

# THE EVICTION PROCESS



**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 such actions. You are responsible for conducting your own legal research, properly applying state law to your situation, obtaining required forms and properly completing them. Please be aware that all Summit County Sheriff's Office employees are prohibited by state law from giving legal advice (30-10-520 C.R.S.), but otherwise will make every effort to provide information and assistance. You should consult an attorney for legal advice.

The eviction process is referred to in the Colorado Revised Statutes as Forcible Entry and Detainer, commonly called an "F.E.D." action. These laws are set forth in Title 13, Article 40 of the Colorado Revised Statutes (C.R.S.). State statutes are available at your local library or on the World Wide Web. For internet access, either do an internet search for *Colorado Revised Statutes* or go to the State of Colorado's Judicial Branch web site at <http://www.courts.state.co.us/>.

## **BEGINNING THE PROCESS**

Most eviction actions are initiated because a tenant has failed to make the rent payments. There are other causes, however, all of which are set forth in 13-40-104 and 13-40-107.5 C.R.S. The specifics of every situation will probably be governed either by the provisions of a lease or the terms of a month-to-month tenancy.

When the landlord has decided to proceed with an eviction action, he or she must complete a written notice to the tenant, such as a *Demand for Compliance*, *Right to Possession*, or a *Notice to Quit*. The notice must set forth the grounds for the landlord's demand for possession of the property, the date and time that the tenancy will terminate, and it must be signed by the landlord or his/her agent or attorney. The amount of time between the time of service and the termination varies based on the type and length of the tenancy or the reason for termination. The most common length of time is 10 days for a failure to pay rent. The specifics are covered by 13-40-104 and 13-40-107 C.R.S. The requirements of the written demand can be found in 13-40-106 C.R.S. This notice may be served on the tenant, other occupant, or a relative living at the premises who is over the age of 15. If no one is present, the Notice may be posted in a conspicuous place, such as on the front door. Service requirements can be found in 13-40-108 C.R.S. It is recommended that language such as "and all other occupants" be included on all paperwork, in addition to the names of tenants and/or persons that are known. It is also recommended that the date, time and manner of service be recorded.

## **NEXT, THE SUMMONS AND COMPLAINT**

If the tenants do not move out in accordance with the written notice, an action under this Article is initiated by filing with the Summit County Court a complaint requesting recovery of the property. Past-due rent and other specified claims may also be included as part of the complaint (13-40-110 C.R.S.). The Court Clerk or the landlord's attorney will then issue a Summons to be served on the tenant(s). The Summons, Complaint, and a blank Answer form must be served no less than 7 days nor more than 14 days from the date the Summons was issued (13-40-111 C.R.S.). The tenant(s) may file a written response, appear in court on the date and time specified, or do nothing. All of the tenant's available options are listed on the summons.

The Summons and Complaint is then served on the tenant(s) (now the defendant(s)). A proper legal service must be made on **each** tenant. Do **not** try to save money by only servicing only one person if there are multiple tenants, because the Court will not have jurisdiction over tenants that are not served. A private process server, the Sheriff's Office, or any person over the age of 18 who is not a party to the action can make the service. Remember, service must be made at least 7 days prior to the court date. If service on the defendant or a relative living at the residence who is at least 18 cannot be made '*after having made all diligent effort*,' the process may be posted. However, if posted, the landlord (now the plaintiff) must have mailed a copy of the Summons and Complaint to the defendant(s) no later than the day following the day the Complaint was filed (**not** the day following service). It is a good practice to mail the copy as a matter of course because the actual manner of service probably won't be known for several days. If the mail provision is immediately complied with, either type of service will be legal.

## **THE COURT HEARING**

If at the hearing the Court finds that the defendant has committed an unlawful detainer, judgment will be entered for possession of the property in favor of the plaintiff. If personal service was made, the Court may also award a monetary judgment for such things as back rent, damage, attorney's fees, etc. If the service was by posting, the Court will not award any money but will still issue the order for possession. In that instance, the monetary judgment may be obtained later through a separate action, such as a Small Claims Court suit (13-40-115 and 13-40-123 C.R.S.) or a continuance of the original action to obtain personal service. If the defendant wins, he/she is entitled to a judgment for costs (13-40-116 C.R.S.).

The defendant may also appeal a decision against him to the District Court. The Court may require an appeal bond, as well as a deposit of rent (13-40-117 and 13-40-118 C.R.S.).

## **THE WRIT OF RESTITUTION**

Assuming that the landlord prevails in court and there is no appeal filed, the Court Clerk will issue a Writ of Restitution **after** the passage of 48 hours. This stay is required by statute and cannot be waived. Its purpose is to allow the defendants to move out on their own. (If this does happen, the landlord does not have to obtain the Writ of Restitution, as the defendant's leaving has restored possession of the property to the landlord.)

Once the Writ of Restitution has been obtained, it must be brought to the Sheriff's Office for execution by the Civil Deputy. If the eviction has progressed to this stage, refer to our brochure *Sheriff's Requirements for Writs of Restitution*. This is the only stage of the process that requires the involvement of the Sheriff's Office. The Civil Deputy 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 his own. If the tenant does not move, the landlord must schedule the eviction with the Sheriff's Office.

All of the tenant's belongings must be removed from the property and deposited along the nearest public right-of-way. 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.

The physical labor required for moving the tenant's property is arranged, provided and paid for by the landlord. Under normal circumstances, sufficient personnel must be provided to complete the eviction in 2 hours.

### **SHERIFF'S FEES**

Serve Written Notice	\$35 + mileage
Serve Summons & Complaint (each defendant)	\$35 + mileage
Serve Writ of Restitution & Notice	\$60
Execution of Writ, up to 2 hours	\$200
Extended Eviction Fee	\$40 / hour

### **REQUIRED FORMS & INSTRUCTIONS**

To obtain additional information, Court forms and instructions, visit the page below on the Colorado State Judicial Branch's web site:

<https://www.courts.state.co.us/Forms/Index.cfm>

Forms can be downloaded either as a Microsoft Word document (.doc) or as an Adobe Acrobat file (.pdf). You may complete a form on-line, or you can print it and either type or legibly print in black ink. Read the *Instructions for Forcible Entry and Detainer* (JDF 100) carefully to determine what forms you may need and to better understand the court process.

The Summit County Sheriff's Office website is [www.SummitSheriffCO.com](http://www.SummitSheriffCO.com).