

SHERIFF'S REQUIREMENTS FOR WRITS OF RESTITUTION



Jaime FitzSimons - Sheriff

Peter Haynes - Undersheriff

501 North Park Avenue
Post Office Box 210
Breckenridge, CO 80424

Phone (970) 453-2232
Fax (970) 453-7329

- Civil Division -

Civil Clerk ext. 8900

Civil Deputy Kenneth Wu, ext. 8955
Civil Technician Tina Mojzer, ext. 8907
Commander Thomas Whelan, ext. 8906

This brochure is intended only as a basic informational guide concerning tenant evictions and the role and requirements of the Summit County Sheriff's Office in the execution of a Writ of Restitution. Nothing contained in this brochure shall be construed as legal advice or as legally binding on the Sheriff's Office.

Conducting an eviction is an unpleasant experience for all those involved: landlord, tenant, movers, and the Deputy. While understanding the emotions involved, the Deputy executing the Writ is acting under, and is bound by, state law.

THE WRIT OF RESTITUTION

Once the Writ of Restitution has been obtained, it must be brought to the Sheriff's Office for execution. This is the only stage of the process that requires the involvement of the Sheriff's Office. This is because the Writ of Restitution is actually an Order from the Court to the Sheriff to remove the tenant and restore possession of the property to the landlord.

No one else but the Sheriff has legal authority to execute the Writ. Doing so may well give rise to legal action against the landlord, who may lose the protections that the law otherwise provides when proper legal procedures are followed.

As soon as the Writ is issued after the mandated 48 hour stay, it can be posted. However, it will not be executed until at least 10 days after the entry of judgement (13-40-122(1). After payment of the applicable fee, the Civil Division will post a courtesy copy of the Writ along with a warning notice from the Sheriff's Office telling the tenant that an eviction is imminent. In many cases, the notice will cause the tenant to move out on their own. Should the tenant not move, the landlord must then arrange for the physical eviction with the Sheriff's Office.

SCHEDULING THE ACTUAL EVICTION

To schedule an eviction, contact the Civil Division by phone or in person. Evictions are scheduled for a mutually convenient time for both the landlord and the Sheriff's Office based on the availability of the Civil Deputy. State law requires that evictions only be done between sunrise and sunset. After scheduling, if execution of the Writ is no longer required, notify the Civil Division as soon as possible. Any pre-paid execution fee will be refunded as long as timely notification is made.

The landlord or his/her representative must be present for the eviction so that he/she can take responsibility for and possession of the premises. The representative must have full authority to act on the landlord's behalf, to include spending money to obtain tools, equipment or supplies, contract with professional trades such as locksmiths, truck rentals, vehicle tows, and the manpower required to gain entry, physically remove the property, and secure the property.

THE MOVEMENT AND DISPOSITION OF PROPERTY

All of the tenant's belongings must be removed from the property and deposited along the nearest public right-of-way. Private property can also be used if the owner gives permission and the tenant has access to his/her possessions. The actual placement of the items will be under the direction of the Sheriff's Deputy. Under Colorado law, the Deputy is immune from civil liability for any damage to a tenant's personal property that was removed. A landlord who complies with the lawful direction of the Deputy executing the Writ is also immune from civil and criminal liability. However, if the individuals moving the tenant's property do not exercise reasonable care, the Deputy may terminate the eviction.

If the landlord is not using a commercial moving company, heavy-duty trash bags and boxes will be needed, especially for kitchens, bathrooms and garages. Having a locksmith present is frequently helpful, both for the initial entry and to re-key the locks to prevent re-entry by the tenant after the eviction is over. Tools and equipment may be needed to dismantle or move large or heavy items, drain waterbeds, aquariums or move vehicles. A truck may be necessary to move the property to the nearest right-of-way.

If the occupants are not present at the time of the eviction, the Deputy will work with the landlord to make arrangements for the care of any household pets or livestock that may be present. Summit County Animal Control will take custody of most pets. If livestock are present, the State Brand Inspector may be contacted to assist in arranging for their loading, transportation and care. In some instances, the livestock may need to remain on the

premises under the care of the landlord until possession by the tenant, brand inspector, or other disposition brought about under an Agistor's Lien pursuant to 38-20-102(1)(a) C.R.S.

PHYSICAL LABOR AND RESOURCES

The physical labor required to move the tenant's belongings is arranged, provided, and paid for by the landlord.

Under normal circumstances, sufficient personnel and other required resources must be present to complete the eviction within 2 hours.

An average three-bedroom home with basement and garage will require approximately eight movers. A condominium with reasonable ground and right-of-way access might require half that number. The landlord should take into account the size of the residence, the amount and type of property to be removed, and the distance to the nearest public right-of-way. If the Deputy determines that there are not sufficient resources, the eviction will be cancelled. It may be rescheduled when sufficient resources are available. Prior consultation with the Civil Division staff will usually avoid such last minute problems.

UNUSUAL SITUATIONS

The landlord should be aware of any hazardous, peculiar or unusual requirements. These may either be due to the nature of a specific location or encountered due to the nature of the tenant's possession, illegal activity, materials stored on the property, or items that will require disassembly.

Hazardous materials and contaminated items, industrial waste, junk automobiles, vehicle or industrial parts may not be moved to the public right-of-way. Instead, it will be left for proper disposal later by the landlord. Each situation will be evaluated based on the amount of the material and impact on the public right-of-way.

Some evictions cannot possibly be completed within the 2 hour time frame no matter how many resources are available. An additional fee of \$40 per hour will be assessed for executions that exceed the 2 hour time frame requirement. The additional time must be scheduled in advance and in consultation with the Civil Division. This is **not** a substitute for poor planning or a lack of resources.

The landlord must fully inform the Civil Division of all known or foreseeable unusual situation **prior** to the execution of the Writ. If necessary, the deputy or the division commander will make a planning trip to the eviction site to evaluate any special needs and/or to offer suggestions to the landlord. The Sheriff's Office will make every reasonable effort to work with the landlord so that the Writ can be executed in the most efficient manner possible. However, remember that if the deputy arrives to execute the Writ and then determines that all proper arrangements have not been made, the eviction may be cancelled.

DISPOSITION OF PROPERTY AFTER THE EVICTION

A landlord has no duty to store or maintain the personal property removed from the premises. However, *'A landlord who elects to store a tenant's personal property that was removed from the premises during or after the execution of a writ of restitution may charge the tenant the reasonable costs of storing the personal property.'* 13-40-122(4) C.R.S. (Refer to that statute for more information on recovery of costs and property disposition.) Also be aware that by taking possession of the property, civil liability may attach should damage occur.

If not stored by the landlord, the property must be available for the tenant to reclaim possession from the public right-of-way. Ownership of the property removed remains with the tenant and is **not** free for the taking, nor is it immediately considered abandoned.

Theft is a crime. Landlords should inform their staff and those assisting with the eviction that persons who steal the tenant's property could be criminally charged.

Should the tenant re-claim only part of their personal property (or none at all), after a reasonable time landlords may be responsible for the removal. As a general guideline, the Sheriff's Office Civil Division generally recognizes 48 hours as a reasonable amount of time.

CAN WE JUST CHANGE THE LOCKS AND NOT REMOVE THE PROPERTY?

The Sheriff's Office will NOT participate in any attempt by the landlord to simply lock out the tenant and keep them from their possessions. *'It is the officer's duty not only to remove the tenant, but also to remove the tenant's personal property and effects from the premises.'* (Christensen v. Hover, 643 P.2d 525 (Colo. 1982)) The storage of property by the landlord under 13-40-122(4) C.R.S. is for *' . . . personal property that was REMOVED from the premises . . .'* (emphasis added).

EXECUTION FEES

Serve Writ of Restitution & Notice	\$60
Execution of Writ, up to 2 hours	\$200
Extended Eviction Fee	\$40 / hour

Pre-payment of the service fee is required, and may be required for the execution fee.

The Summit County Sheriff's Office web site is at www.SummitSheriffCO.com