

Panel Discussion

Panel members:

- Judge John Stenger, Rio Grande County Court Judge
- Benjamin Pacyga, Private Attorney
- Victoria Wagner, Intern, Colorado Legal Services
- Roxy Gehring, Center for Restorative Programs

Facilitated by Chad Keizer

M. Attorney, Colorado Legal Services



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Why are we here?

- Access to Justice Committee
 - Educate community members about court processes and provide resources for better access to the courts
- Important for tenant, landlord, and court that landlords understand how to proceed with an eviction correctly and understand and respect tenants' rights in the process
 - Less confusion = less conflict



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What to expect from this presentation:

- General overview of how the eviction process works with emphasis on recent changes.
- Conditions residences must be kept in
- Rental Assistance
- Local resources/mediation program
- Panel discussion
- NOT COVERED: Special rules for evictions in a mobile home park; foreclosure evictions; collection of a money judgment; appeals

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Domestic Violence Housing Protections

Tenants cannot be evicted for

- Nonpayment of rent related to domestic violence
- Substantial or repeat lease violations caused by abuse
- Nuisance claims tied to DV incidents
- "J" evictions (for calling police during DV events)

Valid Documentation

- Self-attestation affidavit
- Police report
- Protection order (civil, emergency, or criminal)
- Letters from third parties (advocates, healthcare/service providers, caseworkers)

Payment Plan Requirement

If DV causes rent delinquency

- Landlord must offer a repayment plan within 3 business days
 - Minimum \$25/month
 - Up to 9 months
- Failure to offer is an affirmative defense to eviction

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New Landlord Tenant Laws for 2025

When the landlord is searching for a new tenant, the landlord can require proof of income, **but:**

The Landlord <u>cannot</u> require that the tenant have income above 200% of monthly rent.

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Before you begin... know your lease agreement!

Lease agreement does not necessarily have to be written to be enforceable, but it is preferable because it will make the terms clear for the landlord, tenant, and court, if necessary

- Lease agreement should contain information/terms including:
 - Term/duration of lease
 - Type and length of notice required to terminate the tenancy
 - What actions will constitute a violation of the lease and what happens when such a violation occurs



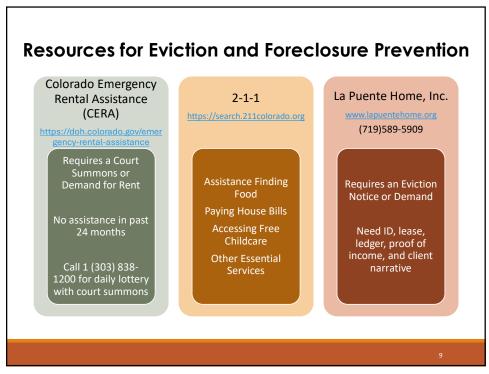
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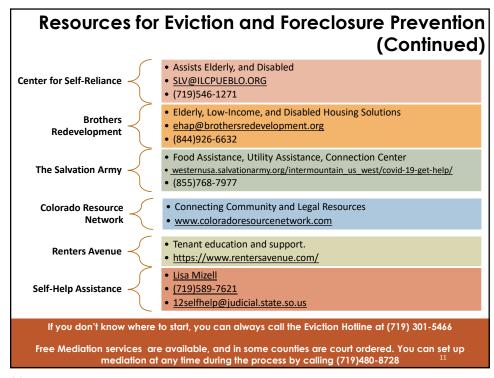
What cannot be in leases?

- •A "penalty" for the landlord having to evict or a "penalty" for a tenant moving out early.
- •Security deposits in excess of 2x monthly rent.
- •A clause that gives attorney's fees to only one side.
 Attorney fees can be awarded to the winning side, not just the landlord.
- Other prohibited waivers of tenant's rights

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Resources for Eviction and Foreclosure Prevention (Continued) • Free Consultation for eviction and other civil matters • Legal Help with Eviction SLV Pro Bono • slvprobono1@hotmail.com • (719)589-5532 • Provides Legal Assistance to Low-Income Individuals • (719)589-4993 **Colorado Legal Services** • https://www.coloradolegalservices.org/ • Holds Free Clinics (Confirm current schedule online) • Fighting Evictions and Homelessness in Colorado **Community Economic** • Legal help, rental assistance, and eviction prevention. **Defense Project** • https://cedproject.org • Matching Low-Income Coloradans with Volunteer Attorneys (303)532-2641 **Colorado Poverty Law** • https://www.copvertylawproject.org **Project** Offers monthly legal clinics, including a free housing clinic on the first Friday of each month



Free Mediation Services

Center for Restorative Programs

Referrals:

- Call CRP Directly
- From the Court
- From La Puente
 - Those in needs of assistance are assigned a caseworker to help with rental assistance and other resources.

Process:

- Both Landlord and Tenant to contact CRP
- CRP will hear from each side individually
- CRP schedule a time to meet for mediation

Outcomes

- Successful mediation: we send the agreement to court
- If no agreement is reached, CRP notifies the court that mediation was attempted and opted to go through court instead
- Mediation not reached: if one party can't be contacted, mediation not possible.

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"FOR CAUSE" EVICTION POLICY

- Colorado landlords must have a valid reason "cause" to evict a residential tenant. If the For Cause Eviction Policy applies, a landlord cannot refuse to renew a tenancy or end a lease unless they have a reason to do so.
- Enacted on April 19, 2024.



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Applies to All

Residences,

except:

Who does the "For Cause" protections not apply to?

Short-term rentals (such as Airbnbs):
 Rental for less than 30 days for "tempor

- Rental for less than 30 days for "temporary, recreational, business, or transient purposes"
- Owner-Occupied or Master-Tenant Occupied Residences
 - single-family home, duplex, or triplex
 - The owner or master tenant must live on the same lot and it must be their primary residence
- · Mobile home:
 - If the homeowner or tenant has a lease-to-own or purchase option, the property is exempt
- · Employer-provided housing
- · New tenants less than 12 months
- Unknown tenants: "A residential tenant who is not known to the landlord to be a tenant of the residential premises."

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What is "cause" for an eviction?

Traditional "Causes"

- Nonpayment of rent
- Material violation of lease
- Substantial violation of lease
- Repeat violation of lease
- Possession after sale or conveyance by personal representative
- Nuisance or disturbance

"No fault" causes for eviction

- Demolition or conversion of residence.
- Substantial repairs (30+ Days)
- · Family of landlord moves in.
- Selling the residence.
- Tenant refuses to agree to a reasonable new lease.
- History of nonpayment of rent.

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When Notice Is Required to End a Tenancy

Notice is Required

- The lease does not have a fixed end date (month-tomonth)
- The landlord is ending the lease due to a lease violation (unpaid rent, damage)
- The landlord is pursuing a "no-fault" eviction (landlord wants to move in, sell, or renovate)

No Notice is Required

END

Applies only when:

- The lease has a specific end date
- The tenancy is not covered by Colorado's For-Cause Eviction Policy

Most residential leases do require notice, even if they have an end date

- Landlord CANNOT simply lockout a tenant or turn off heat, electricity, water or other utilities
 - Called a constructive eviction and it is a violation of the tenant's rights and may result in liability on the part of the landlord for tenant's damages
- Landlord CANNOT simply call the Sheriff to come and remove a tenant; the Sheriff's office will not assist in removing a tenant without a court order directing them to do so

Starting the Eviction process:

What <u>NOT</u> to do



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Starting the Eviction Process: Written Notice to Tenant

The eviction process **must** begin with written notice to the tenant.

- Type/Length of notice depends on:
 - Reason for eviction (lease violation, no-fault)
 - Type of tenancy (fixed, periodic)

Three main types of notices:

- Notice to Terminate Tenancy
- Notice of No-Fault Eviction
- Demand for Compliance or Possession
- Service Requirements:
 - · Notice must be signed by the landlord or their agent
 - Best practice: Hand-deliver to tenant or resident 15+ years old
 - If no one is present:
 - Attempt personal service TWICE on TWO different days
 - Then post notice in a conspicuous place on the premises

Form: www.courts.state.co.us → Self Help/Forms → Housing Case 18



Notice of No-Fault Eviction

If a landlord is not renewing a lease and the "for cause" protections apply, and the landlord does have a valid reason for not renewing the lease, then the landlord should give a Notice of No-Fault Eviction.

JDF 99 C	Notice of No-Fault Eviction Residential Eviction Notice	
To: (tenant's name)	☐ And any other occupants	

Notice - at least 90 or 45 days if the landlord or spouse is on active military duty before proceeding with eviction.

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Definitions

Employer-provided housing agreement

- A residential tenancy agreement between an employee and an employer (or affiliate) acting as landlord.
- Notice Period: 3 days for nonpayment, lease violations, or termination after employment ends.

Exempt residential agreement

- A lease of a single-family home by a landlord who owns five or fewer such homes and includes a notice in the lease that the standard 10-day notice does not apply.
- Notice Period: 5 days for nonpayment, lease violations, or repeat violations.

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Notice to Terminate Tenancy

- Used when landlord does not want to renew lease and "For Cause" policy does not apply.
- Length of notice depends on term of tenancy. A written notice must:
 - Describe the premises,
 - Specify the exact date the tenancy will end,
 - Be signed by the landlord, tenant, or their agent/attorney.
- Notice period calculated from end of term (e.g. 21 days from end of month)

Term of Tenancy:	Length of Required notice:
1 year or more	91 days
6 months or more, but less than 1 year	28 days
1 month or more but less than 6 months	21 days
1 week or more, but less than one month; tenancy at will	3 days
Less than 1 week	1 day

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Notice to Terminate Tenancy

Repeat Minor Violation

- The notice must:
 - State the lease provision violated.
 - Indicate that the tenant previously received notice for the same violation.
- If tenant repeats the same violation, the landlord may issue a Notice to Terminate.
- No opportunity to cure is required after the second violation.
- Notice periods:
 - 10 days: standard residential tenancies.
 - 5 days: exempt residential agreements.
 - 3 days: employer-provided housing or nonresidential agreements.
- Does not apply to repeated nonpayment of rent that is subsequently cured.

Substantial Violation

- Acts that:
 - Endanger people or property,
 - Are violent or drug felonies,
 - Are a public nuisances with potential jail time of 180+ days.
- The notice must:
 - Describe the property,
 - State the termination date,
 - Specify the grounds for termination.
- No opportunity to cure is required.
- Tenant must vacate within 3 days.
- o Exceptions & Protections:
 - Victims of DV, abuse, or stalking are protected
 - The offender may still be evicted.

What is a "Substantial Violation"?



A serious action by a tenant or someone the tenant allows on the property that happens on or near the rental property and falls into one of these categories:

Dangerous Behavior

The act puts someone in danger or seriously damages property belonging to the landlord, a neighbor, or another tenant.

Serious Crimes

The act is a violent or drug-related felony, such as assault or drug trafficking.

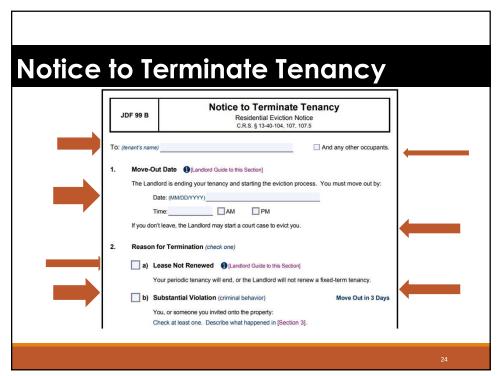
Public Nuisance Crimes

The act is a crime considered a public nuisance, and it carries a possible jail sentence of 180 days or more.

See C.R.S. § 13-40-107.5

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	□ Check if Tenant is entitled to 30 days (in	d explain what happened in [Section 3]. g the prior violation was served on: (enter service instead of 10). (For CARES Act Properties) See 15 U.S.C. § 9058(a)(2). ortgage (FHA, VA, USDA, etc.); or,	
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Demand for Compliance or Right to Possession

Non-payment of Rent

- Malerial Violation C
- Notice Requirements:
 - State amount of rent owed and dates it is owed.
 - o Tenant has:
 - 10 days to pay or vacate (standard residential)
 - 5 days (exempt residential)
 - 3 days (nonresident or employer-provided housing)
- Right to Cure:
 - Tenant may pay all amounts due (including rent, late fees) any time before judgment is entered.
 - This right cannot be waived by lease or agreement
- agreement

- <u>Material violation of lease</u>
 - Notice must:
 - Specifically describe the lease violation,
 - Provide the tenant:
 - 10 days to cure or vacate (standard),
 - 5 days (exempt residential),
 - 3 days (nonresident/employerprovided housing).

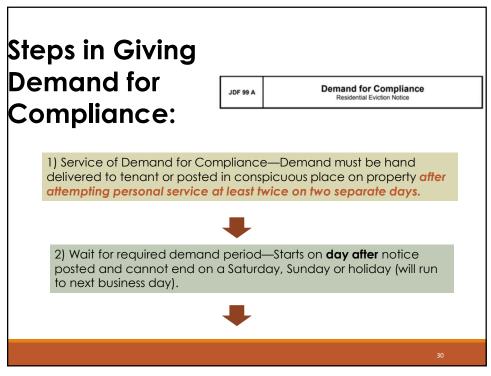
 If due to Domestic Violence, Landlord must offer a repayment plan within 3 business days of serving the demand or receiving documentation. Tenant has 7 days to accept or propose an alternative

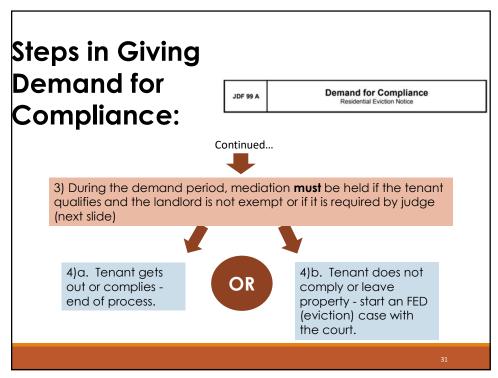
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Demand for Compliance or Right to Possession Demand for Compliance Residential Eviction Notice C.R.S. § 13-40-104, 106 And any other occupants. The Landlord is starting the eviction process. You can avoid eviction, but you have a limited time to move or fix the problem. That time is based on the type of rental agreement (or property). Check one: (The time starts from the "date served" in Section 6.) Residential Agreement: 10 days Exempt Residential Agreement: 5 days Exempt agreements are for Landlords with five or fewer single-family homes, and the 10-day notice is waived in the lease. C.R.S § 13-40-104(5)(b). Employer-provided Housing Agreement: 3 days CARES Act Property: 30 days CARES Act Properties include: See 15 U.S.C. § 9058(a)(2). . Homes with a federally backed mortgage (FHA, VA, USDA, etc.); or, Those that participate in a federally subsidized housing program.

Demand for Compliance or Right to Possession				
2. Grounds for Eviction You must: (Landford: check only those that apply) a) Pay Your Rent Past rent due: \$ This is for missed payments due on: (enter dates) b) Comply with the Lease Landford: For repeat or substantial (criminal behavior) violations, use form [JDF 99 B - Notice to Terminate] instead. Lease Term Violated: JDF 99 A - Demand for Compliance (residential eviction) English Version (must be the Tenant's primary language) Explain how that lease term was violated:	•			
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Mediation through Office of Dispute Resolution

A tenant qualifies for mandatory mediation through ODR if they receive SSI, SSDI, or TANF.

Any demand issued must include a statement informing the tenant about mandatory mediation.

If a tenant qualifies, they should let the landlord know in writing immediately.

After landlord learns that tenant qualifies, landlord should schedule mediation with tenant and the Office of Dispute Resolution online or at 720-625-5940.

A landlord with five or fewer properties is exempt from having to do mandatory mediation with the tenant.

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Starting a Court Case: WHO can bring the case?

- The action must be filed by a "person in interest", i.e. the property owner or other individual or entity identified as the landlord or lessor on the lease. If you are the property manager or the individual or entity acting as an agent for the owner(s), you may be required to show proof of your authority to the Court.
- NOTE: The general rule is that corporations and other entities must be represented by an attorney in court cases—C.R.S. § 13-93-101
 - There is an exception for "closely-held entities" with no more than 3 owners—C.R.S. §13-1-127

WHAT is needed to start a court case?

- Eviction Complaint JDF 101 (residential) or JDF 141 (mobile home)
 - o Attach copy of written lease, if any
 - Attach copy of Notice served on tenant
- Eviction Summons (JDF 102)
 - If you are not represented by an attorney, complete the top portion only and clerk will fill in the rest when you file. The Summons must include resource list (provided by and updated by the Department of Local Affairs).
 - The clerk will schedule a return date that should be between 7 and 14 days from the day you file
- Answer (JDF 103), Request for Documents (Form 185 SC), Fee Waiver (JDFs 205 and 206) and Resource List (Form 186 SC).
 - Leave these blank and include with the documents served on the tenant.
- Filing fee
 - County Court if Less than \$1,000 Filing Fee \$85
 - o County Court if \$1,000 up to \$15,000 Filing Fee \$105
 - o County Court if \$15,000 up to \$25,000 Filing Fee \$135
 - o District Court is anything above \$25,000 Filing Fee \$235



5. Background

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Service of Summons and Complaint

- The tenant must be served with the Summons and Complaint by someone who is at least 18 years old and not a party to the case (process server or law enforcement officer).
 - Whoever serves the tenant should complete an affidavit of service (Form JDF 98), documenting the time, date, and method of service.
- The tenant must be served **no later than** 7 days before the return date.
- Service should be accomplished by handing the papers directly to the tenant or a family member over 18, if possible. If personal service <u>is not possible</u> after diligent efforts, service may be completed by posting the papers in a conspicuous location on the property and mailing a copy to the tenant.
 - Note: If service is completed by posting and mailing rather than personal service, the court may issue an order for possession of the property, but cannot enter a money judgment for back rent or damages.

Possible defenses may include:

- Did not receive/inadequate notice or improper service of notice*
- Improper service of Summons and Complaint*
- Tenant paid rent or cured violation within the Notice period
- Tenant tried to pay rent within the notice period, but landlord refused payment
- Landlord agreed to accept late rent payment or accept work in trade for rent

*defense must be raised in answer, cannot be raised for 1st time at trial

Tenant may file an Answer to the Complaint on or before the court date

DO NOT IGNORE A TENANT'S ANSWER

- Answer may contain defense to your Complaint you will need to address in court
- Answer may contain a counterclaim against landlord
- Along with Answer, Tenant may demand a jury trial on factual issues in FED-possession cases.

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Possible Defenses: Continued

- Landlord accepted rent after lease violation occurred and/or notice given
- No lease violation or failure to pay rent occurred
- Eviction for substantial violation—actions do not meet requirements of "substantial violation"
- Eviction for substantial violation—victim of domestic violence

- Tenant able to pay the landlord rent owed before the judge orders possession for the landlord.
- Tenant used rent money to repair premises and deducted cost from rent after giving notice to landlord of repairs needed and landlord fails to make repairs
- Landlord failed to offer mandatory mediation.
- Landlord evicting tenant in retaliation for tenant making report to government about landlord or property
- Eviction due to unlawful discrimination

BEFORE the court date

*Note: The court date on the summons is a deadline for the tenant to file an Answer. If the tenant files an Answer, a trial date will be set between 7 and 10 days later (C.R.S. 13-40-113(4)(a))

You may be required to participate in **mediation** prior to your court date

 If you and the tenant come to an agreement, you can file a Stipulation (written agreement signed by both of you) with the court and ask to vacate the hearing.

Prepare for your court appearance.

- On October 21, 2024, the Colorado Supreme Court held parties may demand a jury trial on factual disputes in FED-possession cases – (more on this in next slide).
- You are responsible for getting any evidence you
 want to present to the court—this means arranging
 for any witnesses to be available to testify and
 having 3 copies of any documents, pictures, or other
 evidence with you when you come to court



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Jury Trials in FED-Possession Cases

Mercy Housing Mgmt. Grp. Inc. v. Bermudez, 559 P.3d 1163 (Update: Colo. Dec. 16, 2024)

The Colorado Supreme Court withdrew its October 21, 2024, opinion that tenants and landlords have a right to a jury trial in eviction FED-possession cases.

- The Court said that Colorado law (C.R.S. §13-40-115) is unclear about whether jury trials are allowed in these cases.
- They chose not to make a final decision on the issue and said it's up to the Colorado General Assembly to clarify the law.

What This Means:

- As of now, there is no guaranteed right to a jury trial in eviction cases in Colorado.
- o Tenants and landlords can still ask for a jury trial, but judges don't have to grant it.
- ${\color{blue} \bullet}$ The issue is still unresolved unless and until the legislature changes the law.

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The Trial

- As the Plaintiff, you will have the burden of proof, so it will be your job to prove what you are claiming
 - Includes proving damages: Before-and-after photos, checklists, receipts, etc.
- Both sides can present evidence:
 - Testify, Call witnesses, Present documents (photos, or evidence)
- The judge and the other party will be able to ask you (if you testify) and any of your witnesses questions
- You will be able to ask questions of the tenant (if he/she testifies) and any of the tenant's witnesses
 - Ask questions, <u>do not</u> argue or talk over the witness
- Remember courtroom behavior matters. Be organized, prepared, and respectful at all times

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The Trial Cont'd

Jury Trials

Either party can demand one, but the fee must be paid at the time of the demand.

Jury trials will be more involved than court trials:

- You'll need to prepare for jury selection
- Depending on the judge's preferences, you may have to create juror notebooks
- You'll have to consider jury instructions



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After trial \rightarrow if you win

Order for Possession

- Judge orders possession of the property returned to you.
- After 48 hours, you can ask the court to issue a Writ of Restitution (form JDF 103)
- The Writ of Restitution:
 - This authorizes the Sheriff to remove the tenant from the property.
 - If tenant is a DV survivor, the court must delay the sheriff's eviction by 30 days

Money Judgment

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



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Removing the tenant and belongings from property

- You must contact the Sheriff to schedule execution. They supervise but don't move belongings.
- You (or someone you hire) must remove the tenant's property—you can move it to the curb.
- No duty to store the property. If you do, you may charge fees but take on extra responsibilities.
- Landlords and law enforcement are not liable for property damage during lawful execution (C.R.S. § 13-40-122).
- For abandoned property, see C.R.S. § 38-20-116 or talk to an attorney.



Recent Changes... as of 2025



1. Domestic Violence Housing Protections

2. Rental Agreements After Tenant Death

If a tenant passes away, their family doesn't have to keep paying rent for long, and the landlord can take back the unit without going to court in some cases.

3. Subsidized Housing Protections

Tenants in subsidized housing must get 30 days' notice before eviction for unpaid rent, and landlords can't block them from getting rental assistance.

4. Algorithmic Rent Pricing (Vetoed)

A proposed law to stop landlords from using shared software to set rent was rejected, but it raised concerns about rent being unfairly increased.

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Special Thanks!

- 12th Judicial District Access to Justice Committee
- Center for Restorative Programs
- -La Puente

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