



# HOUSING

## Renting: Evictions and Landlord Liens no. 9.905

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### Quick Facts...

A landlord can evict you only through formal legal proceedings.

Types of eviction proceedings are: eviction at the end of the rental period, eviction for nonpayment of rent, and eviction because of violations of the lease agreement.

In certain situations, a landlord may hold and sell your property for payment of back rent.

A landlord of a house (single-family dwelling) cannot take your property for payment of back rent.

A lockout in an apartment or house is illegal; it denies you access to your property without due process.

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### Evictions

You can be evicted for violating common law, sometimes criminal codes or the lease agreement. A landlord can legally evict you through formal legal eviction proceedings called “forcible entry and detainer.” There are generally three types of eviction proceedings.

A landlord does not have to give you any reason for termination of the lease at the end of this period. The landlord can decide not to renew the lease, even if you have lived there for 10 years, always paid the rent on time, and have done no damage to the rental property.

However, the landlord must follow technical legal procedures to terminate the lease. All notices of lease termination must be in writing, signed by the landlord or agent, and must describe the property to be vacated.

- If the written lease advises that it terminates specifically on a date and there are no additional notice provisions in the lease, no notice whatsoever is required. You are expected to vacate the premises on that date.
- If the written lease advises a specific notice requirement prior to the termination date, you must comply with that notice requirement or potentially be subject to an additional month’s rent. Always keep a copy of that written notice and sent it certified and regular mail.
- In the event that the lease is silent as to notice requirements, the notice must be served in a specified number of days before the end of the rental period. The required time is as follows:

Rental period	Time period before the end of rental period that notice must be served.
1 year or longer	3 months
6 months to 1 year	1 month
1 month to 6 months	10 days
1 week to 1 month	3 days
less than 1 week	1 day

When you plan to move out, you also must give the landlord written notice within the same time periods as above or you could be liable for the following month’s rent.

### Eviction for Nonpayment of Rent

A landlord can evict you for nonpayment of rent any time you are behind in the rent. The landlord must follow technical procedures:

- The landlord must serve you a written, signed notice.
- The notice must give you the option to pay the rent within three days or move out. This is sometimes called a Three Day Pay or Quit Notice.
- The notice must be written and signed and must describe the property.

- You can cure the violation during this time period. If you do not, you still may have a defense to the future eviction action, or you may be able to negotiate a resolution with the landlord. See an attorney before you vacate the premise.

### Eviction for Lease Violation

You can be evicted for violating a lease if the clauses in the lease are legal. Some clauses, such as the tenant's forfeiture of the entire security deposit for damages, regardless of actual costs, are illegal. The landlord must follow strict procedures:

- The landlord must give you a written, signed notice that the lease has been violated. The notice must give you the option, in the alternative, to comply with the violated lease terms within three days, or vacate the premises.
- The written notice must set forth the lease terms that the landlord alleges have been violated. The notice must be signed and must describe the property.
- If you violate the same lease terms after a written notice has been given, the landlord may evict you without giving any further right to comply with those terms. The landlord must give only a three-day notice terminating the tenancy.

### Eviction for Violent and Antisocial Criminal Acts

Your lease can be terminated by the landlord at any time during the lease period:

- If the landlord has proof that you or your guests committed an act or series of acts on or near the premises which endangers the landlord or other tenants, or the property of those individuals; or
- If the landlord has proof that you or your guests committed an act or series of acts which constitute a violent or drug related felony.

The landlord must give you three days written notice to quit. The notice must be dated and signed, and must describe the property, the particular time the tenancy will terminate, and the grounds for termination.

If eviction notices are ignored, the landlord must go to court and file a lawsuit. The landlord must serve a summons and complaint. They can be served on you personally or posted on your door (or a conspicuous place on the premises) with a copy mailed on the same day it is filed with the court. If the summons is posted rather than served, the landlord can only get a judgement for possession of the premises, not for money.

The summons must tell you to appear in court in no less than five days. If you do not appear in court as required, the landlord can get judgment for possession on that day.

If you do appear and file an answer, a trial will be set in about five days and the landlord cannot get a judgment until after the trial. Once the landlord obtains a judgment, he or she must wait 48 hours and then get a writ of restitution to have the sheriff put you out. The sheriff usually will give you a day or two to vacate voluntarily before taking forcible action.

### Landlord's Lien on Tenant's Property

In certain situations a landlord may have a lien on your personal property for money you owe the landlord. In situations where the landlord has a lien, he or she may take and hold your property to pay back rent or other amounts due. Some courts, however, have held this statute unconstitutional and landlords were required to pay charges.

The law distinguishes between three types of rentals:

- temporary guests at a hotel, motel, inn or boarding house;

*For more information, see fact sheets 9.903, Renting: Security Deposits; 9.904, Renting: Leases; and 9.906, Renting: Location, Selection and Roommates.*

- tenants in an apartment; and
- tenants in a single-family house.

A landlord of an apartment or room can take only certain property to pay back rent. A landlord cannot take small kitchen appliances, cooking utensils, bedding, beds, necessary clothes, personal or business records, or personal effects. The landlord may take such things as stereos, CDs, television and tools. A landlord of a single-family house cannot take your property.

The landlord may enter the apartment or room at a reasonable time and in a peaceable manner to take possession of the property covered by the lien.

If you are at home, you can resist the entry and order the landlord out. If you are not at home, the landlord may use a pass key to go in and get the property.

If the landlord takes your property and you do not pay money owed to the landlord within 30 days, then the landlord must file a foreclosure action in court. When the landlord has received a judgment, the landlord can sell the property after he or she has given 10 days prior notice of the sale in the newspaper and after having given written notice to the owner of the personal property. From the proceeds of the sale, the landlord may retain an amount for reasonable sale cost (not to exceed \$90) and the amount you owe. The remainder of the proceeds and any unsold property belong to you.

If the landlord sells or otherwise disposes of your property without properly complying with the Colorado law, you are entitled to bring a court action to recover the value of the property or \$100 (whichever is greater), and reasonable attorney's fees.

This procedure is complicated. A landlord who is taking a tenant's property because of amounts owed to the landlord should seek legal advice.

If you have had property taken by the landlord, keep a record of all actions and property taken and notices received. Also seek legal advice.

***This material should not be used as a substitute for seeking advice from attorneys and other qualified advisors.***

## Constructive Evictions

A constructive eviction is when a landlord does something to interfere with your possession, use and enjoyment of the rented premises. You can elect to move out of the apartment and not be responsible for the remainder of the lease. Always seek the advice of an attorney before you vacate the premises because you could potentially incur much liability. You may not want to move out, but rather take corrective actions.

### Lockouts

A lockout is a constructive eviction done by the landlord to lock you out of the rented premises. A lockout in an apartment, motel or house is illegal. By placing a lock on your door, the landlord has denied you access to personal property without due process of law. You may slip or break the lock on the door; however, you run the risk of being arrested when taking this action. Notify the police and seek legal advice before taking this step.

At most, you will be liable for the cost of the damaged lock. You cannot be prosecuted for breaking into your own apartment. If police were called, you may have to prove that you are the tenant. You have a legal right to free access to the apartment. If you are forced to stay in a motel or car due to being locked out, the landlord is liable to pay for damages. You, however, must prove physical injury or deprivation. Payment of hotel fees is sufficient for damage suit.

### Utility Shutoff

The utility shutoff is another constructive eviction done by the landlord to shut off the utilities in the rented premises. When this happens, you can have the utilities turned back on at your expense. You can take legal action against the landlord to recover the expense incurred to have the utilities turned on.

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