



# SHERIFF

KIT CARSON COUNTY

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## The Eviction Process

### EVICCTIONS . . . .

This information was designed to provide basic information concerning tenant evictions and the role and requirements of the Kit Carson County Sheriff's Office in such actions. This pamphlet is distributed with the understanding that the Sheriff's Office is precluded by State Law from giving legal advice (see Colorado Revised Statute 30-10-520). While the Sheriff's Office will make every effort to provide information and assistance, **legal advice should be sought from an attorney.**

The eviction process is referred to in the Colorado Revised Statutes as *Forcible Entry and Detainer*. This is commonly referred to as an "F.E.D." action. The sections that deal with this area of the law are set forth in Title 13, Article 40 of the Colorado Revised Statutes (C.R.S.). These statutes are available for inspection at the Sheriff's Office.

Most eviction actions are initiated because a tenant has failed to make the rent payments. There are other causes, all of which are set forth in 13-40-104 and 13-40-107.5 C.R.S. The specifics of your situation will probably be governed either by the provisions of a lease or the terms of a month-to-month tenancy.

### BEGINNING THE PROCESS: NOTICE TO QUIT . . . .

After the landlord has decided to proceed with an eviction action, he must serve a *Notice to Quit* at the residence. (form available from this office). This notice may be served on the tenant, other occupant, or a relative living there over the age of 15. If no one is present, service may be made by posting the Notice in a conspicuous place, such as on the front door. The Notice to Quit must set forth the grounds for the landlord's demand for possession, the date and time that the tenancy will terminate, and must be signed by the landlord or his agent or attorney. The amount of time between the time of service and the termination varies based on the type and length of the tenancy. The most common length of time is three days. The specifics are covered by 13-40-107 C.R.S. The requirements of the written demand are in 13-40-106 C.R.S. Service requirements are at 13-40-108 C.R.S. It is recommended that language such as "**and all other person**" be included along with the names of the tenants or occupants that are known.

**NEXT: THE SUMMONS AND COMPLAINT . . .** available at [www.courts.state.co.us](http://www.courts.state.co.us)  
(left side – forms – self help)

If the tenant does not move out in accordance with the Notice to Quit, an action under this article is initiated by filing with the county court a complaint requesting recovery of the property.

Past-due rent and other specified claims may also be included as part of the complaint (13-40-110 C.R.S). The court clerk or your attorney will then issue a summons to be served on the tenant.

The summons will command the tenant's appearance in court not less than (7) seven nor more than (14) fourteen days from the date the summons was issued (13-40-111 C.R.S.)

This summons and complaint is then served on the tenant (now defendant). It may be served by a private process server, the sheriff's office, or by a person over the age of 18 who is not a party to the action. Service must be made at least (7) days prior to the court date. If service on the defendant or a relative living at the residence who is at least 18 cannot be made "*after having made diligent effort*" the process may be posted as with the Notice to Quit. However, **if service is made by posting**, the plaintiff must mail a copy of the summons and complaint to the defendant no later than the day following the day the complaint is filed (not the day following service). It is good practice to mail the copy as a matter of course because the actual manner of service probably won't be known for several days. If the mail provision is immediately complied with, either type of service will be legal.

### **THE COURT HEARING. . . .**

If at trial the court finds that the defendant has committed an unlawful detainer, judgment will be entered for the plaintiff and the court will issue a **Writ of Restitution**. If personal service was made, the court may also award a money judgment for such things as back rent, damage, attorney's fees, etc. If the service was by posting, the court will not award any money but will still issue the Writ of Restitution. The money judgment may be obtained later through a continuance of that portion of the action pending personal service, or through a separate action, such as a Small Claims Court suit (13-40-115 and 13-40-123 C.R.S.). If the defendant wins, he is entitled to a judgment for his costs (13-40-116 C.R.S.).

The defendant can appeal a decision against him to the district court. An appeal bond may be required, as may a deposit of rent with the court (13-40-117, and 13-40-118 C.R.S.).

### **THE WRIT OF RESTITUTION. . . .**

Assuming that the landlord prevails in court and that there is no appeal filed, the court clerk will issue the Writ of Restitution after the passage of 48 hours. This stay is required by statute and cannot be waived. Its purpose is to allow the defendant to move out on his own. (If this happens, the landlord does not have to obtain the Writ of Restitution as the defendant's leaving has restored the property to the possession of the landlord.)

Once the Writ of Restitution has been obtained, it must be brought to the Sheriff's Office Civil Division for execution. This is the only stage of the process that requires the involvement of the Sheriff. That is because the Writ of Restitution is actually an order from the court to the Sheriff to dispossess the tenant and restore possession of the property to the landlord. No one else has legal authority to execute the Writ, and doing so may well give rise to legal action against the landlord, who will now have none of the protections the law provides for when proper legal procedures are followed.

### **CIVIL DIVISION REQUIREMENTS . . . .**

As all evictions are done by this division, it is important to contact the Sheriff's Office as soon as possible when you are expecting to have to physically evict a tenant. The Civil Division has numerous other duties and must therefore handle all situations on a first-come first-served basis.

## **EXECUTION –**

Since a Writ of Restitution is an order to the Sheriff and not a service per se, there is no “service” requirement. However, a copy of the Writ will always be posted or given to the tenant as a courtesy.

There are two options regarding the actual execution of the Writ. Per House Bill 21-1121, Section 2 “The Officer shall not execute a Writ Of Restitution concerning a residential tenancy until at least 10 days after the entry of the judgement”. After those ten days has passed, the Sheriff’s Office can proceed with executing the Writ Of Restitution. If the eviction has been scheduled in advance, it may commence immediately. If the eviction will not be done immediately, the Civil Division may post the Writ along with a Warning Notice from the Sheriff’s Office telling the tenant that an eviction is imminent. In some cases, the Notice will cause the tenant to move on his own.

## **FEES –**

The fee for filing the execution with the Sheriff which includes the service of the Writ & Sheriff’s notice is \$35.00 + Mileage + Notary fee. If physical eviction is needed an eviction fee of \$100.00 + mileage will apply. These fees must be paid in advance. Both the dollar amount and the advance payment are required by state law and may not be waived. In the event that the eviction process takes over one hour, there may be an additional per/hour charge. If the eviction is canceled prior to the officer’s arrival, the execution fee will be refunded as per established procedures.

## **PHYSICAL LABOR REQUIREMENTS –**

All of the physical labor required to move all of the tenant’s belongings from the property to the nearest public right-of-way is **arranged, provided, and paid for by the landlord**. Under normal conditions, sufficient personnel must be present to complete the eviction in one hour. The landlord should take into account the size of the residence, the amount and type of property to be removed and the distance to the right-of-way. If the Sheriff’s Office determines that there are not sufficient resources, the eviction will be canceled. When sufficient resources are available, it may be rescheduled upon paying another execution fee. Prior consultation with the Civil Division will usually avoid such last minute problems.

If the one hour time frame is not possible, the Civil Division will work with the landlord so that the Writ may be executed in an expeditious manner.

## **TIME-**

The eviction normally begins at 9:00 A.M. or 10 A.M., but various arrangements can be made. State law provides that evictions may only be conducted between sunrise and sunset (13-40-122 C.R.S.).

## **MOVEMENT AND DISPOSITION OF PROPERTY-**

All of the belongings of the tenant must be removed from the property and deposited along the nearest public right-of-way (to be pre-determined between landlord and Sheriff’s Dept.). The actual placement of the items

will be under the direction of the Sheriff's officer. In Colorado "an officer or sheriff is subject to a minimum standard of care: sheriff is only required to move tenants chattels or property without damaging them more than necessary to execute the writ, consistent with natural consequences of removal (Christensen v. Hoover, 623 P. 2d 525). The same standard applies to the landlord. The sheriff's officer will require that the tenant's property be handled properly to avoid damage. The inability or unwillingness of the movers to maintain this standard of care will cause the eviction to be terminated.

If the tenant is not present during the eviction, certain inherently hazardous items may be taken into temporary custody for the protection of the public by the Sheriff's Officer. Steps short of custody may be employed with certain other items for the same public safety concern. As an example, a refrigerator door may be taped shut or removed. If the tenant is present, all such responsibility is his.

#### **LANDLORD TO BE PRESENT AT CONCLUSION OF EVICTION . . . .**

Once all of the tenant's property has been removed, the Sheriff's officer will restore possession of the premises to the landlord. The date and time will be recorded. The landlord or his representative must be present at the conclusion of the eviction. After the restoration of possession, the former tenant has no right to return to the property and is subject to all normal criminal sanctions if he does so. A Notice will be posted.

#### **DISPOSITION OF PROPERTY AFTER THE EVICTION IS COMPLETED . . . .**

"Sheriff, in executing writ of restitution . . . has no duty to safeguard tenant's possessions after a lawful eviction has occurred, even though he knows the tenant's belongings might be taken if they are left unattended; after the writ has been executed . . . sheriff's statutory duty has ended, and no liability for subsequent damage to tenant's property can attach." (Christensen v. Hoover, 623 P. 2d 525). In accordance with this ruling, the Sheriff's Office will take no steps to preserve the belongings after the eviction is over.

*"After tenancy has been lawfully terminated, landlord is under no obligation . . . to store or maintain tenant's possessions; however, if landlord actively participates in removing tenant's property from the premises, or if he assumes possession or control of tenant's property after writ of restitution has been executed, a bailment is created between landlord and tenant which may subject landlord to liability for damage to tenant's property."*  
(Christensen V. Hoover, 623 P.d 525).

While the Sheriff's Office makes no representation as to any particular interpretation of this ruling, any act of the landlord to do anything with the removed possessions will be done after the officer has left and will be without his knowledge or assistance.

The full text of Christensen v. Hoover is available from the Civil Division upon request.

#### **UNUSUAL SITUATIONS AND RECOMMENDED EQUIPMENT . . . .**

The landlord should be aware of any peculiar or unusual requirements. These may either be due to the nature of a specific location or encountered due to the nature of the tenant's possessions. This may include such things as moving large or heavy items, draining waterbeds, moving aquariums, removing vehicles, any animals on the premises, unusually large amounts of property, or a lack of convenient public right-of-way. In most cases, it is necessary for the landlord to fully discuss the exact nature of the eviction with the Civil

Division. If necessary, the officer will make a planning trip to the site in advance. Remember, if the officer arrives and determines that all proper arrangements have not been made, the eviction may be canceled. If the landlord is not using a commercial moving company, trash bags and boxes are almost always needed, especially for kitchens, bathrooms and garages. Having a locksmith present is frequently helpful, both for making the initial entry and changing the key to prevent the re-entry by the tenant after the eviction is over.

Common household pets encountered during an unattended eviction will have to have special arrangements to be taken care of, either approved by or made by this department. In the case of livestock, the landlord will have to make prior arrangements for their loading, transport and housing. Under no circumstances will live animals be left unattended at the scene of an eviction.

## **CONCLUSION . . . .**

Conducting an eviction is an unpleasant experience for all those involved; landlord, tenant, movers, and Sheriff's Officers alike. While understanding the emotions involved, the officer is acting under a court order. Interference on the part of anyone will almost certainly trigger a custodial arrest. Once started, an eviction will only be halted or canceled short of completion upon request of the landlord or his attorney or by a court order from the same or higher court that issued the original Writ.

Please contact the Kit Carson County Sheriff's Office Civil Division if you have further questions or concerns. Copies of Title 13, Article 40 C.R.S. and Christensen v. Hoover are available. They may be picked up, or upon request mailed.

Various "Notices to Vacate" are attached.

Court forms are available from the court website at [www.courts.state.co.us](http://www.courts.state.co.us)  
(left side – forms – self help)