

Landlord News

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NEW DOMESTIC VIOLENCE LAW IMPACTS YOUR RIGHTS

The new domestic violence law became effective July 1, 2005. The new law grants domestic violence victims certain rights by



amending Colorado Revised Statutes (C.R.S.) § 13-40-104, § 13-40-107.5, § 38-12-402. Generally, the new law grants domestic violence victims significantly more rights in defending eviction actions and terminating lease agreements, and creates new obligations

for property managers.

WHAT IS DOMESTIC VIOLENCE AND ABUSE?

C.R.S. § 18-6-800.3 defines domestic violence as "an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. 'Domestic violence' also includes any other crime against a person or against property or any municipal ordinance violation against a person or against property, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship." The statute further defines an intimate relationship as "a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time."

C.R.S. § 13-14-101 defines domestic abuse as "any act or threatened act of violence that is committed by any person against another person to whom the actor is currently or was formerly

related, or with whom the actor is living or has lived in the same domicile, or with whom the actor is involved or has been involved in an intimate relationship. 'Domestic abuse' may also include any act or threatened act of violence against the minor children of either of the parties."

The definition of domestic violence and domestic abuse is broad, and encompasses many types of relationships. Domestic violence or abuse occurs any time there is an act of violence or threat of violence between two people who are intimate or share the same residence. Therefore, the new law can even apply to roommates.

APPLICABILITY OF THE NEW LAWS

The new laws apply only to residential leases and renewals entered into July 1, 2005 or later, and do not apply to commercial leases or leases entered into before this date. The new law specifically gives rights to residents and lessees, but does not mention occupant rights. In addition, the new law does not apply to nonpayment of rent cases. It does apply to compliance cases, subsequent violation cases and substantial violation cases.

THE CONNECTION WITH EVICTIONS

Under C.R.S. § 13-40-104, an eviction action cannot be brought against a resident or lessee when they are the documented victims of domestic violence, and the basis for the eviction is related to or connected with the domestic violence incident. You cannot evict someone for being a victim of domestic violence or abuse, if you are basing their eviction on any breach of their lease which stems or

flows from the domestic incident. For leases provide and their refrain from boisterous



violence example, most that a resident guests shall making loud or noise, or any

other objectionable behavior. Let's say there is a
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domestic violence or abuse incident between resident and resident's spouse resulting in a police call. The incident is extremely loud and disturbs the neighbors. You post the resident with demand for compliance or possession. Under the new law, the resident would not be found in violation of their lease if they could provide the landlord with a police report of the incident citing domestic violence or abuse or if the resident had obtained a valid protection order against the perpetrator.

Under C.R.S. § 13-40-107.5 (the substantial violation statute), the landlord shall not have a basis for possession under this section if resident



or lessee is the victim of domestic violence or abuse, which domestic violence or abuse was the cause of or resulted in the alleged substantial violation and the incident has been documented by a police report or a valid protection order. For example, most leases have crime free

addendums that provide that residents, occupants and guests agree not to engage in, permit or facilitate criminal activity on or near the property. . .". Under normal circumstances under a crime free drug free addendum, you can evict the resident if the resident, the resident's guest or occupant gets arrested for any crime. Under the new law, if co-resident, or a guest or occupant gets arrested for domestic violence or abuse against the resident, that arrest cannot be used as a basis for an eviction against the resident.

Nothing in either statute prevents a landlord from seeking judgment against the resident or lessee who perpetrated the violence or abuse. As a practical matter, this portion of the statute is not helpful to you. Even if a judgment enters against the perpetrating resident, it would be very difficult to do a physical eviction on that resident. This is because the sheriff's office would not do an eviction because the judgment was not against the entire property, and therefore the sheriff's office would refuse to act on the writ of restitution. However, it may prove to be helpful if the victim of the domestic violence or abuse is also a perpetrator himself or herself. The argument could potentially be made that the



statutes allow for evictions on perpetrators, therefore even though they are victims of domestic violence or abuse, they would also be perpetrators and subject to an eviction under this portion of the statutes.

DOCUMENTATION AND LEASE TERMINATION

Residents must provide documentation of the domestic violence or abuse to invoke the protection of the new law. Only a police report or a valid civil or emergency protection order is acceptable documentation.



If a resident documents the situation, a resident can terminate their rental or lease agreement if they notify the landlord in writing that they are moving because they fear imminent danger for themselves or a child. If the documentation is a police report, the police must have issued the report within the prior sixty days of the request for termination. This time limitation prevents a resident from tucking a police report away for later use. The 60 day limitation does not explicitly apply to valid protection order. However, arguably the same 60 day limitation would apply but the lack of specific language is problematic.

This law could potentially give residents carte blanche to terminate their leases. Residents frequently allow violations or waive altogether protection orders when they reconcile with the abuser either temporarily or permanently. A resident could have a protection order against their spouse, reconcile, and then use the protection order as a way out of their lease. The potential arguments against residents using this "escape" route are that the resident has to be moving because they fear imminent danger and the protection order should be a valid enforceable protection order. Of course, litigating this issue will cost you more money and proving that someone is not in imminent danger may be difficult to prove, as would proving a protection order had been waived and therefore no longer valid. The statute itself states that the resident is not authorized to terminate their lease solely because they are a victim of domestic violence or abuse. However, we anticipate a wave, hopefully not a tidal wave, of residents who will try and use this law to terminate their lease, even if they are not in immediate danger of domestic violence or abuse. Our anticipation is based on the numerous calls that we have already received from clients dealing with resident requests to terminate their leases based on the new law.

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The new law is also problematic because of the "lease break" fee it imposes on residents. Under the statute, if a resident invokes their right to break the lease, then the resident is responsible for one month's rent following their vacating the property. The one month's rent is due and payable within ninety days after the resident has vacated the property. The statute does not specify the month that the resident owes. Residents might argue that they vacated in the middle of the month, so they only owe you through the middle of the next month instead of the full month's rent. For example, if the rent is \$500.00 per month and the resident moves out on the 7th of the previous month, the resident might argue that they only owe \$112.90 for the next month because they would only owe for the seven days of the following month. It is our opinion that the resident would owe for the full following month's rent because the legislature used the words "one month period," not thirty days. Therefore, the argument could be made that they were implying a calendar month, not merely thirty days. However, you will only know how the Courts will interpret the statute at the time some rulings are issued.

The new law gives the resident ninety days to pay you the one month's rent owed as a "lease break" fee. The 90 day period is not equal to the 60 day security deposit accounting law. The security deposit statute gives you thirty to sixty days to return the security deposit and provide an accounting for the security deposit. The new statute does allow the landlord to retain the security deposit for one month's rent, but only until the rent is paid or ninety days has past. You now have to keep track of the initial security deposit deadline, as well as the ninety-day deadline. If you initially kept the rent amount, but the resident paid the amount owed on the eighty-ninth day, then you would have to refund the portion of the security deposit you had retained for the rent, thereby potentially extending your liability for treble damages.

The new law severely complicates security deposit accounting. The statute does not specify a time period for the refund of any amounts withheld pursuant to the statute if the resident eventually pays the "one months rent". The statute only allows collection of the one month's rent "if you have experienced and documented damages equal to at least one month's rent as a result of the resident terminated due to domestic violence. The statute overrides lease break fee provisions. The collective effect of all of these

provisions is to create significant potential problems and liability over security deposit accounting. For these reasons, whenever you have a domestic violence situation, you will have to take great care not to run afoul of both the new law and the security deposit law. In these situations, when you generate the resident's security deposit disposition report, you must be very careful in the language you choose to incorporate into the report. For those of you who automatically generate disposition reports and have lease break fees, you will have to make sure that your lease break fees is not being automatically generated on the security deposit report, and not on the report at all. You may want to consider incorporating language straight from the new statute into the disposition report, and should probably have an attorney review the letter before it is mailed out.

Finally, the current market value for security deposits is usually much lower than one month's rent. Therefore, even if you retained the security deposit in lieu of the future month owed, it would not be enough to cover the total rent amount. Many times you simply never recover this money. Thus, the statute probably will ultimately have the effect of shifting at least some of the costs associated with domestic violence to you.

CONCLUSION

The new law is designed to help those who are unfortunately involved in domestic violence. This is a worthy goal. However, we are concerned that the new law will be abused by some residents to escape their rental responsibilities. Only time will tell if our concern becomes reality. The new law does drastically change how you will need to close out resident accounts. Hopefully these situations will not arise frequently. However, when they do, you will need to be very aware of the law, and the additional deadlines and accounting requirements.



A perfect summer day is when the sun is shining, the breeze is blowing, the birds are singing, and the lawn mower is broken." -- James Dent

REGISTER FOR THE BASIC EVICTION WORKSHOP NOW

The next regularly scheduled Basic Eviction Workshop taught by HTS Partner Vic Sulzer is on Thursday August 11th at our offices. The primary focus of this workshop is on the basic residential eviction action of eviction for non-payment of rent. Emphasis is on and examples presented to demonstrate the



importance of using the legally correct notice to eliminate any defense against the eviction action. The class covers common mistakes made in filling out and serving the notice which result in defective service and delay in eviction.

Also discussed are the technical defenses most often used by residents including tender, waiver and partial payments. Lease language that works or doesn't work. What do the different types of notices mean, what do they tell a resident and when should you serve more than one notice. Notice to comply vs. notice to quit. When does a resident have the right to cure and when not? Non-monetary evictions (evictions for cause) are reviewed including compliance, subsequent and substantial violations as well as lease termination. Information covered includes the ordering and handling of Writs and the use of Stipulations in the Eviction Process. Participants receive a workbook that includes the material covered and copies of correct Eviction Notices, Writs & Stips and other key topics of interest to multi-family housing professionals. Call and register with Nancy 303-699-3484

We look forward to seeing you at our next Client Luncheon. Make a Reservation today to join us on Friday August 19th at our South Location, Piccolo's. Mark and Vic will give timely information on issues impacting the multi-family housing industry as well as answering your questions.



HISTORY IS INTERESTING

How many times do you hear someone say it used to be better or I remember the good old days when? Well, lets take a look at the "really good old days" of the 1500's. Here are some interesting facts and historical origins of practices and phrases still in use today.

Most people got married in June because they took their yearly bath in May, and still smelled pretty good by June. But they were already starting to smell by June, so brides carried a bouquet of flowers to hide

the body odor. *Hence the custom today of carrying a bouquet when getting married.*

Baths consisted of a big tub filled with hot water. The man of the house had the privilege of the nice clean water, then the sons, the women and finally the children. Last of all the babies. By then the water was so dirty you could actually lose someone in it. Remember it was a big tub. *Hence the saying, "Don't throw the baby out with the bath water."*

Houses had thatched roofs piled high with straw with no wood underneath. It was the best place for animals to get warm, so all the cats and other small animals including mice and bugs lived in the roof. When it rained it became very slippery and sometimes the animals would slip and fall off of the roof. *Hence the saying "It's raining cats and dogs"!*

The floor was dirt. Only the wealthy had something other than dirt. *Hence the saying "dirt poor."* The wealthy had slate floors that would get slippery in the winter when wet, so they spread thresh (straw) on floor to help keep their footing. As the winter wore on, they added more thresh until when you opened the door it would all start slipping outside. A piece of wood was placed in the entranceway. *Hence the saying a "thresh hold."*

In those old days, they cooked in the kitchen with a big kettle that always hung over the fire. Sometimes they could obtain pork, which made them feel quite special. When visitors came over, they would hang up their bacon to show off. *It was a sign of wealth that a man could "bring home the bacon."* They would cut off a little to share with guests and would all sit around and *"chew the fat."*

Those with money had plates made of pewter. Food with high acid content caused some of the lead to leach onto the food, causing lead poisoning death. *This happened most often with tomatoes, so for the next 400 years or so, tomatoes were considered poisonous.*

Bread was divided according to status. Workers got the burnt bottom of the loaf, the family got the middle, and guests got the top, or *"upper crust."*

Lead cups were used to drink ale or whisky. A combination that sometimes knocked the imbibers out for a couple of days. They would be taken for dead, prepared for burial and laid out on the kitchen table for a couple of days. The family would gather around and eat and drink and wait and see if they would wake up. *Hence the custom of holding a "wake."*

Land in England was limited and local folks started running out of places to bury people. So they would dig up coffins, take the bones to a *"bone-house"* and reuse the grave. When reopening coffins, 1 out of 25 coffins were found to have scratch marks on the inside and they realized they had been burying people alive. So they would tie a string on the wrist of the corpse, lead it through the coffin and up through the ground and tie it to a bell. Someone would have to sit out in the graveyard all night (*the "graveyard shift"*) to listen for the bell; *thus, someone could be "saved by the bell" or was considered a "dead ringer."*

And that's the truth... Now, whoever said that History was boring !!! Or that the good old days were really that good. Educate someone...Share these facts with a friend!