



January 7, 2021

Colorado Dos and Don'ts for Evictions

- ✓ Colorado's statewide moratorium by executive order on residential and commercial evictions expired on January 1, 2021.
- ✓ The federal government's nationwide moratorium was extended to January 31, 2021.
- ✓ The federal moratorium allows landlords to proceed with evictions for reasons other than nonpayment of rent. This would include reasons such as noise violations, criminal conduct, obtaining possession by fraud, or violating other portions of the terms of the lease. The property manager should be prepared to provide compelling evidence for grounds other than the nonpayment of rent and to refute any argument that such evidence is a pre-text for nonpayment. The property manager may want to discuss with the landlord waiving the right to seek past due rent and late fees to avoid such claims and defenses.
- ✓ Even after the federal moratorium expires, there may still be government regulations that prevent a landlord from evicting tenants. Property managers should consult with an attorney to determine if there is an applicable government regulation, order, or ordinance that applies at the federal, state, and local levels before proceeding with an eviction. For example, if the real property was purchased by the landlord with a VA loan or FHA loan, the property manager will need to know if there are any prohibitions on evictions related to COVID-19 and, if so, what exactly is allowed or prohibited.
- ✓ The property manager must be familiar with local regulations at the county and municipal levels.
- ✓ The property manager also should be familiar with the county sheriff's policy on evictions, even if the local court is prepared to proceed with forcible entry and detainer actions.
- ✓ Per the executive order of the Governor of Colorado, late fees for residential and commercial tenants are prohibited through January 31, 2021.
- ✓ The property manager should avoid accusations of violating the moratorium, including the moratorium on late fees. One way to do that is not apply tenant deposits for damage, security, pet, or other type to past due rent and late fee amounts without first obtaining court approval.

- ✓ Property managers should discuss with the landlord who wants to proceed with an eviction the risks and benefits of seeking late fees, legal fees, court costs, lease penalties, etc. Seeking excessive fees may trigger counter-claims, unexpected defenses, and resistance from the courts.
- ✓ Colorado is still offering assistance for tenants struggling with rent payments. Property managers may want to familiarize themselves with government rent assistance programs to look for creative solutions to avoid an eviction and to be able to answer possible questions raised by the court.
- ✓ If a workout is reached between the landlord and tenant for past rent owed, the property manager should advise the landlord to consult with an attorney.
- ✓ Any workout arrangement should be reduced to writing. The Colorado Real Estate Commission has not created or approved a standardized form for property managers to use for workout agreements. The property manager may not create a form or prepare the workout agreement as property managers are prohibited by Colorado licensing law from drafting contracts. Property managers should familiarize themselves with Commission Rule 7.1.
- ✓ The property manager may use an “Attorney Form” for past rent workout agreements that is actually drafted by an attorney, per Rule 7.1.B. Any such form must contain the language that says: “This form has not been approved the Colorado Real Estate Commission.” The form must also include: the name of the attorney or law firm that prepared the Attorney Form and the name of the Broker, Employing Broker, or the Brokerage Firm for whom the form was prepared. The Attorney Form may not be altered by the property manager other than by completing any blank spaces in the form. The property manager may advise the parties as to the effects of the Attorney Form.
- ✓ The property manager may use instead a “Client Form” provided by a party to the lease for such things as past rent workout arrangements. The property manager must retain written confirmation that the Client Form was provided by the party to the transaction. The property manager may not alter the form itself. The property manager’s use of such form is limited to inserting transaction-specific information within the Client Form.
- ✓ Property managers should be on the alert to avoid any charges of discrimination with respect to eviction actions. Property managers may not discriminate in the selection of tenants to evict based on protected class status of race, religion, ethnic background, sex, or because the tenant has children or a disability. Be aware that there are advocacy groups who will be proactively looking for eviction patterns to show housing discrimination.
- ✓ Property managers may want to advise landlords to explore other options of removing the tenant other than resorting to a forcible entry and detainer action. Such options include a negotiated surrender of the premises by the tenant or buying out the tenant similar to a settlement agreement. Any such conversation with the tenant should not involve unlawful or tortious threats or the use of intimidation or scare tactics. Again, any

such agreement should be reduced to writing and prepared by an attorney or prepared by a party to the written agreement.

- ✓ Be patient. Expect a backlog of eviction actions. Do not be surprised if you encounter resistance from the tenant, including claims involving habitability issues, discrimination, and breach of the lease agreement. You should not be surprised if a tenant rights organization, special interest group, or a pro-bono attorney gets involved on behalf of the tenant. Be prepared for such possibilities by keeping records of the condition of the property and compliance with all property management license requirements, including the use of forms and accounting regulations. Prepare a risk management plan, including making sure you have a current E&O policy in place, you are an additional named insured on the landlord's liability policy, and you have an indemnity agreement with the landlord.
- ✓ Evictions in Colorado are a highly sensitive, hot-button topic that will receive additional attention in the upcoming legislative session. Property managers should do everything they can to continually update and educate themselves on landlord-tenant legal developments.

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NOTE that the information contained in this document is for general education and knowledge. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem or claim. Additionally, the situation surrounding COVID-19 is evolving and the subject matter discussed herein may change on a daily basis. Please contact an attorney for timely advice as to any specific issue that may arise.