

Hopkins • Tschetter • Sulzer
Attorneys and Counselors at Law

Landlord News

2821 South Parker Road, Pavilion Tower II Suite 228, Aurora, Colorado 80014

htsnews@htspc.com

www.htspc.com

Denver Phone 303.766.8004

FAX Completed Eviction Forms To: 303.766.1181 or 303.766.1819

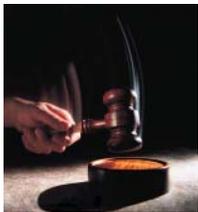
Colorado Springs Phone 719.550.8004

FAX Completed Eviction Forms To: 719.227.1181

RESTRAINING ORDERS WHAT DO YOU KNOW

Restraining orders, as an issue, frequently come up in the rental industry. One resident has a restraining order against his ex-girlfriend; another resident has a restraining order against the property manager; the management company needs a restraining order against a former resident. This month we demystify, clarify, and discuss the key issues surrounding restraining orders.

Restraining orders are no longer called restraining orders. Restraining orders are now called "civil protection orders" ("CPOs"). The person applying for a CPO is called the petitioner. The person being restrained is called the respondent.



Anybody can obtain a CPO. Recent changes in the law allow management companies and owners to be petitioners and get a CPO just like an individual. A **Permanent CPO** can protect the property as well as staff and other residents. We have obtained permanent CPOs where the petitioners have been the management companies, the community, the onsite management team, and other residents.

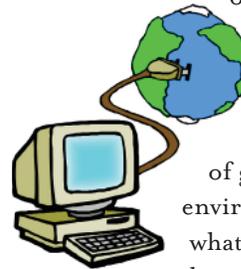
A **Temporary CPO** is easy to obtain. The burden of proof is very low. You only need to allege facts that demonstrate that you were injured, another person threatened to injure you with bodily harm, or another person molested you. These standards are discussed in greater detail below. You make these allegations in a verified complaint. A verified complaint is a written statement as to what happened and why you are entitled to a CPO. A complaint is "verified" when you state under penalty of perjury that the allegations made by you are true.

As a general rule, you do not need us to draft the verified complaint when you seek a CPO against a resident or former resident. Denver County has a designated CPO courtroom. You go to the court, and the clerk drafts the Temporary CPO, and the Court promptly

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FIRM WEBSITE DEBUTS NEW LOOK DELIVERS MORE FOR CLIENTS

Have you www.htspc.com lately? Check out the new look and improved navigation of the Firm's redesigned website. The new site includes all of the great features that have existed since the original launch over two years ago but now also includes new pages, updated navigational tools and an overall client friendly web environment.



While providing greatly expanded information pages, resources and interactive forms, the fresh new look of the site has been designed with lots of graphics to create a visually pleasing environment. If you use the site, let us know what you think of the new look and, if you haven't yet utilized this excellent Firm resource, log on today and let us know how you like it.



OMNI EMPLOYEE GETS MORE THAN JUST A PICNIC

And the winner is.... Kari Starr! The lucky winner of the HTS iPod gift donation at the Annual Omni Apartment Communities Picnic is a leasing professional at the Sommerset Gardens apartment complex in Aurora. The 80GB iPod has digital audio capacity, photo viewer, game player and has the capability to store 20,000 songs, 25,000 pictures and holds up to 100 hours of video. New to the world of iPods, Kari is looking forward to exploring the many options that her newly acquired techno-prize can do. Enjoy your iPod Kari!



Kari shows off iPod prize

A veteran multi-family housing industry professional Ms. Starr has the skills and the experience to deal with the most complex situations that confront her every day. Kari's enthusiasm and commitment to her job is evidenced by the fact that she has been at Sommerset Gardens since 2001.

RESTRAINING ORDERS WHAT DO YOU KNOW CONTINUED FROM PAGE 1

signs it. You serve it. Some other courts have the same process. In other courts, you have to fill out the form on your own. Whether the clerk assists you or you fill out the verified complaint on your own, we are always available for a quick consultation to recommend appropriate language that meets the required legal burden based on your facts and circumstances. You may also download the



CPO paperwork from our website in order to familiarize yourself with the form before going to a particular court. The most commonly used county form is available on our website. The form for all county

courts should be substantially similar. (www.htspc.com then link to documents-general)

While not a complex legal document, some clients prefer that we handle all legal matters for them. We are always available to assist with CPO matters. We do charge hourly for these services. Fees vary, but \$500.00 is a solid benchmark. Fees can be substantially more for complicated CPO matters. If you want us to draft the verified complaint only, fees are usually about the same as a standard eviction. In accordance with our standard billing practices, initial consultations for existing firm clients are at no cost.

In jurisdictions where you are required to complete the verified complaint, after filing, the judge reviews the complaint. You appear before the judge. The judge puts you under oath. The judge asks you if the allegations in the verified complaint are true, or other brief questions as to the grounds for the CPO. If the verified complaint meets the requirements, and your testimony before the judge supports the allegations, the court grants you a **temporary CPO**. The court will only deny a request for a temporary CPO if the allegations of the verified complaint state insufficient grounds, or your sworn testimony does not support the allegations made in the verified complaint. A temporary CPO proceeding is conducted *ex parte*. *Ex parte* means that the respondent is not notified of the hearing and they are not given/allowed the opportunity to attend the hearing.



Upon entry of the temporary CPO, the Court will designate a no-contact order restraining the respondent. The temporary CPO will specifically state locations from which the restrained party is prohibited from, including how many feet the respondent (restrained party) must stay away from specific places and persons, etc. The respondent must stay 100 feet away from the petitioner, and from the petitioner's home and

place of employment.

The Court then schedules a Permanent Civil Protection Order Hearing within fourteen days. The temporary CPO along with a citation to appear must be served upon the respondent prior to the permanent CPO hearing. Ideally, it should be served as soon as possible. The County Sheriff, or a private process server may serve the temporary CPO. The permanent CPO hearing gives the respondent an opportunity to dispute the allegations



of the verified complaint. If the respondent fails to appear at the permanent CPO hearing, the court enters a permanent CPO by default, and the temporary CPO becomes a permanent CPO. Petitioners are given verified copies of both temporary and permanent CPOs to give to the

police or local law enforcement in case the respondent violates either order.

If the grounds for a CPO are bodily injury, the court almost always enters a permanent CPO upon proof of the bodily injury. In this type of case, frequently the police have charged the respondent with committing the crime of battery, assault, or both. Other CPO cases involving residents are not so clear-cut.

If the grounds for a CPO are threat of bodily injury, you will need to present a strong or compelling case to get a permanent CPO. You need to present testimony about the context of the threats, including establishing a vivid image of what transpired. This includes describing, in specific detail, how the resident threatened you, what body language the resident used, and how scared or intimidated you felt. Your reaction to specific threats is critical. We lost one case because the property manager testified that despite the resident threatening to kick his ass, the manager wasn't really scared. Failing to admit you were scared or acting macho will jeopardize or lose a case.



Judges are looking for an imminent harm or a threat of an imminent harm. Thus, your credible subjective reaction (fear) is important and must be articulated at hearing. Judges can sniff out when someone is using a restraining order as revenge, or other improper motive, or when the totality of actions does not justify a CPO.

Judges also evaluate and weigh your behavior to determine if you provoked the respondent. One case involving a former property employee was lost when the property manager admitted, in response to the judge's questions, that she had been angry with the resident (former employee) when she fired him. The judge

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RESTRAINING ORDERS WHAT DO YOU KNOW CONTINUED FROM PAGE 2

found the resident engaged in the behavior alleged by the property manager, but ruled that this was a one time incident, which was the result of a heated interaction between both parties, and there was no imminent harm. Ideally, you need to present evidence that the respondent is dangerous and is capable of acting this way in the future. Isolated incidents can be tough to win on, but if the threats are real and dangerous, we have almost always won.

If the grounds for a CPO are molestation (harassment), you will need to show an ongoing pattern and practice of major harassment. A few stray remarks and general stalking or isolated odd behavior are usually not enough. The behavior needs to be alarming to the average person and continuous. CPOs grounded on a molestation fact pattern are by far the most difficult to win.

We recommend counsel at permanent CPO hearings because a solid cross-examination of the respondent is the difference between winning and losing. Property managers are not skilled in the art of cross-examination. The judge wants the dangerous propensities of the respondent established. This is most effectively done through solid cross-examination of the respondent. For example, one case



involved a former resident who kept driving by the property and making threatening gestures, including simulating firing a gun. This unnerved the property manager, but probably by itself would not have been enough to win the case. On cross-examination, we brought up the former resident's criminal records, and he blew up on the stand to the point he started cussing out the attorney questioning him. The Magistrate told the respondent that he might have won the hearing if he hadn't blown up on the stand. Up until that point, the Magistrate was not sure if he totally believed our client. Once the former resident lost it on the stand, the Magistrate completely believed our client and threatened to have the guy restrained by the Deputies in the courthouse if he did not calm down.

Even if you win a permanent CPO hearing, and are granted a permanent CPO, you may not always get everything sought at permanent hearing. For example, the judge may rule that a former resident is restrained from coming within 100 feet of the property manager, and the management office, but is still allowed to visit friends at the property. Sometimes residents counter-petition for restraining orders against managers, and they have been granted. But this is highly unusual and requires

major evidence that the manager is hostile and acts like a Nazi concentration camp guard. In one case, the judge ruled our client molested the tenants, because she spied on them all the time, followed them, yelled at them, wrote three days up for everything, and he felt it was outrageous conduct.

Restraining order issues also arise in a variety of other contexts. If one resident has a restraining order against another resident (prevents the restrained resident from living in the unit), the restrained resident is still liable for rent and all other obligations of the lease. The restraining order does not alleviate any lease obligations.



Frequently one resident asks you to lock out another resident because the resident has a permanent CPO against the other resident. You have no obligation to enforce a CPO. If a resident has a protection order against another co-resident, their remedy is to call the police (not to require you to change the locks) if the co-resident violates the order by returning to the premises. Ideally, your lease should resolve this potential problem. Your lease should give you the right to lock out any restrained resident without relieving them from liability.

If the issue is not covered in your lease, you don't have the right to lock out a restrained co-resident. However, this decision should be made based on applicable risk factors. If you lock out the restrained resident, the worst-case scenario is a lawsuit for wrongful lockout, which is probably unlikely by a restrained resident. If you don't change the locks, the worst-case scenario would be a wrongful death suit if the restrained individual returns to the premises with a gun and uses it. In this pick your poison scenario, most of the time you would be better off facing a wrongful lockout suit. The fact that the resident was restrained is a solid defense to a lockout suit. Defending a wrongful death suit or a lawsuit for bodily harm would be more difficult, and you may be facing a huge potential verdict. The resident with the protection order or his estate would argue that the damages would have not occurred, but for your failure to change the locks.



IMPORTANT OCTOBER DATES

- October 8th - Federal Holiday All Courts Closed (Except Denver)
- October 9th - Basic Evictions Workshop
- October 19th - South Client Luncheon

HTS SET TO DEFEND CHILI CHAMPIONSHIP

HTS was awarded the first place trophy for our Red Chili at the AAMD Chili Cook-Off in 2005 and 2006. With the 2007 Chili competition set to take place on October 13th, the Firm culinary whizzes are already planning their strategy to defend their hard won reputation for having the best red chili.



In addition to our Red Chili win, the Firm also received an honorable mention for our excellent Green Chili, which is the specialty of our Senior Evictions Supervisor Tracy Gallegos.

Once again we will all gather to prepare the Chili together the week of the event because our entries in the Cook-Off are truly a team effort. Be sure and stop by our booth and say hi and sample the Hopkins Tschetter Sulzer Award Winning Chili.

2007 CLIENT LUNCHEONS COMING TO END

The Firm has been excited about the attendance of clients at our monthly client luncheons during this year. Turn out for this monthly free event has grown all year with the last several luncheons hitting record numbers. Our commitment to sponsor the luncheons has been reinforced by the positive feedback we continue to receive from our clients who express appreciation to be able hear industry updates and key information while having the opportunity to interact with peers in the multi-family housing industry and meet the Firm Attorney's and Staff.

The last luncheon of 2007 will be at our South location on Friday October 19th. If you haven't signed up, now would be a good time to do so. **You can register on line at our website www.htspc.com or call Matt at 303-699-3484 or e-mail Matt at matt@htspc.com.** Please check out the new 2008 Client Luncheon schedule listed below and mark them on your calendar.

2008 Client Luncheon Schedule

JANUARY	18TH	NORTH
FEBRUARY	22ND	SOUTH
MARCH	21ST	NORTH
APRIL	18TH	SOUTH
MAY	16TH	NORTH
JUNE	20TH	SOUTH
JULY	18TH	NORTH
AUGUST	15TH	SOUTH
SEPTEMBER	19TH	NORTH
OCTOBER	17TH	SOUTH

LAST BASIC EVICTION WORKSHOP FOR YEAR SCHEDULED IN OCT

The last Basic Eviction Workshop of 2007 will be held on Tuesday October 9th. There is still available space for clients who would like to attend this workshop, which is taught by Partner Vic Sulzer. The workshop information can be found on our website Events Link. You can register on line at our website www.htspc.com or call Matt at 303-699-3484 or e-mail Matt at matt@htspc.com.

Listed below is a 2008 Schedule of Workshops that the Firm will be teaching in the coming year. For information on the content of the classes please go to our Education link on our website and check out the information on the workshops.

2008 Workshop Schedule

JAN	17TH	BASIC FAIR HOUSING
FEB	12TH	BASIC EVICTIONS
MARCH	13TH	ADVANCED FAIR HOUSING
APRIL	17TH	NON-MONETARY EVICTIONS
MAY	22TH	BASIC FAIR HOUSING
JUNE	19TH	BASIC EVICTIONS
JULY	17TH	ADVANCED FAIR HOUSING
AUGUST	12TH	NON-MONETARY EVICTIONS
SEPT	18TH	BASIC FAIR HOUSING
OCT	14TH	BASIC EVICTIONS
NOV	13TH	ADVANCED FAIR HOUSING

DON'T MISS THIS FIRM EVENT

Before you know it we will have passed Columbus Day and be racing toward Halloween followed pretty closely by Thanksgiving. And you know what comes after Turkey Day. It is PARTY DAY! Better known at the Firm as the Client Appreciation Holiday Party. This not to be missed pre-holiday event hosted by the Firm is a tradition of many years and is specifically held to express our appreciation to our great clients.



Clear your calendar and mark Friday November 30th with a great big smiley face and RSVP NOW to let us know you will be joining the HTS team to party and kick-off the holiday season with us. When the Firm hosts a party you can count on Great Fun, Terrific Food, Excellent Libations and Wonderful Door Prizes.

We guarantee a great time for all. You can RSVP on line at our website www.htspc.com or call Matt at 303-699-3484 or e-mail Matt at matt@htspc.com.

