

## Cheat Sheet: Drafting Agreements & Stipulations in Nonpayment of Rent Evictions

### 1. Big Red flags in agreements and alternatives to those red flags

#### A. Red Flag 1: Judgement for Possession entered up front (i.e. legal eviction built into agreement)

- The landlord (LL) or their attorney will want a judgment for possession to be entered up front in the agreement, and then if the agreement is for tenant to move out, the agreement states that client will move out on a certain date and the writ of restitution will not be executed by the sheriff until this certain date.
  - Red Flag Example: “The Plaintiff and the Defendant agree as follows: Defendant(s) confess judgement for possession. A writ of restitution shall issue after the statutory 48 hour stay and the Plaintiff may schedule the sheriff’s move out. However, there can be no physical move out prior to the Jan. 12, 2020.”
- Very bad for tenants: Part of our goal in drafting these agreements is to mitigate the impact on a client’s ability to find new housing. However, if a judgment for possession and a writ enters (i.e. the client will have an eviction on their record), this is going to have a huge negative impact on client’s ability to find new housing.
- Alternative to Judgement for Possession entered up front:
  - Draft an agreement that allows for a judgment for possession to enter if client does not meet the conditions of the agreement, ie, doesn’t meet move out date.
    - (a) LL’s are not always receptive to this because it could cost them more money.
      - (i) For example, if tenant agrees to move out by July 1, then ideally the agreement will state that if client is not out of the residence by July 2, then LL can file a motion with court and obtain an immediate judgment for possession and a writ of restitution. LLs may not want to go to this effort but if you can convince them, it is highly beneficial to the client.
    - (b) How to frame it to LL:
      - (i) Tenant is agreeing to move out (what LL wants) and is having to move in a very short time. It is fair to at least give them this small concession.
      - (ii) And, tenant has an interest in complying so that a judgment for possession (i.e. eviction) is not on the tenant’s record.
  - Example of good language:
    - (a) “Plaintiff and Defendant (collectively the “Parties”) have agreed that this is a Non-Judgement Stipulation Agreement.”
      - (i) Title for filing can actually be “Non-judgment Stipulation Agreement”

#### B. Red Flag 2: Automatic judgment based on default of agreement requirements

- If the agreement contains conditions for tenants to follow during its term, some LLs will push for automatic judgment based on default of these conditions.
  - This red flag fails to protect tenant for LL simply alleging a lease violation during term of stipulation and not having to prove it.
- Alternative: If the agreement contains conditions for tenant to follow during the term of the agreement (i.e., must pay rent on time, comply with lease), then negotiate for any alleged violation to be supported by affidavit with notice to tenant with time to respond.

- Example language: “If defendants have not fully vacated and/or removed all items from premises by Jan. 9, 2020, Plaintiff will be immediately entitled to a judgment for possession entering against Defendants and may schedule an actual physical move-out with the Sheriff. Plaintiff will file a 48-hour Notice of Default of Stipulation Agreement with defendant and the court.”
- C. Red Flag 3: Exorbitant attorney and late fees in repayment agreement.
- LLs and their attorneys always initially ask for attorney fees, but in negotiations you can sometimes get attorneys fees waived.
  - Under CO law, late fees need to be “reasonable,” but we have seen late fees that equal half or more of the rent owed. That is not reasonable.
    - Lots of case law on what is “reasonable.” Normally aim for no more than 15% of back owed rent (E-mail Jen at [jcuesta@colegalserv.org](mailto:jcuesta@colegalserv.org) for case law).
- D. Alternatives to fees and rent reduction proposals:
- Propose elimination of late fees in exchange for same-month payment.
  - Proposed a rent reduction for in-time payments
- E. Other Red Flags to look for:
- The agreement makes the rent too high for tenant to pay.
  - The agreement, if tenant is staying, changes lease terms other than payment.
  - Stipulations does not state that the LL will dismiss the eviction case without prejudice if tenant meets all the provisions of the stipulation.
  - LL is threatening to evict the tenant if they do not sign the proposed agreement.

2. How to ethically draft documents for pro se parties:
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- A. C.R.C.P. 311(b) – If an attorney helps a pro se party draft a legal document, that document must include the attorney's name, address, phone number and attorney registration number.
- EXAMPLE: This answer was prepared with assistance from Leslie Knope, Atty. Reg. #: 12345, 1905 Pawnee St. Denver, CO 80203, (303) 123-4561, [lknope@coserv.org](mailto:lknope@coserv.org). My assistance with this document does not establish me as the attorney of record, so please continue sending all case correspondence to the defendant.
    - ADD this sentence at the end of the body of the document.
    - DO NOT include your name in the caption, put client's name & info in the caption.
    - This last sentence in the above example is not required under the ethical rule, but it can prevent the courts from mistakenly making you the attorney of record.
  - If you simply help a client fill out a JDF form and do not modify the form, then you do not have to include your attorney information.
- B. Make it clear to tenant that if no agreement is reached and they proceed to trial, then they will be representing themselves. You can provide advice about hearing procedures, what to argue, evidence, witnesses, etc., but you will not be representing them.