GENERAL ASSEMBLY PASSES LAW SUPPLEMENTING RIGHTS OF DOMESTIC VIOLENCE VICTIMS

In 2005, the General Assembly passed a domestic violence law to protect domestic violence victims. The law was called "Victims of Domestic Violence." The 2005 law granted domestic violence victims significant rights in defending eviction actions based on domestic violence, as well as rights to terminate lease agreements, and created new obligations for landlords. In the 2017 legislative session, the Colorado General Assembly amended the 2005 law. The 2017 law is called "Victims Of Unlawful Sexual Behavior, Stalking, Domestic Violence, And Domestic Abuse." The 2017 law extended the protections covering domestic violence victims to sexual assault victims and stalking victims and added some new requirements. The new law became effective on June 1, 2017, when the Governor signed the bill. This month we take a comprehensive look at Colorado domestic violence law that impacts landlords.

For the most part, the 2017 law supplements the 2005 law. Specifically, the 2017 legislation adds the categories of unlawful sexual behavior ("USB") and stalking to the statutory framework. The 2005 law covered Domestic Violence ("DV") and Domestic Abuse ("DA"). The law now covers USB, stalking, DV, and DA. Rental agreements now cannot contain provisions allowing a landlord to terminate a tenant's lease, or impose a penalty on a tenant if a tenant calls the police for DV, DA, USB, or stalking. The law further provides that a tenant may not waive either verbally or in a lease the tenant's right to call the police or other emergency assistance.

DV, DA, USB, and stalking are broad terms. Domestic violence (DV) is "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."

Domestic abuse (DA) is "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 legal definition of stalking is more complicated. Generally, stalking means to either directly or indirectly through another person make a credible threat to another person, and in connection with the threat, repeatedly follow, approach, contact, or place under surveillance that person, a member of that person's immediate family, or someone with whom that person has or has had a continuing relationship. Stalking can also include making a credible threat and, in connection with the threat, repeatedly communicate with that person regardless of whether a conversation

ensues. Stalking also includes repeatedly following, approaching, contacting, surveillancing, or communicating with another person in a manner that would cause a reasonable person to suffer serious emotional distress and does cause that person to suffer serious emotional distress. A victim does not need to show that she received professional treatment or counseling to prove serious emotional distress.

The legal definition of Unlawful Sexual Behavior (USB) is lengthier than stalking. Generally, USB includes any form of sexual assault and unlawful sexual contact. USB also includes all sexual crimes against a child. Overall, the definitions of and the range of conduct considered to be domestic violence, domestic abuse, stalking, and unlawful sexual behavior is extremely broad and encompasses many types of relationships. The law covers any act of violence or threat of violence between two people who are intimate or share the same residence, including roommates. Because of the potentially broad-ranging coverage of the law, we strongly advise to consult us before taking action, and especially before determining the law does not apply to a given situation.

The law prevents landlords from evicting tenants in certain cases. The 2005 law amended the Colorado eviction statute to prevent a landlord from evicting a tenant 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. Thus, a landlord cannot evict a tenant for being a victim of domestic violence or abuse, even if the domestic violence episode is a breach of the lease. For example, most leases provide that a tenant shall refrain from making loud or boisterous noise, or any other objectionable behavior. If there is a domestic violence or abuse incident between the tenant and the tenant's spouse that disturbs neighbors and results in a police call, you cannot evict the tenant victim because of the incident, if the tenant asserts domestic violence-related rights. You can move forward if the tenant has not asserted DV rights.

The 2005 domestic violence changes to the eviction statute covered more than disturbances. The eviction law addressing domestic violence specifically prevents landlords from evicting domestic victims even if the incident is a crime. For example, most leases have crime-free addendums that provide that tenants, 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 tenant if the tenant, the tenant's guest or occupant gets arrested for any crime. Under the law, if co-tenant or a guest or occupant gets arrested for domestic violence or abuse against a tenant victim, that arrest cannot be used as a basis for an eviction against the tenant victim.

Interestingly, while the 2017 law amended the main statute granting protection to domestic violence and abuse victims, the law did not amend the two sections of the Colorado eviction act that refer to domestic violence and domestic abuse. These two sections of the Colorado eviction statute reiterate these victims are protected against eviction. However, the main amendment to the 2005 law makes it clear that a landlord may not evict a tenant who is a victim of USB, stalking, DV, or DA. Specifically, the law provides that nothing in the law authorizes the termination of tenancy and eviction of a residential tenant solely because the residential tenant is the victim of USB, stalking, DV, or DA.

Given these protections, how does a landlord handle a domestic episode? Assuming that the victim has moved out (asked to be let out), a landlord is free to bring an eviction against the perpetrator to recover possession of the unit. The law does not prevent a landlord from seeking judgment against the tenant who perpetrated the violence or abuse. A scenario where a tenant is claiming victim status, but won't move out, and the perpetrator remains is much more complicated. Obviously, in this scenario, a landlord is concerned about a repeat episode or other tenants being disturbed and wanting out of their leases. If you encounter this scenario, you should always contact us to obtain a thorough analysis of the situation.

You should also contact us if a domestic situation involves warranty of habitability related issues. Colorado landlords have a legal duty to provide habitable premises. Under the warranty of habitability law, if a tenant's misconduct causes the premises to be uninhabitable, the landlord has not violated the warranty of habitability. However, if property damage is caused by domestic violence, then the conduct is not deemed to be tenant misconduct. If you contact us when this type of scenario comes up, we can walk you through what can be a complicated scenario.

Under the 2005 law, tenant victims of DV and DA had a right to terminate their lease obligations. The new law expands the right of a victim to terminate their lease obligations to include USB and stalking victims. To terminate their lease obligation, a tenant must notify the landlord in writing that the tenant is a victim, provide sufficient evidence, and that the tenant is seeking to vacate the unit due to fear of imminent danger to the tenant or the tenant's children.

If a tenant (victim) meets these requirements, then the tenant may vacate without further obligation except to pay one month's rent. The tenant has ninety days after vacating to pay the one month's rent. A landlord has no obligation to refund the security deposit until the tenant has paid the one month's rent. Under the law, a landlord and tenant may use any amounts owed to the other to offset costs for the one month's rent or the security deposit. The law specifically provides a landlord and tenant may offset despite any requirements of the security deposit act. However, the accounting provisions of the law only apply if tenant owes damages equal to at least one month's rent as a result of the tenant's early termination of the agreement.

We frequently see two accounting-related mistakes in domestic scenarios. Many times domestic scenarios involve lease breaks. Lease breaks mean a large balance can be owed. The law is clear that the victim is off the hook. However, communities still erroneously send the victim to collections. Additionally, communities simply overlook or miss the security deposit deadline on cases involving domestic violence. When a tenant is a victim, it impacts security deposit accounting. For example, the victim is no longer obligated under the lease, but full damages can be collected from the perpetrator. Most landlords simply haven't given the issue any thought, therefore have no SOP to address. If you don't have a SOP, at a minimum, your teams need to know that security deposit issues need to be evaluated when a tenant notifies you of a domestic issue, and you probably will have to manually generate one or more move out statements.

The new law expands the acceptable evidence of DV, DA, USB, and stalking. Under the 2005 law, sufficient proof meant either a police report issued in the last sixty days or a valid protection order. The expanded proof of DV, DA, or USB now means a police report or protection order, but also includes a written statement from a medical professional or application assistant who has

examined or consulted with the victim, and confirms the DV, DA, or USB. Stalking can be proven by a police report, protection order, or by an application assistant, but not through a medical professional.

The law is not as clear as it should be regarding who is a "medical professional". Based on the language, a medical professional would be anyone licensed as a doctor or a nurse. Colorado has established an address confidentiality program to assist persons attempting to escape from actual or threatened domestic violence, a sexual offense, or stalking. Application assistant means a person designated by the executive director of the Colorado address confidentiality program to assist an applicant in the preparation of an application to participate in the address confidentiality program.

The 2017 law imposed a significant new requirement on landlords. Specifically, the law now prevents landlords from disclosing, without the tenant's consent, that a tenant was a victim of domestic violence. Additionally, the law also prohibits landlords from disclosing a tenant's new address without the tenant victim's consent. In some instances, a landlord may be legally required to disclose either the fact that a tenant was a victim or the tenant victim's new address. Under these circumstances, a landlord could lawfully disclose the information. Onsite teams need to be trained immediately regarding these legal prohibitions. If an address was disclosed, and the former tenant is injured or killed, the tenant's next of kin may sue alleging that the tenant was harmed because of the address disclosure, which the landlord is legally prohibiting from disclosing.