

# **COLORADO LEGAL REQUIREMENTS FOR HANDLING UNCLAIMED SECURITY DEPOSITS**

Most landlords are familiar with the requirements of the Colorado Security Deposit Act (the “SDA”). However, many landlords don’t know that their legal responsibility for security deposits may continue after a security deposit refund is completed. In addition to the SDA and Colorado Real Estate Commission Rules (“commission rules”), a landlord’s liability for security deposits is governed by the Colorado Unclaimed Property Act (the “UPA”). The UPA kicks in when a security deposit refund check is either returned or not cashed and remains “unclaimed”. The UPA requires landlords to track unclaimed security deposit refunds for five years, to file reports regarding unclaimed security deposits, and to ultimately turn all unclaimed security deposits over to the state of Colorado.

Under the UPA, property is presumed to be abandoned after five years. Security Deposits are defined as intangible property under the UPA and are subject to the UPA’s requirements. Under the UPA, unless subject to an exception, all unclaimed Security Deposits must be turned over. Given the complexity of almost all of the exceptions and the unlikelihood of them applying to a landlord, landlords should comply with the UPA rather than attempting to fall under an exception. However, the small business exception is straightforward and will be applicable to some landlords. If a landlord’s business has less than \$500,000 in annual gross receipts, the landlord is not required to file UPA reports until the aggregate value of the unclaimed property that the landlord holds exceeds \$3,500.

Key terms under the UPA include “holder”, “apparent owner”, and “last known address”. Holder is defined as a person in possession of property that belongs to another. When it comes to security deposits, a holder can be a management company or an owner. As discussed later, management companies do not want to be holders to avoid being subject to the UPA. Apparent owner means the person whose name appears on the records of the holder (landlord) as the person entitled to property held, issued, or owing by the holder. Under the UPA, if you hold unclaimed security deposits of tenants, the tenants are the apparent owners. “Last-known address” means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

Under the UPA, a landlord is responsible for turning over unclaimed security deposits, retaining records, making efforts to return the unclaimed security deposits to the owners, and reporting. Landlords must turn over unclaimed security deposits at the time a landlord files a report. Because security deposits are maintained as cash, turning over means writing a check to the state of Colorado. Landlords are allowed to deduct from unclaimed deposits on an individual basis two percent of the deposit or twenty-five dollars whichever is less.

Under the UPA, landlords must retain copies of reports and supporting financial records for five (5) years after the property becomes reportable. A landlord’s records must indicate the date of last activity or contact with the owners of property (tenants), as well as the last known address, if available. Under Real Estate Commission rules, Brokers are required to keep records

for four years. Given these two requirements, landlords will need to maintain appropriate records for unclaimed security deposits up to ten years.

Under the UPA, a landlord must make efforts to return unclaimed security deposits to tenants prior to turning over to the state and reporting. This requirement is known as the “due diligence” requirement. To meet the due diligence requirement, landlords must send written notice to a tenant with an unclaimed security deposit not more than one hundred and twenty days (120) days prior to reporting. Because reports are due on November 1st of any given year, landlords are required to send the statutory required notice on or after July 4th of any given year. If you report annually, you should calendar sending out required notice every year after July 4th. You should also calendar that reports are due on or before November 1 of each year.

You are only required to send written notice if you have no information that a tenant’s last known address is inaccurate, the tenant’s claim to the security deposit is not barred by the statute of limitations, and the security deposit is fifty dollars or greater. Under the SDA, after a tenant has vacated, a landlord must send a Move-Out Statement (MOS) and a check if a refund is due. A MOS is sometimes referred to as a SODA (Statement of Deposit Account) or a FAS (Final Account Statement). If the tenant’s MOS and refund check were returned as undeliverable, you do not have to send the written notice because you have information showing the tenant’s last known address is inaccurate.

When a landlord receives information indicating an address is inaccurate, this information should be added to a spreadsheet or database as discussed later on in best practices. The statute of limitations for a tenant to file a security deposit claim is six years or one year greater than the five-year turn over requirement under the UPA. While theoretically possible, based on reporting deadlines, it is not very likely that a tenant’s claim will be barred by the statute of limitations at the time a landlord is required to report and turn over an unclaimed security deposit. Thus, landlords shouldn’t take the position that they don’t have to send the required written notice because the tenant’s claim is barred by the statute of limitations.

The most onerous UPA requirement is reporting. Landlords are required to report if they hold unclaimed security deposits unless they meet the small business exception. Reports are due on or before November 1st of any given year for the previous reporting period. A reporting period runs from July 1st to June 30th. Thus, a landlord must report on or after July 1st but before November 1st any security deposit that was abandoned in the proceeding July 1 to June 30th period. To establish applicable dates and calculations, we recommend using the MOS date. For example, a tenant’s MOS is prepared April 30, 2018. The MOS and refund are returned as undeliverable. Under the UPA, the security deposit is considered abandoned on April 30, 2023, or five years after the MOS. April 30 2023, is in the July 1, 2022 to June 30, 2023 reporting period. This unclaimed security deposit would have to be reported by November 1, 2023.

To report, Landlords will have to complete both Form A and Form B. Form A collects information about the “holder”. Form B collects information about the unclaimed property. For detailed reporting requirements see, <http://www.colorado.gov/treasury/gcp/generalreportinginfo.html>. To accurately complete reports, landlords will need to keep track of tenants with unclaimed security deposits, last known addresses, amount of unclaimed deposits, tenant’s social security numbers or TINs, date of last

transaction (MOS date). Landlord's who in good faith timely file reports are relieved from legal liability for a tenant's security deposit. Because reporting can be complicated, Colorado provides both website and telephone support to assist landlords in reporting

Every landlord should know that the penalties for not complying with the UPA are harsh. Under the statute, landlords are liable for eighteen percent interest on the value of all unclaimed property that was not turned over, plus a penalty of twenty-five percent of the value of the property not turned over. Additionally, a landlord is subject to a \$100 per day penalty for each and every day a landlord willfully fails to report, up to five thousand dollars. If a landlord has several thousand dollars in unclaimed security deposits, non-compliance could get expensive quickly.

Every landlord should develop and adopt a systematic plan to track and report unclaimed security deposits. Step one for management companies and brokers who third-party fee manage is to avoid being a holder by diligently complying with the Colorado Security Deposit Act and Real Estate Commission rules for the handling of security deposits. Both the SDA and commission rules require managing agents who are holding security deposits to give tenants written notice, via U.S. first class mail, when a tenant's security deposit is transferred to a successor management company or to the owner. Upon compliance, a holder of a deposit is relieved from further liability. Complying with the SDA and commission rules also has the major benefit of relieving you of having to comply with the UPA because you are no longer holding the security deposit.

Best practices also require simple and appropriate lease language. Every lease should contain language requiring a tenant to provide both you and the U.S. Post Office with a forwarding address. For example, "prior to vacating, Resident shall provide in writing to Owner and the U.S. Postal Service each Resident's individual forwarding or last known address." You should also incorporate reminders to tenants in your notice procedures that they are required to comply with this provision when vacating. When tenants provide forwarding addresses, the amount of "unclaimed security deposits" will be greatly reduced, and thereby significantly decrease your UPA reporting burden.

Finally, best practices dictate the development of a system to track unclaimed security deposits. The system does not need to be complicated. First, download Form B from the state treasurer's office. Form B is the report you will have to complete if a security deposit remains unclaimed for 5 years. Form B can be downloaded at <http://www.colorado.gov/treasury/gcp/images/FormB.pdf>. Use Form B to develop a simple spreadsheet. Enter the column headings from Form B onto your spreadsheet, add any additional columns, and insert some calculation columns, and you have an unclaimed security deposit tracking system. Because your tracking system has all of the information required by Form B, completing the report should be easy. Calculation columns you may want to develop are 5 years from the date of the MOS, the date the due diligence letter needs to be sent, and the date the unclaimed deposit would have to be reported. As discussed above, you may also want to add a column to keep track of any information received that indicates you have an inaccurate address, and when the required written notice to meet due diligence requirements is due.

You will also want to keep any backup documentation such as MOSs, copies of returned unopened mail demonstrating you do not have an accurate address, and copies of required due diligence letters. You should also keep all documents showing compliance with the SDA and commission rules to prove that you are not a holder, and thus don't have to report. If the community is sold or if you lose management, you can forward all of this information to the Owner, or your successor along with a letter explaining that you have complied with applicable law regarding security deposit transfers, you no longer are legally liable for the deposits, you are no longer the holder of such deposits under the UPA, that the transferee has a duty to comply with the UPA, and that you are forwarding the necessary information for the transferee to comply with the UPA at the applicable time.