

SUBPOENA OVERVIEW

Every week clients call into THS with questions regarding a subpoena that they have received. In order to make you aware of the importance of promptly dealing with a subpoena here is a basic overview of subpoenas. If you receive a subpoena, you will, of course, need to act and consult with the team at THS to determine the appropriate next steps.

A subpoena is a Court Order requiring you to be somewhere to testify, to provide a copy of a document or to do both. While subpoenas are Court Orders they do not necessarily have to be issued by a Court. Attorneys have the authority to issue subpoenas when they are representing a client in a case. Parties to a Court case without an attorney can have the Court clerk issue a subpoena in the case. There are also administrative agencies that have the ability to issue a subpoena without a Court case being open, and the Attorney General can also issue a subpoena as part of an investigation.

A subpoena is most often hand-delivered by someone other than the person that issued the subpoena. Sometimes a subpoena can be sent over with a request to waive service of the subpoena, which is done in an effort to try and save the cost of time and money to send a process server. A waiver of service is when a party consents to cooperating with a subpoena without being served by a process server. An agency or attorney may send over a subpoena with a waiver if there is going to be a cooperative witness. For example, THS will often have a waiver of a subpoena for a vendor that works with a landlord on a regular basis. If the issue at an eviction trial is compliance with pest control preparation, the vendor can be essential to proving the violation of the lease. A subpoena helps ensure the vendor will appear at trial, and the vendor can also use the subpoena as justification for missing a few hours of work in order to testify.

Landlords regularly receive subpoenas requesting information about tenant files. Administrative agencies will send over a subpoena looking for a lease and a tenant's application from years prior. The natural response from a landlord is to question if this is a legitimate request and to contact the law firm. Administrative agencies in Colorado can have subpoena power to request records. If a tenant were to question the release of the information, a landlord has a good response, that they had to comply with a lawfully issued subpoena. If anyone fails to comply with a valid subpoena they can be subjected to sanctions from a Court. Sanctions from a Court can take a variety of forms, but most often they can be a fine, and an order to comply with the subpoena.

Not all subpoenas are created the same. Tenants will sometimes try and use subpoenas in a way that is not appropriate by not following the rules regarding subpoenas or requesting documents that are protected by attorney-client privilege. There are Court rules that need to be followed in order to issue a subpoena, and there has to be an active case or investigation. A person cannot just issue a subpoena unrelated to a Court case, because they want to know particular information. For example, a customer of a famous chicken company cannot just issue a subpoena to demand a list of ingredients and spices for the chicken. There has to be a legitimate basis for the subpoena. There needs to be a court action or administrative investigation.

There are options to fight a subpoena. Just because someone serves you with a subpoena does not mean that everything being requested in the subpoena needs to be provided. There are limits to the authority of a subpoena, and requirements regarding service of subpoenas. In order to avoid educating rental industry adversaries with this article, the details of these challenges are not going to be discussed in detail. Just be aware that there can be limitations to subpoenas and there also can be challenges brought by legal counsel.

Over the years we have seen attorneys push the boundaries of using a subpoena. Attorneys have issued subpoenas as a fishing expedition for information, without a legitimate basis for sending the subpoena in a court case. A well-informed phone call from a THS attorney pointing out the problems with the subpoena process can be enough to have an attorney retract his questionable paperwork. However, sometimes it will take more than a phone call, and require the filing of a motion with the appropriate Court to ‘quash’ the subpoena, which is the official term for seeking to deny the request for information or production.

In the end, the intent in this article is to quash some common misunderstandings. Subpoenas can be legitimate requests for information, that when complied with give landlords legal protection from claims regarding the sharing of information. However, there can be times when the subpoena may either be incorrect or seeking information that should not be shared. As you can see from the information in this article, there can be shades of gray when it comes to the subject of subpoenas, so the next time you receive a subpoena, let THS know and we can help you sort it out.