

## Information on Evictions and Writs of Restitution

***The following information is not intended to be legal advice and 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 Routt County Sheriff's Office policy and procedure for executing Writs of Restitution. We recommend that you first personally research the statutes, or contact an attorney or the courts before relying on this information for legal purposes or proceeding with any action.***

The eviction process, called a Forcible Entry and Detainer (F.E.D.) under Colorado Revised Statutes (C.R.S.) Section 13-40-101, serves to remove parties from a rented or leased structure or grounds that they had previously lawfully occupied. The formal F.E.D. process can serve both to evict a tenant from the property and as an action for money damages. The lawful steps must be followed—the law does NOT allow self-help by landlords. For example, without a court order, a landlord may not lock a tenant out of his apartment or room. A tenant locked out without a court order may use reasonable and necessary force to regain entry.

The eviction process has three steps, described briefly below. Necessary forms may be downloaded from the Colorado courts website at <http://www.courts.state.co.us/chs/court/forms/fed/fed.html>.

1. **Notice (Demand) to Vacate** (sometimes called a **Notice to Quit or Demand for Compliance or Right to Possession**): The general eviction process begins when the landlord gives a written demand for the tenant to vacate (C.R.S. 13-40-106). The written notice must be served upon the tenant 72 hours before the landlord can seek additional remedy in the courts (13-40-104(1)(d)-(e)). It is not possible for a waiver of this three-day notice period to be included in any written agreement (13-40-104(1)(d)). The written notice to vacate is used only when the tenant has failed to meet the obligations of agreement with the landlord (*i.e.*, failure to pay rent). The notice must contain the following:
  - a. Specific grounds for the landlord's right to possession of the premises;
  - b. Description of the premises;
  - c. Specific time to deliver possession;
  - d. Signed by the landlord, agent, or attorney;
  - e. Alternative to payment of rent (if applicable).

In the case of a mobile home eviction from a mobile home park for nonpayment of rent, 38-12-204(1) allows the tenant five days to remove the mobile home after the written notice is served or posted; there are no express requirements for the contents of this notice (see mobile home instructions below).

2. **Summons in Forcible Entry and Unlawful Detainer:** After the 72-hour period has expired, you must request a Summons in Forcible Entry and Detainer from county or district court, depending upon which court has jurisdiction under the applicable statutes, to continue the eviction procedure. The court will request a copy of your three-day notice (C.R.S. 13-40-108/110/111). The summons will contain a court date on which the defendant/tenant is required to appear. Service of the summons can be completed by either the Routt County Sheriff's Office's Civil Section or by a disinterested party over the age of 18 years. "Personal" service, as outlined in Rule 4 of the Colorado Rules of Civil Procedure, is *required* if you are seeking a money judgment along with the actual eviction. A copy of the complaint must be served with the summons (C.R.S. 13-40-112). If no money judgment is sought, the summons and complaint may be served by posting in a conspicuous place upon the premises after diligent effort to make "personal" service (38-40-112). Both types of service must be completed not more than 10 and at least 5 business , not including Sundays and holidays, before the day of appearance specified in the summons and must be evidenced by completing the return of service to the court (13-40-113).
  
3. **Writ of Restitution:** Upon hearing the complaint made by the plaintiff/landlord, the court may enter judgment for the landlord. The issuing court must wait 48 hours after entry of a judgment before issuing a Writ of Restitution. In the event that the court does not wait, the Sheriff's Office will wait the 48 hours before serving or posting (C.R.S. 13-40-122). Once the court issues a Writ of Restitution, then the landlord must bring it to the Civil Division of the sheriff's office for execution. Only sheriff's deputies may execute the Writ of Restitution that actually evicts the tenant. The plaintiff/agent must bring the Writ of Restitution (2 copies), and Notice of Judgment (when evicting a mobile home from a mobile home park) to the Civil Section of the Sheriff's Office. The Civil deputy will schedule the next available appointment to evict the tenants. Please be aware that there can be a waiting period of several weeks before the Civil Division can complete your eviction. The issuing court must wait 48 hours after entry of a judgment before issuing a Writ of Restitution (if they fail to do so the Sheriff will wait the 48 hours before serving or posting) 13-40-122. In the case of Writ of Restitution on mobile homes, 38-12-208, the court can immediately issue the Writ of Restitution, but the Sheriff may not serve the writ less than 48 hours after the Court's entry of judgment.
  - a. A sheriff's deputy will serve or post the Notice of Writ of Restitution with a copy of the Writ of Restitution that contains the eviction date set to return and execute the writ. The eviction is actually scheduled for the first *available* date. This increases the likelihood that the tenant(s) will vacate the premises in the time prior to the appointment set to execute the writ and the tenants are able to avoid removal by the

Sheriff's Office. A sheriff's deputy will respond on the eviction date scheduled with the plaintiff/agent. In the event that the tenant moves out before the scheduled eviction date, please contact the Civil Division at (970) 870-5527 or 879-1090 to cancel the eviction. This will allow the Sheriff's deputy to use the time constructively and avoid additional costs incurred should the sheriff's deputy respond to the premises and no notice of cancellation provided. **Note: If the landlord and the tenant reach an agreement that makes the eviction unnecessary (i.e., the landlord will allow the tenant to store the property on the premises), please let the sheriff's office know.**

- b.** The sheriff's office requires the plaintiff/agent 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. Plaintiff/agent is requested to consider storage of the evicted tenant's property until the tenant makes arrangements to remove the property. This avoids a large grouping of belongings adjacent to the premises. Should you desire information regarding landlord liens, please see the landlord lien information on the website. The plaintiff/agent is required to provide enough manpower to remove all belongings within one hour (when possible) at his own expense. A sheriff's deputy will stand by while the premises are cleared.
- c.** Local jurisdiction Animal Control will be contacted to impound any animal abandoned at the premises.
- d.** Property removed from any residence deemed to be a danger to the public will be impounded by the Sheriff's deputy (firearms, fuels, etc.).

RCSO Service Fees (Approximate):

The Sheriff's Office charges fees for service of civil process and mileage depending on the location of the eviction premises. Total costs for the eviction itself usually do not exceed \$200. The service charges are as follows:

Notice to Quit/Demand: (3-day notice): \$35 plus mileage

Summons & Complaint: \$35 per tenant served plus mileage

Writ of Restitution: \$60 plus mileage

Notice of Judgment (mobile home): \$35

Deputy time during eviction: Deputy's hourly rate (\$40.50/hr) plus mileage

Sheriff's Report & Return: \$60

Mileage is charged per round trip to the premises and depends on the physical address.

Mobile Homes:

In the case of a mobile home eviction from a mobile home park for nonpayment of rent, C.R.S. 38-12-204(1) allows the tenant five days to remove the mobile home after the written notice is served or posted; there are no express requirements for the contents of this notice. In the case of a Writ of Restitution on a mobile home, the court can immediately issue the Writ of Restitution, but the sheriff may not serve the writ less than 48 hours after the court's entry of judgment (C.R.S. 38-12-308). The sheriff's office will need to serve a Notice of Judgment with the expected date of removal. The Writ of Restitution may contain the following language: "This Writ of Restitution requires the removal of a mobile home from the premises, pursuant to C.R.S. § 38-12-208, or the mobile home may be left in place if the plaintiff should elect to store the mobile home on-site." This allows for the mobile home to remain on-site if Plaintiff is not able to move the mobile home immediately upon execution of the writ.

Removal of a mobile home requires the landlord to arrange for a tower and qualified personnel to remove skirting and make the needed disconnection at the landlord's expense, if the tenant fails to do so, prior to the eviction date. No mobile home can be towed without meeting Colorado state statutes applying to movement of mobile homes on public roadways. The landlord is also responsible for having a specific location to store the mobile home. Mobile homes may not be placed on the side of public roadways.

A sheriff's deputy will serve or post the Writ of Restitution and Notice of Judgment with a date set in accordance with availability on the Sheriff's calendar and with the plaintiff/agent to execute the writ. The plaintiff/agent is given the actual date which is the first available on our eviction schedule at which time the mobile home should be prepared to be moved according to the instruction outlined above and in compliance with the applicable statute.