

**LANDLORD-TENANT HANDBOOK  
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# LANDLORD-TENANT HANDBOOK

## INTRODUCTION

This handbook was prepared and printed by the City of Boulder Community Mediation Service (CMS) with legal advice from the Boulder City Attorney's Office. It summarizes existing State of Colorado and City of Boulder residential landlord-tenant law. Knowledge of the Colorado Revised Statutes (C.R.S.) and the Boulder Revised Code (B.R.C.) regulating rentals can prove valuable to tenants and landlords in averting trouble before entering into a lease as well as in answering questions which may arise during the lease period and upon termination of the lease. All information contained in this handbook is subject to change at any time through subsequent court decisions or legislation.

It is strongly recommended that an attempt be made by both tenants and landlords to initiate communication to work out differences before seeking outside help. If differences arise which the parties are not able to resolve, the City of Boulder Community Mediation Service can be contacted for help at 303-441-4364. Mediation service via experienced neutral third party mediators is available to assist in resolving disputes between landlords and tenants or between roommates. Community Mediation Service charges a low fee for its services. The fee can be waived for low income clients.

**The information in this handbook does not constitute legal advice. Information contained herein is current as of June 2006 , but there is no assurance that the laws have not changed or been amended.** This information is meant to serve only as a general guide and is not intended to be used as a substitute for seeking advice from an attorney or other qualified professionals.

## THE LEASE

A lease is a legally binding contract between a landlord and a tenant which grants the tenant possession and use of the landlord's property for a given period of time. The lease sets forth the terms of possession, such as rent, length of time of possession and rules governing tenancy. Lease terms can be negotiated, but once a lease is signed, there is no grace period to back out of the lease. **Probably the most important advice to be given in resolving landlord/tenant disputes is that both parties read the lease carefully.**

### *Written Leases*

Section 12-2-3 "Leases to be Provided," B.R.C. 1981, requires a written lease in all situations in which the rental is for thirty days or more. The lease must be signed within thirty days of commencement of the rental, and the landlord must provide each lessee with a copy within seven working days after all parties have signed or within fifteen days after the date of signature by any tenant, whichever is sooner.

**Be alert** to clauses in written leases which require the tenant to give up certain rights such as a clause which allows the landlord to evict a tenant for nonpayment of rent without a three-day notice. A three-day notice is required by Colorado law and cannot be waived by a tenant. Other questionable clauses may only be determined unenforceable by a court. If any party has a question concerning the enforceability of a term of a lease legal advice should be sought from an attorney. The City of Boulder has endorsed the “**Boulder Model Lease**,” which is recommended but not mandatory. Copies of the model lease are available from the Community Mediation Service, 2160 Spruce Street, Boulder, Colorado, 80302 or on our web site <http://www.bouldercolorado.gov>. (click on “City A-Z”, click on “M” and then go to Mediation Services.)

### **More Than One Tenant: Joint and Several Liability**

When more than one tenant signs a lease for a particular residence, each tenant is responsible for all of the conditions of the lease. For example, each tenant is individually responsible for all of the rent and all of the damages regardless of the means the tenants use to divide the rent between them and regardless of which tenant actually caused the damage. This is called “**joint and several liability**.” If one person does not pay the rent, the other tenants are liable for payment of that person’s share or they are all subject to eviction for non-payment of rent. It is up to the other tenants, not the landlord, to collect from the non-paying tenant. By the same token, if one tenant damages the premises, the landlord may deduct the damages from the tenant who caused the damage, or the landlord may choose to deduct money from all of the tenants’ deposits. For better self-protection it’s useful for tenants to execute a “**roommate agreement**” which spells out each tenant’s obligations to another, such as: what portion of rent each will pay, responsibility for damages, division of payment for utilities, duration of the rental period, responsibility for finding a replacement tenant upon early termination, and payment of rent until a replacement is found. A roommate agreement is not binding on the landlord. Sample roommate agreements and materials on avoiding roommate disputes are available from the Community Mediation Service on-line.

### **TERMINATION OF THE LEASE**

Termination is the end of a tenancy and occurs at the end of the lease term or as a result of mutual agreement to terminate the lease prior to the end of the lease term.

#### ***Termination of the Lease for a Definite Term (or a one-year lease)***

If a lease has a date of termination or a definite term and if there is no mention of a requirement to give notice of termination, then the lease expires and the tenant is responsible to leave the premises on the date or at the end of the term stated. The landlord is under no obligation to automatically renew the lease with the tenant. **If a lease does require that a tenant give notice of termination prior to the stated expiration of the lease, then the specified amount of notice must be given before a tenant is free and clear of his/her obligation.**

Many leases contain hold-over clauses which allow the tenant to continue the tenancy on a month-to-month basis following the expiration of the initial term of the lease. The lease should be consulted carefully to determine all termination and hold-over provisions.

### ***Termination of a Month-to-Month Lease***

A month-to-month lease is a rental agreement for a one-month period which is renewed automatically each month for another month until properly terminated by either party. A month-to-month tenancy is usually created when a tenant moves into the unit and begins to pay rent on a specified date without signing a lease. A month-to-month tenancy can also be created using a written lease.

If someone previously had a lease which was not renewed, but the individual remained a renter, then the lease is considered to have rolled over into a month-to-month lease. The terms for termination and some other rights and obligations established in the expired written lease may still be applicable unless altered with the knowledge of all parties.

To terminate a month-to-month lease, State law requires that written notice of intent to terminate must be given at least ten days before the last day of the rental month which has already been paid, that is, eleven days prior to the next rental payment due date. In a written lease, for example, start from the day when the rent is due then count back ten days. To terminate a month-to-month tenancy the tenant or the landlord (whoever is initiating the termination) needs to provide written notice of intent to terminate by mailing or hand-delivering a copy of the notice to the other party.

In a written lease, it is acceptable to establish and require that a notice of intent to terminate be given at a period of time longer than the ten days required by law under Section 13-40-107 C.R.S.

Written leases commonly require a thirty-day notice. The failure of either party to provide proper written notice will obligate both parties to another month's tenancy.

## **EVICTION**

The legal term for eviction is "Forcible Entry and Detainer" (FED). Eviction occurs when the court enters an order for the tenant to vacate the property. **This court order is enforceable only by the sheriff.** It allows the sheriff to monitor the removal of the tenant and their property from the premises.

### ***Evictions without Court Order***

It is never legal for a landlord to evict a tenant without a court order.

### ***When a Tenant Has Not Paid Rent***

Before filing a suit to evict a tenant for nonpayment of rent, the landlord must give the tenant a written signed 3 Day Demand For Compliance Or Possession, giving the tenant the choice of either paying the past due rent or moving out within three days. The landlord can serve the tenant this demand by posting a three-day notice in a conspicuous place on the premises or by leaving a copy with a resident in the household over the age of 18. If service is by posting, a copy must **also** be mailed the next day. In computing the three days, the first day is excluded. Therefore, the three-day time period begins the day following the posting. After the notice has been given and if the tenant has not paid the rent or moved out within three days, the landlord need not accept the rent and may file an eviction suit at the Boulder County Justice Center, on 6th and Canyon in Boulder. The time begins running whether or not the tenant discovers it posted. Also the time continues to run regardless of whether it is a Saturday, a Sunday, or a holiday. The tenant's legal right to this three-day notice prior to eviction for nonpayment of rent cannot be taken away by the language in a lease.

### ***When a Tenant has Broken a Condition of the Lease***

Before filing a suit to evict a tenant for noncompliance with lease conditions, the landlord must give the tenant a written signed 3 Day Demand For Compliance Or Possession giving the tenant the choice of either curing the noncompliance or moving out within three days. The landlord can serve the tenant this demand by posting a three-day notice in a conspicuous place on the premises or by leaving a copy with a resident in the household over the age of 18. If service is by posting, a copy must **also** be mailed the next day. In computing the three days the first day is excluded. Therefore, the three-day time period begins the day following the posting. The notice must state the reason the landlord believes the tenant is in violation of the lease and give the tenant three days to either move out voluntarily or correct the violation. (Noise violations are particularly difficult issues for both landlords and tenants regarding eviction.) After the written notice has been given, and if the tenant has not moved out by the end of the three days, and has not corrected the violation, the landlord may file an eviction suit at the Boulder County Justice Center, on 6th and Canyon in Boulder. The start of the three-day time limit begins running whether or not the tenant discovers it posted. Also the time continues to run regardless of whether it is a Saturday, a Sunday or a holiday.

### ***When a Tenant has Repeated or "Substantial" Violations of the Lease***

Under certain conditions involving repeated violations for which the three-day notice has been previously given, or serious violations usually involving drugs or violence defined by statute, an eviction may be sought by posting or delivering a Notice to Quit, which does not give a tenant an opportunity to "cure" the problem but simply advises the tenant to leave within three days. A victim of domestic violence is generally not subject to eviction under this provision. Legal advice should be sought to determine if circumstances warrant this action.

### ***Roommate Problems in Evictions***

When a problem arises in a roommate situation, eviction can only be undertaken by the landlord. If someone other than the owner of the property is seeking eviction of a tenant, assistance from an attorney is recommended. Legal advice should also be sought in cases where confusion exists regarding legal rights and responsibilities by any of the roommates, such as in sublease situations.

In all circumstances, written roommate agreements are recommended to clarify roommate responsibilities and expectations. Sample roommate agreements are available at the Community Mediation Service, 2160 Spruce Street in Boulder, on-line or by calling 303-441-4364.

For assistance in resolving roommate conflicts call the Community Mediation Service.

### ***Tenant's Continuing Liability for Rent***

If a tenant leaves the premises before the end of the lease term in compliance with a landlord's demand to vacate, the tenant may still be responsible under the terms of their lease to pay rent or other costs. However, Colorado courts view the election of the eviction remedy as terminating the lease, and costs owed by tenants may be limited accordingly.

### **Eviction Procedure**

#### ***A. Three-Day Notice***

If the proper three-day written notice has been given to the tenant, the tenant should immediately call the landlord, the Community Mediation Service, and/or legal counsel to attempt to resolve the issues, or comply with the lease (if the eviction is for breaking a clause of the lease, e.g., non-payment of rent, noise, pets, guests.) If the situation has not been remedied within the three-day time period, the landlord may initiate an eviction suit under a specific procedure set forth by laws of the State of Colorado in a statute entitled "Forcible Entry and Detainer." (Section 13-40-101 et seq., C.R.S.)

Once the landlord has obtained a court order for eviction, the sheriff should be contacted so that they can monitor the process. By state law, the prevailing party in a Forcible Entry and Detainer suit is entitled to an award of reasonable attorney's fees and costs of the lawsuit.

#### ***B. In Event of a Lockout***

Any form of self-help eviction by a landlord, including locking a tenant out of the premises, is not permissible. Actions such as physical contact or intimidation should be reported to the police. If a tenant is locked out, the tenant may not force their way back

into the premises. A tenant should seek legal advice prior to attempting to re-enter the premises on their own.

### **UNINHABITABLE PREMISES-CONSTRUCTIVE EVICTION**

Unless otherwise expressly agreed, there is an implied agreement in every lease for real property that the landlord will refrain from acts or omissions which interfere with the tenant's right of peaceable enjoyment of the premises. If this implied agreement is breached by the landlord, either by act or by omission, resulting in the premises becoming **legally uninhabitable**, the tenant may vacate the premises, terminate the lease, and owe no further rent. The premises become legally uninhabitable when there is a disturbance of the renter's possession by the landlord which renders the premises unfit for occupancy for the purposes leased. To exercise this remedy, the tenant may need to abandon the premises. Before the tenant is justified in moving out, the landlord must also have been given notice of the problem by the tenant and a reasonable time in which to remedy the situation. Only in extreme conditions may a tenant vacate the premises and stop paying rent. For example, where the heating and plumbing stopped functioning and the ceiling collapsed – the premises were found to be legally uninhabitable. This remedy should never be attempted without first talking to an attorney.

### **SECURITY DEPOSIT**

Security deposits are regulated by Colorado law, Section 38-12-101, et seq., C.R.S. A security deposit, also called a damage deposit, is any advance or deposit of money used to secure the performance of the lease. This deposit may be retained by the landlord for the following: any unpaid rent or utility bills owed by the tenant; payment for damages to the premises beyond normal wear and tear; any cleaning the tenant agreed to in the lease; and any other breach of the lease causing financial damage to the landlord. "Normal wear and tear" is defined by Colorado statute to mean "that deterioration which occurs based upon the use for which the rental unit is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattel by the tenant or members of his household or their invitee or guests." Examples of normal wear and tear include worn tracking in the carpet. Normal wear and tear does not include nail holes in the walls, stains on carpets, and mold on grout.

#### ***Return of Security Deposit***

If the tenant has fulfilled all the terms of the lease (including giving the landlord proper notice, if required), has paid the rent in full and on time, has left no financial obligation to the landlord, and has caused no damage beyond ordinary wear and tear, the tenant is entitled to a full return of the security deposit. The tenant should collect the security deposit in person or leave a forwarding address with the landlord so that the landlord can return the deposit.

Colorado law requires that the landlord return the security deposit or send an itemized statement of the deductions and the balance of the deposit, if any, to the tenant within

thirty days after termination of the tenancy. This time period may be extended up to sixty days if written in the lease. The landlord must either deliver or mail the full deposit or a statement of deductions and the balance of the deposit to the **last known address of the tenant**. If the landlord fails to provide a written statement of deductions and the balance of the deposit in full within the specified time period, the landlord forfeits his/her right to withhold any portion of the security deposit. However, the landlord retains the right to pursue damages by counter-claim against the tenant in a lawsuit for unpaid rent or for any of the charges he could have otherwise deducted from the damage deposit or any other financial obligation owed by the tenant. Treble damages may be ordered against the landlord in a lawsuit for a security deposit not returned within the required time period.

### ***Withholding of Security Deposit***

If the tenant vacates prior to the termination of the lease, or if the tenant never moves in but has signed a lease, or has given money to hold the unit, the landlord may apply the security deposit to the unpaid rent for the remainder of the lease term. Once an agreement is reached between the parties and a lease is signed, there is no time period in which parties have the opportunity to back out of the agreement.

The landlord may also charge for any damage to the premises, provided s/he furnishes the tenant with an itemized statement within the time period specified in the lease. In addition, if the landlord's damages exceed the security deposit the landlord may sue the tenant to recover such damages.

### ***Rent Liability for Early Move-Out***

The landlord must make a reasonable effort to re-rent the premises if the tenant moves out early. The tenant may be responsible for rent until the premises are re-rented or until the lease expires. If the unit is re-rented for a lower amount the tenant may be assessed the difference in the rent. The tenant may also be charged for the landlord's reasonable costs of re-renting. It is important to look to the lease to see who is responsible for re-renting the unit.

### ***Recourse for Withheld Security Deposit***

If the landlord does not return the security deposit or does not send an itemized list of deductions within the required time period, **or if the tenant disagrees with the deductions made by the landlord**, the tenant should take the following steps:

1. Attempt to negotiate with the landlord for the return of the security deposit.
2. Send a letter to the landlord. This letter, called a "Seven-day Demand letter," should state that the tenant will sue the landlord for three times the amount of the deposit withheld if the deposit is not returned to the tenant within seven days of the receipt of the letter. A template for this letter is available on the Community Mediation Service

website: <http://www.bouldercolorado.gov>. (click on “City A-Z”, click on “M” and then go to Mediation Services.) The letter must state:

- a) the address of the prior rental premises,
- b) the dates of the tenant’s occupancy,
- c) the amount of the security deposit originally paid,
- d) the tenant’s current mailing address, and
- e) (if applicable) a statement by the tenant explaining any disagreement with charges withheld from the deposit.

The letter should be sent by certified mail, return receipt requested. The tenant may also send a copy via regular mail. The tenant should keep a copy of the letter and the certified mail receipt.

If the landlord returns the deposit in full or pays the tenant the disputed portion of the deposit within seven days of the landlord’s receipt of the letter, the matter is resolved.

3. If the landlord does not return the deposit within the seven days, the tenant may sue the landlord to obtain the return of the security deposit. The tenant may request three times the amount of the deposit that has been withheld plus reasonable attorney’s fees and court costs. In court, the landlord may counterclaim against the tenant for any damages caused by the tenant. **Note: Under most leases, the losing party in a court action is responsible to pay attorney’s fees for the winning party.**

4. Contact the Community Mediation Service to arrange to mediate an out-of-court settlement (303-441-4364). Mediation is often faster, less stressful, and cheaper than going to court. Trained, neutral mediators will help to facilitate a negotiation process that often results in agreements that both parties feel are fair and that are tailored to meet the needs of the individuals involved.

#### ***Division of Security Deposit in roommate situations***

The landlord may divide the security deposit return equally among the tenants or may send the entire return amount to one tenant. It is helpful if the tenants agree in advance how the security deposit or its remaining balance is to be disbursed. A signed agreement to this effect should be presented to the landlord. Samples of Roommate Agreements are available through the Community Mediation Service (303-441-4364) or on the web at <http://www.bouldercolorado.gov>. (click on “City A-Z”, click on “M” and then go to “Mediation Services” and then “Roommate.”)

### ***Interest on Security Deposits***

Sections 12-2-4 through 12-2-6, B.R.C. 1981, provide that simple interest must be paid on the entire amount of all security deposits for residential property in Boulder. Under Section 12-2-5, the security deposit remains the sole property of the tenant. A duty exists for the retainer of the security deposit (the landlord) to account for interest at the end of the lease. Under Section 12-2-2, security deposits are defined as any advance or deposit of money, the primary function of which is to secure the performance of a rental agreement for residential premises. This has been determined by courts not to include advance payment of rent.

### ***Determining Interest Rates on Security Deposits***

The interest rate to be paid upon the refund of security deposits shall be determined by the city manager by averaging the interest rates being paid on one-year certificates of deposit by three banks doing business within the City of Boulder. This average interest rate will be adjusted annually calculated as of December 15 of each year. The rate shall be published in a newspaper of general circulation or posted on a city internet site that is accessible to members of the general public.

Interest rate information and a calculation formula are available on the Community Mediation Service section of the city of Boulder Website ([www.bouldercolorado.gov](http://www.bouldercolorado.gov)). See also page 17 of this Handbook.

Interest must be paid within one month (up to 60 days, if stated in the lease) after termination of the lease or surrender and acceptance of the premises, whichever occurs last. A landlord may withhold the payment of interest only for those reasons permitted under State law (§38-12-103 C.R.S.) for retention of a security deposit; (for example, unpaid rent or utilities, reasonable charges for cleaning, payment for damages beyond normal wear and tear, or any other breach of the lease causing financial damage to the landlord.) Waivers of the provisions of the ordinance are not permitted.

The ordinance provides for actions against landlords by tenants to recover treble damages or \$100.00, whichever is greater, plus attorney's fees and court costs, if the interest is willfully and wrongfully retained. The tenant must give the landlord at least seven days written notice before filing an action.

Security deposits given to operators of mobile home parks are not covered by the interest ordinance and therefore leases governing the rental of a space in a mobile home park should include an interest provision in the lease, if interest is to be paid.

### ***Precautions to Prove the Condition of the Premises***

Before the tenant moves into the premises, a list of all existing damages and necessary cleaning should be prepared and signed by all parties. If either party is unavailable or unwilling to do this, another person should witness the inventory, sign the list and then

provide the other party with a copy of this list. In addition, it is best to take photographs of individual rooms and specific items to document their condition.

Upon moving out, the tenant should make an appointment with the landlord to accompany the landlord on a tour of the premises, listing damages or necessary cleaning. The tenant and the landlord should sign both copies of the list and keep a copy for their records. To minimize future disputes, if the landlord is unavailable or unwilling to do a walk-through, the tenant should have another person witness the condition of the unit and sign the list.

## **REPAIRS AND MAINTENANCE**

**A tenant who withholds rent until repairs are made can be legally evicted for nonpayment of rent.** Neither Colorado nor Boulder law provides for a tenant to make the repairs himself/herself and then deduct these costs from the rent.

Except for common areas and facilities in multi-unit properties, the landlord is required to repair and maintain the premises **only** if:

1. There is a specific agreement between the landlord and the tenant (such as a lease) which specifies that the landlord is responsible for repairing or maintaining the premises; or
2. There is a specific agreement between the landlord and the tenant that the landlord will make specific repairs (such as an attachment to the lease or a letter of promise); or
3. The repair or maintenance is required to make the property conform to the City of Boulder Housing Code, Section 10-2-1, et seq., B.R.C. 1981, unless the tenant is given this responsibility in the lease. The Housing Code only applies within the Boulder city limits.

The Housing Code covers basic safety and living conditions such as fire safety systems, fire resistive doors and walls, plumbing, water supply, electrical services, mechanical and heating equipment, cooking devices, windows, doors and egress, floors, walls, ceilings, stairways, space requirements, pest control, food preparation and storage areas, and safe maintenance of utilities and equipment. If the tenant believes that a violation of the Housing Code has occurred, the tenant should first contact the landlord to request the necessary repairs. A sample letter to request repairs is available on the Community Mediation Website <http://www.bouldercolorado.gov>. (click on “City A-Z”, click on “M” and then go to Mediation Services.) If the landlord does not respond, the tenant may call Housing Inspection and Rental Licensing (303-441-3152) to request assistance. The housing inspector will contact the landlord if the problem constitutes a violation of the Housing Code. If the violation is minor, the landlord will be given a reasonable period of time to correct the problem. Enforcement action may be taken by the city when violations are not corrected.

### ***What a Tenant May Do When Repairs are Needed***

To determine who is liable for repairs, the tenant should check the lease to see if the lease states who is responsible for maintaining and repairing the premises. If the landlord is responsible, the tenant should first contact the landlord. If the landlord refuses to act promptly, the tenant may then:

1. Present a **written list** of the needed repairs to the landlord requesting that the repairs be made by a certain date;
2. Offer to help cooperate by arranging to be home when the repair person arrives;

#### **The tenant should always:**

1. Keep a copy of any notes or letters to the landlord;
2. Follow-up any verbal agreements with the landlord by a letter confirming the agreement;
3. Be reasonable in allowing the landlord time to make the repairs;
4. Follow-up with a written reminder to the landlord if the repairs have not been made.

### ***When Repairs are not made in timely fashion:***

If the landlord was obligated to repair (through a lease, Housing Code, or some other agreement), and repairs were not made, a tenant may be able to receive some financial compensation for not having the repairs completed or use of the amenities (such as appliances or a flooded room). The determination of how much less a rental home was worth because the repairs were not made is a negotiation. The tenant may ask the landlord for a decrease in rent. The concept of rent reimbursement is known as diminished value of the premises. Consult an attorney before you attempt this as principles of contract law are involved.

## **RENTAL LICENSING AND RENTAL UNIT SAMPLE LEASE DISCLOSURE**

Section 10-3-2, B.R.C. 1981, requires a rental license for the occupancy of any residential rental property. Rental licenses must be applied for by a landlord. The city will provide a list of approved inspectors who can inspect the rental property for compliance with Housing Code for issuance of a license. Tenants and prospective tenants may verify the status of a property's rental license by calling the City's Housing Inspection Services at 303-441-3152 or going to their website <http://www.bouldercolorado.gov>. (click on "City A-Z", click on "L" and then go to "Licensing – Rental Housing.")

## **DISCRIMINATION**

Under Section 12-1-2, B.R.C. 1981, a landlord may not discriminate against a tenant on the basis of “. . . race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of the individual or such individual’s friends or associates. . . .” Other than denial of housing to an individual, discrimination also includes charging different rents or deposits, requiring different lengths of lease, or establishing different lease conditions on the basis of the above-listed categories. Exceptions to the ordinance, and more details on the types of conduct it prohibits, may be found on the website <http://www.bouldercolorado.gov>. (click “City A-Z” and then on “H” and then go to Office of Human Rights.)

The Boulder Revised Code prohibits more types of discrimination than federal or state law. A tenant who believes that a landlord has discriminated against him or her, or a landlord or tenant who wants clarification or a copy of the law should contact the Office of Human Rights, Department of Housing and Human Services, Second Floor, New Britain Building, 1101 Arapahoe, P.O. Box 791, Boulder, Colorado 80306 (303-441-3140.) Other options include contacting and filing a complaint with H.U.D. The Federal Fair Housing Act also prohibits discrimination. The terms of the Act may be utilized by private parties against landlords who discriminate.

## **ZONING/LAND USE**

City of Boulder zoning and land use regulations determine the number of people that can legally occupy a unit. Over-occupancy of a unit may result in criminal prosecution of the landlord, the tenant, or both. Multi-family zones allow a maximum of four unrelated people. Single family zones allow a maximum of three unrelated people **or** a family and two unrelated persons per dwelling unit. To determine the zoning classification of your property/residence contact the Planning Department, Park Central Building, Third Floor, 1739 Broadway, Boulder, CO, 80302 (303-441-3270.)

## **PRIVACY**

Colorado law implies a covenant of quiet enjoyment, and this protects tenants' privacy in principle. However, enforcement is difficult. A landlord may inspect, do repair work, or show the premises to prospective buyers without notice and at any time if the lease states that the landlord has retained the right to control, re-enter, or repair the premises. To protect this right, a tenant should negotiate with the landlord to include language in the lease assuring privacy and providing some notice in advance.

For example, the Boulder Model Lease spells out terms for entry by the landlord:  
"Resident shall permit owner/agent to enter the premises at reasonable times and upon reasonable notice for the purpose of making necessary or convenient repairs or reasonable inspections, or to show the premises to prospective residents, purchasers, or lenders. Entry may be made without prior notice only if owner/agent reasonably believes

that an emergency exists, such as a fire or broken water pipe, or that the premises have been abandoned."

The City of Boulder Housing Code requires that entry be permitted for reasonable inspections and repairs related to the Housing Code.

If a tenant believes that the landlord is interfering with their right to privacy, the tenant should try to resolve the problem by negotiating an agreement with the landlord regarding entry, including reasons, times, and advance notice required. This negotiation may start with a clear letter identifying the problem. If an agreement cannot be reached the advice of an attorney should be sought or mediation can be requested through the Community Mediation Service.

If a lease provides a landlord the right of entry or the right to retain control of the residence, and the tenant denies entry, the landlord may begin eviction proceedings against the tenant. Threats, intimidation, and continued invasion of a tenant's privacy need not be tolerated. If intrusions or tensions over showings persist, seek legal advice and mediation.

There are no laws against a tenant replacing locks on the premises if a tenant wishes to prevent unreasonable visits by the landlord. However, the tenant will be liable for any damages, and the landlord can retain from the security deposit the cost for removal of locks. Before a tenant denies entry to a landlord for any reason, an attorney should be consulted.

## MISCELLANEOUS

### *Tenants' Personal Property*

The landlord is **not** responsible for damage to the tenant's personal property **unless** such damage was caused by his/her negligence. A tenant should purchase renter's insurance to protect his/her personal property.

### *Fees for Late Payment of Rent*

If specified within the lease agreement, late fees may be assessed by landlords when rent is past due. However, a fee of more than 5-10% of the monthly rent may be disallowed in court as excessive.

### *Landlord Lien*

Colorado law provides that in certain situations a landlord may have a lien on some items of a tenant's personal property for past due rent. **Prior to taking such action, the landlord should seek legal advice from an attorney as s/he could be liable to the tenant for actual punitive damages if a lien is improperly exercised.** If property has been seized, the tenant should document in writing the property taken as well as keeping

all written notices received from the landlord. Whenever involved with the exercise of a landlord lien, whether as a tenant or a landlord, legal advice should be sought.

### ***When Rental Property is Sold***

When rental property is sold, the new owner is subject to all rental obligations of the previous owner unless the lease provides otherwise. The new owner may increase the rent or change the other lease terms only upon the expiration date of the existing lease.

### ***Rent Increases***

If a lease specifies the amount of rent to be paid, it cannot be raised during the lease period. However, after the lease expires, the lease may still control the rent amount. At the present time, under Colorado law there is no rent control. Once the lease has expired the agreed rent amount may change. Refer to “Termination of the Lease” for additional information.

### ***Subleases and Assignments***

A sublease and an assignment are not the same thing. A sublease is a second contract between the landlord and a new tenant. It doesn't relieve the original tenant from their obligations under the lease. For example, if a subtenant doesn't pay rent the landlord may sue the original tenant, the subtenant, or both. The landlord may or may not require a new security deposit on a sublease.

An assignment is a contract between the landlord and a second tenant which relieves the original tenant of their obligation under the lease. If the second tenant doesn't pay rent, the landlord may only sue that tenant. On an assignment, the landlord will almost always require a new security deposit from the second tenant.

Subleases and assignments may only occur with the landlord's permission. Under Colorado law a landlord may not unreasonably withhold permission to sublet. Check your lease for a sublease or assignment clause.

### ***Conclusion***

In general, both parties should keep good records, including copies of notes, letters and photographs. Make all agreements specific, and keep them. Both parties should make an effort to talk to each other and try to understand each other's point of view. Strive to make the landlord-tenant relationship work in a context of what is reasonable, fair and respectful of the needs of both parties.

If disagreements arise, every effort should be made to negotiate a settlement. Write down any agreements that are reached. If direct negotiation isn't successful, mediation is often the next best alternative. Mediation is an assisted negotiation process in which a neutral mediator helps the parties communicate and listen to each other's point of view, develop

a list of issues to be resolved, and negotiate a settlement that meets both parties' needs. Agreements reached in mediation are drawn up by the mediator and signed by the parties. For more information, contact the Community Mediation Service at 303-441-4364.

## **RESOURCE LIST**

### **City/County Departments**

|  |              |
|--|--------------|
| Animal Control                         | 303-442-4030 |
| Environmental Enforcement (Noise/Snow) | 303-441-3239 |
| Rental Licensing                       | 303-441-3152 |
| Indoor Air Quality (Mold, etc.)        | 303-441-1180 |
| Office of Human Rights                 | 303-441-3140 |
| Planning Department                    | 303-441-3270 |
| Zoning Inspection                      | 303-441-3280 |
| Code Enforcement                       | 303-441-1883 |

### **Mediation Services**

|   |              |
|---|--------------|
| Community Mediation Service             | 303-441-4364 |
| Colorado Council of Mediators (CCMO)    | 303-322-9275 |
| Longmont Mediation Service              | 303-651-8444 |
| Yellow Pages listings under "Mediation" |              |

### **Legal Resources**

|   |              |
|---|--------------|
| Boulder County Legal Services (Low-income only)             | 303-449-7575 |
| Eviction Instructions & Packet                              | 303-441-4749 |
| CU Legal Aid and Defender Program (Low-income only)         | 303-492-8126 |
| Metropolitan Lawyer Referral Services                       | 303-831-8000 |
| Small Claims Court  | 303-441-4749 |
| Student Union Legal Services (CU Students only)             | 303-492-6813 |
| Yellow Pages listings under "Attorney," "Landlord & Tenant" |              |

## **SAMPLE DOCUMENTS**

The following sample documents are available by contacting Community Mediation Service at 2160 Spruce Street, Boulder, Colorado, 80302, 303-441-4364 or by visiting our web site <http://www.bouldercolorado.gov>. (click on "City A-Z", click on "M" and then go to Mediation Services):

**The Boulder Model Lease (PDF file)**

**Check in/Check out Forms**

**Interest Rate Calculation Formula (PDF file)**

**Letter for Suggesting Mediation**

**Roommate Agreement Form**

**Sample Letter to Request Repairs**

**Seven-Day Demand Letter**

**Sublease Forms**

**Three-Day Eviction Notice**

**City of Boulder Interest on Security Deposits calculation formula**  
01-01-2009 through 12-31-2009

Pursuant to a Boulder City Council decision on February 17, 2004, the city will calculate the interest rate for tenant security deposits annually. This is the mathematical average of the one-year certificates of deposit from the top three financial institutions in Boulder, based on market share data, as of March 19, 2004.

The specific decision was adopted by Boulder City Council Ordinance 7320, changing the interest rate on tenant security deposits and adopting amendments that are included in Sections 12-2-2, 12-2-4 and 12-2-7 of the Boulder revised Code at: <http://www.colocode.com/boulder2/index.htm>.

**The computation formula of the interest due for residential security deposits in the City of Boulder is:**

Multiply the entire amount of the security deposit by the appropriate multiplier for that year, divide that number by 12 to obtain a monthly % amount due, and then multiply that monthly number by the number of months the deposit was in the landlord's possession, including the 30 or 60 days after the end of the lease. **The rate in effect at lease signing is in effect for that lease period, until termination or renewal for another period.**

Month to month leases are considered renewed each month, so the interest rate due will change on the first of every calendar year for month to month leases.

| <b>Interest rates:</b>       | <b>% rate</b> | <b>multiplier</b> |
|------------------------------|---------------|-------------------|
| prior to 12-5- 1985          | no % required | N/A               |
| 12-5-1985 through 3-18-2004  | 5.5%          | .055              |
| 3-19-2004 through 12-31-2004 | 1.08%         | .0108             |
| 1-01-2005 through 12-31-2005 | 1.85%         | .0185             |
| 1-01-2006 through 12-31-2006 | 3.01%         | .0301             |
| 1-01-2007 through 12-31-2007 | 3.89%         | .0389             |
| 1-01-2008 through 12-31-2008 | 3.69%         | .0369             |
| 1-01-2009 through 12-31-2009 | 1.88%         | .0188             |

**Note:** Due to a Colorado Supreme Court ruling which found last month's rent to be pre-paid *rent*, interest is not due on last month's rent held by the landlord. All other refundable deposits including pet deposits should be included in the computation.

**Example computations:**

A. \$1000 deposit on a 2 year lease starting on August 1, 2002 and ending July 31, 2004. Landlord received the deposit at lease signing on May 1, 2002 and is mailing it back on September 27, 2004.  $\$1000 \times .055 = \$55$  (this equals one year's interest) divided by 12 = \$4.58 (one month's interest) x 29 (number of month's held by landlord) = \$132.82.

B. \$800 deposit on a 13.5 month lease which rolled over into a month-to-month tenancy after the initial 1 year written lease. Tenant moved in and paid the deposit on May 15,

2003 and moved out with proper notice on September 30, 2004. Landlord is returning the deposit on October 31, 2004.  $\$800 \times .055 = \$44$  divided by 12 =  $\$3.67$  (one month's interest rate until May 15, 2004)  $\times 12 = \$44.04$  (or  $\$44$  even) plus  $\$800 \times .0108 = \$8.64$  divided by 12 =  $\$.72 \times 5.5$  months =  $\$3.96$ . Total interest due is  $\$3.96 + \$44 = \$47.96$ .