



San Miguel County Sheriff's Office

684 CR 63L Telluride, Colorado, 81435

William S. Masters, Sheriff

"Upholding Liberty and Personal Responsibility"

TENANT / LANDLORD DISPUTES

This information is provided to help avoid or solve problems. It is not meant to be comprehensive and should not be used as a substitute for seeking legal advice. This information does not address the specific statutory and legal issues of evictions and Writs of Restitution. Our only intent is to provide the public with general guidelines to questions we are generally asked, related to the Sheriff's policy and procedure.

Tenant/landlord disputes are considered civil in nature and unless a criminal act has taken place the Sheriff's office does not get involved in civil matters, other than to keep the peace between the parties.

You will need to contact an attorney or the courts before relying on this information for legal purposes or proceeding with any action.

DEPOSIT TO HOLD RENTAL UNIT

Frequently, tenant will wish to put a good faith deposit down simply to hold the premises for a few days, until tenant can make arrangements to sign a formal lease or move in. Landlord and tenant may agree to this arrangement, however, the deposit agreement should be in writing, setting forth the amount of deposit so paid and the date set for formal closure.

Sometimes, tenant, for a variety of causes, is unable or unwilling to proceed to closure and backs out of the transaction altogether. In such cases, landlord is normally entitled to retain as much of the deposit as will reimburse him/her for loss of rent and other expenses incurred, while the premises was held off the market.

UTILITIES – WHO PAYS WHAT?

The question of who pays what for utilities is a frequent source of dispute between tenants and landlords. If there is a lease, it should very thoroughly spell out who is to pay for what. If there is no lease, a short rental agreement spelling out the respective obligations is advisable.

No prospective tenant should enter into a rental arrangement with landlord without a clear written statement or lease provision as to who is to pay for what utilities – particularly gas, electricity, water, trash, upkeep of appliances, yard and weed control. This is especially true where the rented premises are a duplex under a single gas/electricity meter, where each of the two tenants agrees with landlord as to sharing of these costs. There is no statute governing this issue.

LATE PAYMENT PENALTIES

Usually, the lease or rental agreement will specify “late charges” covering a stated period of time when rent that is past due may be paid along with such charges.

Late charges are ordinarily expensive, as a deterrent to late payment of rent. Many leases permit landlord to either accept the late rent plus late charges, or start eviction proceedings for the non-payment (late payment) of the rent. In other words, landlord can serve the required notice to pay rent or vacate, and then halt further proceedings if tenant pays, and landlord accepts the late payment and charges.

HOLD-OVER TENANTS

Where a lease is for a specified term, and tenant remains in possession and continues to pay rent, which landlord continues to accept, he is called a “hold-over” tenant. The rent and tenure are thereafter on a month-to-month basis; however, the other provisions of the lease remain in full force and effect, unless landlord and tenant agree otherwise.

Ordinarily, it is recommended that if the parties desire to continue the tenancy, a new lease or rental agreement be drawn up and signed by both parties.

HAZARDOUS GAS LEAKS

If any gas appliance, piping or other gas equipment exists, and the local gas company is notified and makes inspection, the tenant and/or landlord may be given a notice of defect and compelled to comply with the gas company’s procedures. If tenant gets the notice, he/she must notify landlord immediately.

If a tenant smells gas odors at any time within the rented premises, he/she should call Public Service or other gas company immediately and get out of the premises.

72-HOURS TO CORRECT

Landlord must repair the condition within 72 hours (not counting weekends or legal holidays) after receiving notification. Repairs must be done by a “professional” – one licensed or certified by state or local laws.

FAILURE TO MAKE REPAIRS

Failure to repair within the 72-hour period, permits tenant to: (1) terminate the tenancy and move out and (2) demand return of his/her security deposit within 72 hours after vacating the property.

LANDLORD TRESPASS

Once tenant has moved in, he/she is free to have peaceful enjoyment of the premises, free from landlord hassle. Unless otherwise provided in a lease, the landlord has no right to enter the premises without first obtaining the tenant's permission (which shall not be unreasonably withheld), EXCEPT FOR: (1) to demand payment of unpaid rent; (2) to make emergency repairs (plumbing / roof leaks, faulty appliances, etc.) which are for tenant's use; and (3) abandoned property of tenant after move out.

LEAD PAINT – REQUIRED DISCLOSURE

New federal law requires disclosure warning of possible existing lead paint used in premises, which must be furnished to tenant prior to leasing/renting when the premises was constructed prior to 1978. Disclosure forms can be obtained at any local office of the Environmental Protection Agency, or any local realtors' office. Landlord incurs federal penalties for failure to make this disclosure warning.

MOVE-IN & MOVE-OUT WALK THROUGH

Tenant and landlord should make a “walk-through” (careful inspection) of the premises both at the time of tenant's move-in, and at tenant's move-out; making careful, written note of all existing conditions of the premises at the time, including carpet damage/wear, walls needing painting, plumbing and appliances all in good working order, evidence of water leak damage, etc. Both tenant and landlord should keep a copy of this report. If landlord refuses to join in the walk-through inspection, tenant should have a friend or non-family person witness the walk-through and initial the report. Photographs or video pictures can help. This will provide an accurate record of the condition of the premises when landlord is considering retaining all or part of the security deposit to cover any damage during tenant's stay. (Landlord cannot charge for “normal wear and tear”).

LOCKOUT

In the absence of a lease or rental agreement provision allowing it, neither landlord nor tenant can change the locks on the premises without advising the other and furnishing new keys, so long as tenant has not abandoned the premises. Non-payment of rent is not considered cause to change the locks.

If landlord does lockout a tenant, he/she may call police or consult a lawyer about obtaining a restraining order to regain possession and prevent further lockout; tenant may also sue landlord, in county or small claim court, for damages occasioned by the lockout.

RENT INCREASE

Month-to-Month Rental: Where there is no lease or rental agreement providing otherwise, landlord must give 10 days written notice to tenant, of any rent increase, stating the amount and date of the increase. Tenant, of course, always has the choice of paying the higher rent, or vacating.

Leases: Where there is a lease, it should be read carefully as to what, if any, rent increase notice the landlord must give the tenant.

Mobile Homes: Where tenant owns a mobile home on a rented site, site rent cannot be increased without 60 days written notice to the tenant, stating the amount and effective date of the increase, along with other information required by law (unless already disclosed in the rental agreement). Please note that the above notice does not apply to tenants who merely lease or rent their mobile home from its owner.

NOTICE TO MOVE-OUT (VACATE)

If there is no lease or rental agreement provisions providing for tenant’s notice to move-out or vacate the premises, tenant must give landlord 10 days written notice, if on a month-to-month tenancy. Most leases provide for 30 days written notice if tenant does not intend to remain at the end of the lease.

If there is a lease or rental agreement involved, it must be read carefully as to what kind of notice must be given. Normally, the lease terms will make a marked distinction between moving out prior to the end of the lease (called “break-lease”) and moving out at the expiration of the lease, not choosing to renew the tenancy. Ordinarily, early termination of a tenancy under lease, triggers a number of penalties incurred by the tenant, including responsibility for the rent to lease end, or until the premises are re-rented by landlord – and may include charges for advertising and other specified costs in preparing for next tenant.

EVICTON FOR CONDIMINUJM CONVERSION PROSESSES

Landlord of a residential multi-unit building may elect to convert it from rentals to condominium ownership of the units. In such case, a condominium declaration must be recorded, and 90-day written notice must be given to each tenant personally, or mailed to tenant by postage prepaid, certified or registered mail, return receipt

requested at tenant's last known address. If a lease has less than 90 days to run, or there is no lease, the above 90-day written notice can effectively terminate the tenancy at the end of the 90-day period.

No residential tenancy shall be terminated for condominium conversion purposes, prior to the expiration date of the existing lease or tenancy, except by mutual agreement of landlord and tenant. Such tenancy may be terminated with consent of tenant by landlord paying tenant's moving and such other expenses that may be agreed upon.

ROOMATE ARRANGEMENTS

At times, a tenant may wish to have a roommate live-in and share expenses. However, a lease or rental agreement may restrict occupancy to one person, in which case, the landlord's written consent would be required.

Otherwise, the agreement is normally one of shared costs between occupants and doesn't change any of the provisions or obligations of the original lease. Landlord ordinarily can treat the tenancy as one and insist on timely rent payments and is not normally involved in disputes between occupants.

BASIC LANDLORD RIGHTS

CHANGE OF RIGHT OF POSSESSION

A property owner has legal title and exclusive right of possession to his property. Within limits, due to mortgage provisions or state or local law, he may do as he or she pleases with it.

Once a lease or tenancy agreement is struck between the owner and one seeking to rent the property, the owner's rights shrink noticeably. In this case, the owner now becomes the "landlord" and the person paying rent is called the "tenant." The landlord can impose written legal restrictions on the tenant, in the form of a lease. These include, but are not limited to: payment of rent, compliance with the terms of the lease and certain laws governing behavior.

The tenant now enjoys the exclusive right to possession as long as the rent and utility charges that must be paid by the tenant are promptly paid, provisions of the lease or tenancy are complied with, and the tenant is taking reasonable care of the property. Due to this possession, a tenant now has certain rights provided by the lease and certain federal, state and local laws.

TWELVE BASIC LANDLORD RIGHTS:

- 1) Right to require timely payment of the rent and other charges as well as compliance with criminal statutes, and if not, to serve a 3-day notice of demand or a 10-day eviction notice to end a month-to-month tenancy. In either case, the landlord may then commence eviction proceedings in the appropriate county court.
- 2) Right to sue for eviction, and 48 hours after the court awards possession, seek physical eviction of the tenant and his personal property through the county sheriff if the tenant still refuses to move out.

- 3) Right to require the tenant to take reasonable care of the property and to avoid abuse or negligence.
- 4) Right to enforce all terms and conditions of a signed, written lease. Note: The Colorado Security Deposit Act takes precedence over any lease provision.
- 5) Right to be notified when any condition imperils the property (such as gas defect or major plumbing problems).
- 6) Right to protect his or her property from willful damage or abandonment by the tenant.
- 7) Right to enter the property in case of emergency (such as fire or flooding), or to assert a possible landlord's lien against some of the tenant's property. **Caution: Consult legal advice before attempting to impose/enforce any lien.**
- 8) Right to convert a multi-unit apartment property to condominium ownership and sale, and terminate tenancies upon giving 90 days notice to all tenants, honoring all leases with more than 90 days left to run.
- 9) Right to terminate* a lease due to criminal activity by the tenant or their guests, by giving a 3-day written notice. The "criminal" laws involved are for drug-related felonies.
- 10) Right to terminate* an employees' lease after he or she is fired from the job, as provided by law upon 3-days written notice.
- 11) Right to take possession, without court action, if the property is truly abandoned.
- 12) Right to charge unpaid rent, unpaid utility bills, damages (which are not considered "normal wear and tear") against the security deposit of a tenant within 30 days (or 60 days if a lease so provides) after tenant has vacated. However, a list of charges claimed due must be mailed to the tenant within the above period of time; otherwise landlord may be subject to triple damages awarded to the tenant should the tenant sue to recover his/her security deposit.

* The notices to terminate are necessary before the landlord can proceed with court eviction, but do not, in themselves, give the landlord power of eviction.

CAUTION: This outline only furnishes the basics of your rights. For more information seek legal counsel .

TIMETABLES

1) Deposit to hold property where tenant thereafter elects not to go ahead.

- Landlord can charge his/her reasonable loss of rent due to withholding the property off the market.

2) Eviction Notice

- For default in payment of rent whether there is a lease or not: **3 days written notice ***
- For violation of a written lease or a criminal statute: **3 days written notice***
- For termination of a month-to-month tenancy for any reason: **10 days written notice***
- **This notice is only the first step in the eviction process. *****

* First day of service does not count; last of the three days cannot end on a holiday or weekend. Moreover, except for criminal activity (such as drug-related activities), the tenant has the right to pay the arrears of rent or cure the violation within the three days.

** This notice must be served not less than ten days before the next rent payment due.

***** The tenant cannot be physically evicted by this notice; the order of the court awarding right of possession to the landlord is still required.** In addition, if further action is required, the landlord must employ the authority of the county sheriff (see Writ of Restitution).

3) Court Proceedings

- The landlord then files a complaint with the county court where the property is located. The complaint can be signed by the landlord or his/her attorney.
- The clerk of the court then sets a hearing date which may not be less than five days or more than ten days after the case is filed.

4) Service of Process

- The tenant must be served with a copy of the complaint, summons and blank answer form for the tenant's use if he/she wishes. This must be filed at or before the hearing date.
- This service must be at least five days before the hearing date, or the court will continue the case to allow for proper new service.
- The service is usually made by the sheriff's office, but anyone of legal age and not a party to the dispute may make the service. Service may be either of the following methods:
 - ✓ **"Personal Service"** means handing to a tenant or any family member of the tenant over the age of 15 years; or as allowed in any civil action. Ask the clerk of the court if you have a special problem.
 - ✓ **"By Posting"** i.e. leaving the complaint, summons and answer form in some "conspicuous place", usually taped to the front door.

Note: failure to get "personal" service on a tenant will prevent the landlord from getting a money judgment for rent or damages; but he/she can still get a judgment evicting the tenant and awarding the landlord repossession of the property.

5) Writ of Restitution

48 hours after the court has entered a judgment for possession in favor of the landlord, he can apply to the sheriff for what is called a "Writ of Restitution". This is the court ordered authority to the Sheriff to give stand-by protection, as needed, while the landlord and his/her moving crew physically take possession of the property and move the tenant's personal property out onto the curb. The sheriff will set the date for removal according to his schedule.

BASIC TENANT RIGHTS

WHAT IS A TENANCY?

A “renting”, also called a “tenancy”, occurs whenever a property owner allows another person to live in the property in return for money (rent). A tenancy agreement can either be in written form (lease) or by a verbal agreement (month-to-month).

Either way, a tenancy is for a particular period of time, be it a year, six months or monthly. When that period ends, both the landlord and the tenant are free to make other arrangements. They may agree to a new lease, or have the tenant remain on a month-to-month basis.

The house or apartment becomes the “home” of the tenant so long as the tenancy lasts. As such, the tenant has certain basic “rights” to what is called “quiet enjoyment” of his/her “home”.

TWELVE BASIC TENANTS RIGHTS

- 1) Right to enjoy the “home” free from invasion of privacy and disturbance by the landlord or manager.
- 2) Right to “livable” conditions – that is, to enjoy the home in the same condition as when tenant moved in.
- 3) Right to insist that landlord make any repairs or replacements, which he/she has agreed to make in writing.
- 4) Right to be free from civil right abuses as provided by federal and state laws.
- 5) Right to police protection if neighbors or tenants violate municipal law, as to disturbances, fighting, loud parties and so forth.

- 6) Right to be told, in advance, if the “home” contains lead paint in violation of federal law.
 - 7) Right to have the home in compliance with all city “housing codes” or safety code.
 - 8) Right to “break” or terminate a lease and move out if the “home” becomes seriously “unlivable” (farther than just uncomfortable) under the rules of “constructive eviction” and to claim that part of the Security Deposit to which he or she is entitled.
 - 9) Right to “break” or terminate a lease for any good reason, provided tenant is prepared: (a) to pay rent to the end of the lease term or until the property is re-rented whichever happens first; and (b) to pay any reasonable “re-letting” charges stated in the lease. Tenant does not thereby forfeit his/her right to that part of the security deposit to which he/she may be entitled.
 - 10) Right to “break” or terminate a lease or tenancy and move out if a “gas hazard” is found to exist by the gas company. If the landlord fails to have repairs made within 72 hours after notice from the gas company, the tenant may move and demand immediate return of all or that part of the security deposit to which he/she is entitled.
 - 11) Right to be heard and defend in a court hearing when the landlord sues to evict the tenant.
 - Prior to court filing, landlord must first give tenant a **3**-day written notice for arrears in rent or violation of lease terms for “substantial” criminal activity; or a **10**-day written notice simply to end a month-to-
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month tenancy for any reason.

-Then a complaint, summons and blank answer form from the county court must be served on the tenant letting him/her know when to appear in court. See TIMETABLE section for details.

- 12) Right to a refund or a statement of charges against the security deposit within 30 days (or up to 60 days if a lease so provides), pursuant to the Colorado Security Deposit Act. After that period of time, the tenant can mail a 7-day notice, and ask for triple damages in Small Claims Court, for any portion of the deposit that is “wrongfully” and “willfully” withheld, or for all improper charges should the court so determine. [Caution: If the landlord wants an attorney present, the case gets certified to the county court, and if the landlord wins in court, the tenant may be ordered to pay some or all of the landlord’s attorney fees and costs. Get legal or professional advice before you sue.]

TIMETABLES

1. Deposit to hold property where tenant thereafter elects not to go ahead.
 - a. Landlord can charge his/her reasonable loss of rent due to withholding the property off the market.

2. Eviction Notice

- For default in payment of rent whether there is a lease or not: **3 days written notice***
- For violation of a written lease or a criminal statute: **3 days written notice***
- For termination of a month-to-month tenancy for any reason: **10 days written notice****
- **This notice is only the first step in the eviction process.*****

* First day of service does not count; last of the 3 days **cannot** end on holiday or weekend. Moreover, except for criminal activity (such as drug-related activities), the tenant has the right to pay the arrears of rent or cure the violation within the 3 days.

**This notice must be served at least 10 days before the next rent payment date.

*****The tenant cannot be physically evicted by this notice; the order of the court awarding right of possession to landlord is still required.** In addition, if further action is required, the landlord must employ the authority of the County Sheriff (see Writ of Restitution).

3. Court Proceedings

- The landlord then files a complaint with the county court where the

property is located. The complaint can be signed by the landlord, or his/her attorney.

- The clerk of court then sets a hearing date which may not be less than 5 nor more than 10 days after the case is filed.

4. Service of Process

- The tenant(s) must be served with a copy of the complaint, summons and a blank answer form for the tenant's use if he/she wishes. This must be filed at or before hearing date.
- The service must be at least 5 days before the hearing date, or court will continue the case to allow for proper new service.
- The service is usually made by the sheriff's office, but anyone of legal age and not a party to the dispute may make the service. Service may be by either of the following methods:
- **"Personal service"** means handing to a tenant or any family member of the tenant over the age of 15 years, or as allowed in any civil action.
- **"By Posting"** i.e., leaving the complaint, summons and answer form

in some “conspicuous place”, usually taped to the front door.

NOTE: Failure to get “personal” service on a tenant will prevent the landlord from getting a money judgment for rent or damages; but he/she can still get judgment evicting the tenant and awarding the landlord re-possession of the property.

5) Writ of Restitution

48 hours after the court has entered judgment for possession in favor of the landlord, he or she can apply to the sheriff for what is called a “writ of restitution.” This is the court ordered authority to the sheriff to give back-up protection, as needed, while the landlord and his/her moving crew physically take possession of the property out on the curb. The sheriff will set the date for removal according to his schedule, and the landlord will be advised as to when.

EVICCTIONS & SECURITY DEPOSITS

SECURITY DEPOSITS: *A security deposit (sometimes called damage deposit) is normally a one-time charge to help guarantee that a residential tenant will not "skip out on the rent", utility charges, or leave the premises in a damaged condition. It is held by the landlord, without payment of interest (except as provided by local law) until tenant has moved out, having paid all of the rent and other lawful charges, and leaving the premises in the same condition as when the tenant first occupied it, except for normal wear and tear.*

DEFINITION: It is defined by statute [CRS 38-12-102 (2)] as: "any advance or deposit of money, regardless of its denomination, the primary function of which is to secure the performance of a rental agreement for residential premises or any part thereof."

TIME TO RETURN OR ACCOUNT: State law requires landlord to return or account for retention of the deposit, within one month (or 60 days if so provided in a lease) “after the termination of a lease or surrender and acceptance of the premises, whichever occurs last”.

Landlord may withhold that portion of the security deposit, to cover nonpayment of rent and/or utility charges, abandonment of the premises, repair work or cleaning contracted for by the tenant, provided a state of account, together with the balance (if any) of the deposit is, within the above time period, mailed to tenant’s last known address.

NORMAL WEAR AND TEAR: Landlord may not charge for “normal wear and tear”, which is defined, by law, as “that deterioration which occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse.”

FAILURE TO RETURN OR ACCOUNT: If landlord fails/refuses to return the deposit or otherwise account for charges against it in writing, within the time period above, landlord loses all right to the deposit. Tenant should then send a letter, (it is strongly recommended that you use certified mail return receipt requested) to the landlord demanding that he do so, giving him seven (7) days to comply.

After the seven days has passed, if landlord still ignores this request, tenant may sue landlord in court, and state law allows him to collect triple the amount of deposit wrongfully withheld, if a court so finds.

Landlord has the burden, in court, of showing that his refusal to refund or otherwise account for the deposit was not wrongful or willful. Otherwise, tenant may recover triple the amount wrongfully withheld, together with costs and such attorney fees as the court may allow.

HAZARDOUS GAS CONDITION: If any gas appliance, piping or other gas equipment exists, and the local gas company is notified and makes inspection, the tenant and/or landlord may be given notice of defect and compelled to comply with the gas company’s procedures. If tenant gets the notice, he/she must notify landlord immediately.

72 HOURS TO CORRECT: Landlord must repair the condition, within 72 hours (not counting weekends or legal holidays) after receiving notification. Repairs must be done by a “professional” – one licensed or certified by state or local laws.

FAILURE TO MAKE REPAIRS: Failure to repair, within 72 hours period, permits tenant to: (1) terminate the tenancy and move out, and (2) demand return of the security deposit within 72 hours after vacating the property.

LEASE EVICTIONS: Where there is a lease, the rights of the parties are as provided in the lease, which is considered a legal contract, binding all parties. Accordingly, all notices provided for in the lease are governed by the lease and must be observed. Thus, tenant and landlord should always READ AND UNDERSTAND the lease terms and tenant should ask to have a signed copy.

No notice to quit is necessary from or to a tenant whose term ends on a date set by terms of the lease unless the lease requires it.

However, during the lease term, most leases do provide for a 3-day notice of eviction for non-payment of rent, or to compel compliance with lease provisions. Written notice is required in all cases. Although the law does not prescribe any particular form, blank forms are available and may be purchased at most stationery stores.

10-DAY NOTICE: In month-to-month tenancy (no lease), landlord may evict tenant at any time for any reason, regardless of rent status, upon giving a 10-day, signed, notice in writing to do so. The notice must be served (given) not less than 10 days immediately prior to the next regular rent payment due date. This notice is preliminary to filing a court eviction action.

3-DAY NOTICE FOR PAST DUE RENT: In the event tenant is behind in rent, landlord can sign and serve a 3-day notice, at any time the rent is in arrears, requiring the back rent to be paid within 3 days or the tenancy will be terminated. This notice can be combined with the notice, below, in a single form, and is a preliminary step to filing a court action in eviction. Normally, such combination notice calls for either payment of rent or compliance with lease, but both may be included.

3-DAY DEMAND FOR COMPLIANCE OF LEASE: Landlord can sign and serve a notice demand, at any time that violated provisions in a lease or rental agreement are corrected within 3 days, or the tenancy will be terminated. This notice, too, can be combined with the eviction notice, above, and is also a preliminary step to filing a court action in eviction.

COMPUTING TIME OF NOTICES: **In computing any of the above period of days, the first day is excluded and the last day is included unless it falls on a weekend or legal holiday, in which case it is extended to the next business day. [C.R.S. 2-4-108]**

SERVICE OF NOTICE: **The notice can be handed to tenant or left with a member of tenant's family, over the age of 15 years, or it can be "posted" (taped) to the tenant's door or in a conspicuous place. The notice must be written, signed, but need not be notarized. This notice, as well as other notices described above are preliminary and essential to filing a court action in eviction and do not constitute immediate eviction.**

NOTICE SIGNED BY LANDLORD'S AGENT / ATTORNEY: **Any of the above notices must be signed by landlord, or by his agent, management company, or attorney, but need not be notarized.**

THE NEXT STEP – COURT EVICTION

FILING COMPLAINT – ISSUANCE OF SUMMONS: **At the expiration of the time stated in the above notice, landlord files with the county court, his affidavit and complaint, stating the reasons for eviction, and demanding the back rent money and/or citing the violations of lease or rental agreement prompting termination of the tenancy. The clerk of the county court will issue a SUMMONS, naming the parties to the lawsuit, and setting the RETURN DATE AND TIME, when both parties must be present in court. This date must be not less than 5 or more than 14 days later. The landlord, then, must deliver the summons, together with a copy of the complaint and affidavit to the sheriff or other non-interested party over the age of 18 years, to make service of the same upon the tenant.**

SERVICE OF SUMMONS: **The summons together with a copy of the complaint may be served either by handing to tenant(s) or leaving it with a member of his/her family over the age of 18 years. If no money judgment is sought the summons and complaint may be served by "posting" (fastening) a copy in a "conspicuous place" (usually the door). If the services of the sheriff are used in serving the summons, it is**

customary that a member of the sheriff's office make ONE trip to the tenant's residence – either to make personal service or post the summons. A signed "Return of Service" is then filed. The summons must be served no less than 5 days prior to the court appearance date. Mileage and a service will be charged.

ANSWER OR DEFAULT: If tenant feels he/she has a good cause, tenant may file an ANSWER or even a COUNTERCLAIM in the suit. Current filing fees must be paid to the court. The above answer must be filed with the court at or prior to the court appearance date in order to prevent a default judgment.

COURT HEARING / TRIAL

JUDGMENT: If the court rules in favor of landlord, or if tenant defaults in appearance and answer, it enters a judgment, in favor of landlord, being a money judgment for back rent and damages in event personal service was obtained, as well as a judgment for possession of the premises. A money judgment, especially, can result in unfavorable credit history for the tenant. Tenant can also, in some cases, be assessed court costs and attorney fees incurred by the landlord.

WRIT OF RESTITUTION: No earlier than *48 hours* after entry of judgment, landlord can deliver to the Sheriff a Writ of Restitution, requiring the physical eviction / removal of tenant and tenant's furnishings. The civil processor will then personally serve or post on the front door a Writ of Restitution containing information as to when tenant has to be vacated from the premises or will be removed by the Sheriffs department. A service fee is charged along with mileage.

SERVICE OF WRIT OF RESTITUTION: The Sheriff is obligated, by law, to serve the Writ of Restitution upon the tenant. The Sheriff's Office will schedule the next available eviction date with landlord or agent. Please be aware there can be a waiting period for the eviction takes place. The Sheriff's office requires the landlord to hire and be responsible for all necessary movers/towers and requires the landlord or agent to be present at the scheduled time of eviction. The eviction may be cancelled if the landlord or agent fails to arrive on time. The landlord is requires to provide enough manpower to remove all belongings within 2 hrs. The civil officer will "stand by" while landlord /agent and available manpower remove the tenant's furniture and goods from the premises and put it to the property line or public right of way. Mileage is charged for each round trip to

the premises and a “stand by” fee is charged for the completion of the Writ of Service. You can contact the civil processor at 970-728-4442 for expense amounts.

The right and obligations of respective parties are typically spelled out in the lease. For advice concerning disputes you should contact an attorney. General information for landlord/tenant issues/disputes can be obtained from the Community Housing Service at (303) 831-1935 or from the Resident Relations Helpline at (303) 320-1611. The Housing Information/Referral Service’s help line (303) 831-1935 is another available resource for questions. Below are other useful phones numbers.

San Miguel County Court (970) 369-3300

For further information and forms pertaining to the Eviction process access

www.courts.state.co.us

Choose "Forms"

"Evictions and Foreclosures"

"Evictions"

Check local listings for attorney phone numbers

NOTE: This pamphlet should not be used as a substitute for seeking needed advice from qualified attorneys or advisors.