] the basis for the forcible entry and detainer action filed against me
[ ] the basis to terminate my tenancy as a home owner in the mobile home park
[ ] based on my rent subsidy provider's failure to pay its portion of my rent
[ ] imposed more than once for the same late payment and is in excess of $50 or 5%
[ ] interest on a late fee
[ ] recouped from my rental payment
[ ] charged without providing me with a written notice of the late fee within 180 days after the rent payment was due

If you fail to fix this issue within seven (7) days of your receipt of this letter I(we) intend to file suit under Colorado Revised Statutes 38-12-105 and seek any and all available damages for the improper late fee.

Regards,