

A Colorado Lawyer's Guide to Evictions and COVID-19

Developed by the COVID-19 Eviction Defense Project and Colorado Center on Law and Policy

Last updated: June 16, 2020

Introduction

- This deck has been prepared to support volunteer attorneys who are **assisting tenants facing eviction, harassment, and other landlord tenant issues during the COVID-19 public health crisis**
- The goal of this document is to **introduce attorneys to the basic principles of landlord-tenant law, discuss the eviction process in Colorado, and provide up to date information on various local, state and federal moratoria**
- Predictably, the treatment of evictions is changing daily as policymakers grapple with the challenges of COVID-19; Our team will work to **keep this document and our tenant's guide updated on a daily basis**

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What is an eviction under CO law?

Colorado evictions are guided by the **Forcible Entry and Detainer Act** (C.R.S. §§ 13-40-101 through -123) which defines the grounds and process under which landlords can seek to remove tenants from property they own or control.

Landlords may seek to evict from tenants on the basis of 11 different types of “unlawful detainer,” however most COVID-19 eviction cases will likely be tied to:

- 1. Holding over by a tenant after a default in payment of rent:** a significant number of Colorado tenants have been unable to pay rent since April; as of May 21st, the Colorado Department of Labor has received 400,000+ new unemployment claims as a result of work stoppages, furloughs, and lay-offs
- 2. Holding over by a lessee or tenant at will after the expiration of the term for which the property was leased, or after such tenancy was terminated by either party:** Given various stay at home orders currently in place, many tenants will be unable to move during the COVID-19 crisis, requiring them to overstay the lease term
- 3. Holding over by a tenant after a violation of a condition of the tenancy:** during the COVID-19 crisis, tenants may be in violation of various conditions of tenancy due to unforeseen personal and economic circumstances (e.g., additional family members moving in)

Currently, there are multiple eviction moratoria in place

Federal (CARES Act)

The CARES Act includes an eviction moratorium that halts *new* evictions for certain rental properties in Colorado through July 25, 2020, as well as the assessment of late fees. Covered rental property types include:

- [Most federally assisted rental housing programs](#),
- Low income tax credit housing,
- [Housing with federally backed loans](#).

For more information, please see this [summary](#) prepared by the National Housing Law Project.

State

[Executive Order D-2020-101](#) last until July 13th and provides the following:

- Landlords must give tenants a 30-day notice and 30-day period to cure for a default base on non-payment before filing an FED. This 30-day period can extend past July 13th
- No late fees or penalties for non-payment defaults from May 1 to June 13.

The **[statewide eviction moratorium](#)** ended on June 15th

Court District

Many Colorado Judicial Districts have temporarily suspended evictions.

The expiration dates of these suspensions vary widely and are subject to change. You can find more information at [this link](#) about the status of eviction procedures in your county.

If you're uncertain about the status of an eviction moratorium, please contact the appropriate district or county court, or check online [here](#).

County

Some counties (including Denver) have directed sheriffs to discontinue the enforcement of writs of restitution

These provisions vary by county and only delay the removal of families and possessions from rental properties; they do not forestall court proceedings

What we know right now: The current executive order does not stop FED filings, but it buys tenants more time with a 30-day notice and cure period before landlords can file.

Despite the presence of moratoria, tenants are still bound by rental contracts

While moratoria remain in place, tenants are still expected to pay rent under the terms of their rental agreements. Landlords may still use normal measures to attempt to collect rent from tenants during a moratorium

Acceptable landlord collection tactics during moratoria

1. **Calls, emails, letters, and other outreach:** Landlords may ask tenants to pay rent during the moratoria and are permitted to follow up
2. **Proposing payment agreements:** Landlords may attempt to negotiate payment agreements with tenants during the moratorium period

Unacceptable landlord collection tactics during moratoria

1. **Evicting tenants:** Landlords may not use “self-help” measures to remove tenants during or after the moratoria period
2. **Harassing or intimidating tenants:** Landlords cannot seek rental payments through harassment, intimidation, or other related means
3. **Locking-out tenants:** Landlords may not change locks or attempt to block tenant entry to premises
4. **Discontinuing utilities or other services:** Landlords may not discontinue critical services during the moratoria
5. **Failing to maintain premises:** Landlords must continue to maintain premises

Eviction moratoria only defer legal action: when moratoria expire, tenants may face eviction, suits for unpaid rent, or both

Post moratorium legal action

Eviction (F.E.D.)

Description

- When eviction moratoria are lifted, landlords may be able to proceed in F.E.D suits against clients for non-payment, holding over, or other causes; however, the timelines on the suits will depend on the court docket, whether a demand was served during the moratorium, and other factors
- Landlords may also be able to pursue back rent from tenants who are still living on the premises, who have voluntarily moved out, and who have been evicted for non-payment and other causes

Money damages

What tenants need to know: Despite the presence of various eviction moratoria, they are still bound by rental contracts. Landlords will likely seek payment under the terms of rental agreements and will continue to expect tenants to pay

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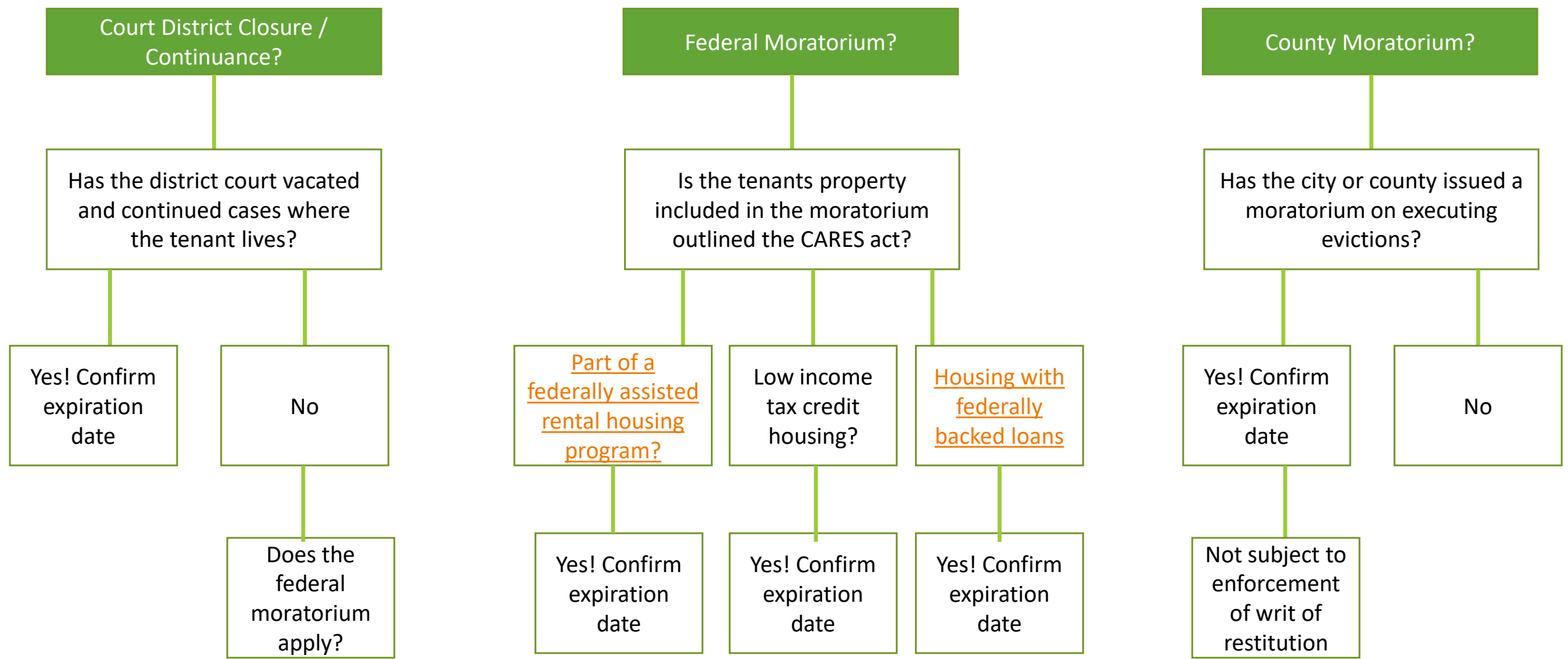
1 Context and background information on Colorado evictions and moratoria

2 7-steps in handling an eviction case during the current COVID-19 moratoria

When working with tenants who cannot pay rent due to COVID-19, there are several steps you should take

- 1** Determine if your client is currently protected by an eviction moratorium, and when that moratorium expires
- 2** Explain situation and options to client in clear and compelling language
- 3** Review resource list with clients to provide guidance on stimulus payments, UI, etc.
- 4** Assist tenant in reaching out to landlord to explain inability to pay
- 5** Engage with landlord where appropriate and constructive
- 6** Advise on proposed payment agreements, if any
- 7** Support client through legal proceedings when eviction moratorium is lifted, if needed

STEP 1: Determine if client is protected by an eviction moratorium



Step 2: Explain situation to client

Topic to cover

Description

Moratorium protection/
deadline

- After reviewing applicable court, city, and federal moratoria, advise client of applicable protections, expiration date, etc.
- Emphasize that while a moratorium forestalls evictions, it does not eliminate contractual obligations to pay

What the world
will look like post-
moratorium

- Discuss what the world might look like when the eviction moratorium is lifted, to include (1) potential for an eviction proceeding due to non-payment, and (2) potential for lawsuit seeking unpaid rent, late fees, etc.

What landlord can
(and cannot) do
during moratorium

- Review what steps a landlord can and cannot take during a moratorium to pursue payments outlined under rental agreement (*see page 5*)

Immediate next
steps

- Align on next steps with tenant, to include: (1) Call and/or explanatory letter to landlord (*see page 11*), (2) opportunities for resources (*see page 10*), (3) next check in with client as negotiations evolve.

Step 3: Share prospective resources with client

From: [“A Tenant’s Guide to COVID-19”](#)

1. **Stimulus funding:** In the days and weeks, each U.S. taxpayer who earns less than \$75,000 per year will receive a \$1200 check from the federal government along with an additional \$500 for each dependent child. (For example a family with two parents and three children would receive $\$1200 + \$1200 + \$500 + \$500 + \$500 = \3900) More information is available at this [link](#).
2. **Unemployment Insurance:** The recently passed CARES Act expands unemployment insurance dramatically. If you have been laid-off, furloughed, or face a work reduction as a contractor or gig economy employee, you may be eligible for benefits (in addition to receiving the stimulus funding above). You can submit an application here: [Start a Claim](#)
3. **Temporary Rental and Utility Assistance:** In Denver County, residents may apply for TRUA benefits to support rental and utility payments. More information can be found by dialing 3-1-1 or visiting: [Rent and Utility Help - Department of Housing Stability](#)
4. **Other rental support:** The State of Colorado is providing some rental support to tenants facing hardship as a result of COVID-19. Residents across the state can search for emergency rental assistance providers here: [State of Colorado Eviction Prevention Programs](#). You may also call 2-1-1 or visit <http://211.org/>
5. **Energy Assistance:** Apply for or find out information about the Low Income Energy Assistance Program (LEAP) by calling the HEAT [HELP Line](#) (available 24/7) at 866-431-8435. Applications can take 30 days to process but can be quicker for emergencies like a shutoff notice.
6. **Food Assistance:** There are many options available to you to apply for Food Assistance (SNAP) benefits. Try to provide as much information as you can on the application to make the process faster.

Using “A Tenant’s guide to COVID-19,” work with client to **discuss potential funding and support options at the local and national level**, including:

- Potential timing and amount of federal stimulus funding (formula outlined in Tenant Guide)
- Opportunities to apply for unemployment insurance via CDLE (note: through the CARES Act, the federal government has included many gig and self-employed workers facing reduced or eliminated hours)
- Temporary Rental Assistance: Some counties and the state are providing temporary support for rent and utility payments

Step 4: Assist tenant in reaching out to landlord

From: “A Tenant’s Guide to COVID-19”

LANDLORD LETTER DRAFT TEXT

Dear [Insert Landlord or Company Name]-

I am writing in regards to my tenancy at [Insert address]. Due to the ongoing COVID-19 crisis, I am unable to make my rental payment for the month of [insert month] on [rental due date]. This is due to [select reason: being ill and unable to work / being laid-off from my work / being furloughed at work / facing reduced work hours / other].

I hope to be able to make payments in the future. If you would like to discuss this more, please feel free to reach out.

Thank you,
[Signature]

- Work with tenant to draft letter or email to landlord explaining inability to pay, establishing reason for non-payment, and offering further discussions
- If other documentation is available (e.g., letter from employer explaining furlough), you may also want to include that

Step 5: Engage with landlord when constructive

It may be helpful to engage directly with the tenant's landlord when:

- The tenant is struggling to engage with, understand, or reach temporary resolution with the landlord
- The landlord is behaving in a threatening manner, not recognizing the moratorium, or threatening a discontinuation of services
- The landlord is attempting to negotiate a payment agreement, settlement, or other form of resolution

Step 6: Support tenant in evaluating payment agreements

Dear Resident,

If your ability to pay rent is affected by the coronavirus, you may request limited hardship relief. **To qualify for any relief, you must establish (1) that your main source of income has been disrupted by a coronavirus-related layoff, work stoppage or significant income reduction and (2) you have a plan of when/how you can resume regular rent payments.** Approval of hardship requests are within the sole discretion of Landlord. All other provisions of the Resident's lease agreement and the community rules remain in full force and effect.

For April, and as may be further extended by management, if you pay your rent in full in the same month that it is due, we will automatically remove the late fee/s for that month. You do not need to request a late fee waiver as long as your rent is received in full during the same month it is due.

For other requests, please fill out the below form and send back to the office along with any supporting documentation. If you cannot fill out the form, a manager can do it for you by phone.

Community Name: _____

Resident Name: _____ Unit Number/Address: _____

Resident Mobile Phone: _____ Email Address: _____

Current/Recent Employer Name: _____

Supervisor Name: _____

Supervisor Phone/Email Contact: _____

Hardship Agreement: Due to a coronavirus-related layoff, work stoppage or significant reduction in income, I am unable to pay some or all of my rent at this time. I am entering this agreement with the understanding that while Landlord may agree to accept a late payment, my rent remains due in full. I promise to pay my balance as soon as I resume work, receive unemployment, governmental or other assistance, or am otherwise able to pay.

My current employment status is unemployed/laid off temporarily not working reduced employment.

I am able to make a partial rent payment of \$_____ at this time and promise to pay the remainder on/before this date: _____.

- We are seeing payment agreements from landlords with significantly different terms; most commonly, landlords offer: (1) rent reductions for on-time payment, or (2) an elimination of late fees in exchange for same-month payment
- Many payment agreements disadvantage tenants and should be reviewed closely, keeping an eye on: (1) Whether altered payment arrangements make rent too high to pay, (2) Whether the agreement changes lease terms other than payment, (3) Whether it stipulates that the landlord is entitled to an order for possession from a court if the tenant fails to make payments as agreed, and (4) Whether the landlord is threatening to evict the tenant if they don't sign the proposed modification agreement

Step 7: Advise client through legal proceedings when the eviction moratorium is lifted

We are hoping that there will be a public policy solution that will modify the traditional eviction process; however, in the absence of this support, tenants will require representation in their eviction lawsuits

Simplified eviction timeline

Tenant served with demand

Tenant must pay rent owed or move out

Landlord files suit, serves tenant with summons and complaint

Tenant files answer to complaint

If tenant files answer, trial scheduled

Trial held, If judgement entered, writ of restitution issued

Sheriff executes writ of restitution

Day 1: Landlord serves tenant with demand to pay rent or move; Usually, tenants have 10 days to respond, however in some cases they may only have 5 days if living in an exempt residential property

Day 6/11: After ten day demand period has passed (5 days in exempt properties), tenant must pay owed rent or move out.
Tenants get 30-day notice under current order valid until 7/13.

Day 12: If, at the end of the 10 day period, the tenant does not pay rent or move, the landlord may file an F.E.D suit with the court and then serve the tenant with a summons and complaint

Day 19-26: Tenant has between 7-14 days to file an answer, depending on the court; NOTE: the answer must be filed on or before the return date mentioned in the summons

Failing to file an answer will result in a default judgement for the landlord

Day 23-31: If tenant files an answer, a trial may be scheduled by the court within 5 days; during this period landlord and tenant often negotiate a stipulated agreement

In a post COVID-19 word, trial dates may be considerably delayed

Day 23-31: If trial is held and judgement is entered against tenant, writ of restitution may be issued

Day 25-33: Sheriff may execute writ of restitution 48 hours after entry of judgement; depends on landlord-sheriff scheduling and sheriff availability

Further questions?

Please feel free to contact us with questions about this training:

1. Zach Neumann: zacharyneumann@gmail.com
2. Jack Regenbogen: jregenbogen@cclponline.org

If you or someone you know is in need of legal services, please contact one of the following organizations:

1. [Colorado Legal Services](#)
2. [Colorado Poverty Law Project](#)
3. [COVID-19 Eviction Defense](#)