

# Clear Creek County Sheriff's Office

## Information on Residential Evictions and Writs of Restitution

The following is ***not*** intended nor should it be construed as legal advice, or, as legally binding information, and does not address the specific statutory and legal issues of evictions and Writs of Restitution. Our only intent is to provide the public with general guidelines to questions we are generally asked, related to the Clear Creek County Sheriff's Office policy and procedure for executing Writs of Execution. **We recommend that you personally research the statutes, or contact an attorney or the courts, before proceeding with any action.**

1. **Written Demand / Notice to Vacate (13-40-106)**: The general eviction process begins when the owner/landlord gives a Written Demand for the tenant to vacate. The eviction Notice must be personally served to the tenant, or posted in a conspicuous place upon the premises. The Notice to Quit must set forth the grounds for the landlord's demand for possession of the premises, description of premises, the date and time that the tenancy will terminate, and must be signed by the landlord or his agent or attorney.
2. **Service of Notice to Quit (13-40-108)**: A Notice to Quit, or Demand for Possession of real property may be served by delivering a copy to the tenant, or other person occupying such premises. By leaving with a member of the tenant's family above the age of fifteen years, residing on, or in charge of the premises. Or, if no one is on the premises at the time service is attempted, by posting in a conspicuous place upon the premises.
3. **Upon failure of your tenant to vacate – Action – how commenced (13-40-110)**: If the tenant has not moved out of the property by the end of the time set out in the eviction Notice, or, fails to meet certain terms outlined in the Notice, take a copy of this Notice to the Clear Creek Combined Courts, located at 405 Argentine, Georgetown. There you must obtain a Summons and Forcible Entry and Detainer (S.F.E.D.), and file with the court a Complaint in writing describing the property, names of person in possession or occupancy. The Summons will command the tenant to appear before the court at a designated date and time. The Complaint may also set forth the amount of rent due, or, to become due, present and future damages, costs, and any other relief to which the landlord is entitled.
4. **Service of the S.F.E.D and Return of Summons (13-40-111)**: The service of the S.F.E.D. can be completed by a Sheriff's Deputy or by a disinterested party over the age of 18 years. "Personal" service as outlined in Rule 4 of the Colorado Rules of Civil Procedure is required if you are seeking a money judgment along with the actual eviction. A copy of the Complaint must be served with the S.F.E.D. If no money judgment is sought, the Summons and Complaint may be served by posting in a conspicuous place upon the premises/property after diligent effort to make "Personal" service. Both types of service must be completed not less than **seven days** before the day of the court appearance specified in the S.F.E.D., and must be evidenced by completing the return of service to the court (13-40-112).
5. **The Court Hearing / Answer of tenant-defendant (13-40-113)**: The tenant may respond to the landlord's Complaint by filing a written Answer with the court on or before the date and time in the Summons, or by appearing in court at the date and time in the Summons. The tenants Answer may state why they believe they have a right to remain in the property, and whether they believe they were given proper notice by the landlord. If the tenant fails to file an Answer or appear in court on the date and time in the Summons, the judge may enter a default judgment against the tenant in favor of the landlord for possession. A default Judgment for Possession means the tenant will have to move out, and may have to pay money to the landlord. If the court finds the tenant has committed an unlawful detainer, Judgment will be entered for the landlord. A Writ of Restitution may not be issued until 48 hours after the time of the Judgment.
6. **Eviction / Writ of Restitution after Judgment (13-40-122)**: A Writ of Restitution is a court order directing the Sheriff to oversee the removal of a tenant/occupants and their personal property. **Only** Sheriff's Deputies can execute the Writ of Restitution (eviction). The Sheriff's Office shall not execute a Writ of Restitution until at least **ten days** after entry of the Judgment.
7. **Fees of Sheriff (30-1-104) / Mileage Fees (24-9-104)**: A \$160.00 Sheriff's fee is charged for posting, serving and returning a Writ of Restitution. Additionally, roundtrip mileage is charged for each trip to the premises/property. A \$50.00 cancellation fee will be assessed if notice is not given 12 hours prior to a scheduled eviction. \$50.00 per hour will be assessed for evictions lasting longer than two hours.
8. **Scheduling the Eviction**: You must bring your Writ of Restitution (2 copies), and your Notice of Judgment to the Civil Division of the Sheriff's Office. The Civil Division will schedule the eviction for the first available date. Please be aware that there can be a waiting period of several weeks before the Sheriff's Office can complete your eviction.
9. **Unusual Situations**: Special circumstances should be directed to the Civil Division (303) 679-2376 (including concerns about anticipated tenants' reactions to being evicted, possessions or illegal activities). Some locations cannot possibly be completed in the two-hour period even with a large moving crew. An additional fee of \$50.00 per hour is required for these unique evictions.
10. **Posting the Writ of Restitution / Eviction**: Sheriff's Deputies will post the Writ of Restitution and Notice of Judgment, along with a Warning Notice from the Sheriff's Office, no sooner than **forty-eight hours** after the entry of the Judgment. We

feel this enhances the possibility the tenants will vacate the premises/property to avoid removal by the Sheriff's Office. Sheriff's Deputies will then respond only on the eviction date given to the owner/landlord, no sooner than **ten days** after the entry of the judgment.

11. **Physical Labor Requirements:** The Sheriff's Office requires the owner/landlord to hire and be responsible for all necessary movers / towers / locksmiths and requires the owner/landlord or agent to be present at the scheduled time of eviction. The eviction may be cancelled if the owner/landlord or agent fails to arrive on time. The owner/landlord is required to provide enough workers to remove all belongings within **two hours** at his/her own expense. The Sheriff's Deputy will stand by while the property is cleared.
12. **Cancellations:** If tenants vacate the premises/property before the scheduled date for eviction, please contact the Civil Division (303) 679-2376, at least 12 hours prior to the scheduled eviction. A \$50.00 cancellation fee will be charged if notice is not given 12 hours prior to a scheduled eviction.
13. **Disposition of Property after the Eviction:** An owner/landlord has no duty to store or maintain a tenant's personal property that is removed from the premises during or after the execution of a Writ of Restitution. Owner/landlords who elect to store a tenant's personal property may charge the tenant the reasonable costs of storing the personal property. (13-40-122(4)).
14. **Hazardous materials:** Property removed from any residence deemed to be a danger to the public will be impounded by the Deputy (firearms, fuels, etc.).
15. **Animals / Livestock:** Any animal/livestock abandoned at the premises will be impounded by the Clear Creek Animal Services Officers and will be housed at the Clear Creek Animal Shelter at the owners' expense.
16. **Can't we just change the locks and not move the tenant's personal property?** The Sheriff will **NOT** participate in any attempt by the owner/landlord to simply lock out the tenant and keep them from their possessions. *Duty to remove tenant and property. 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. Hoover, 643 P.2d 525 (Colo. 1982).*

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- A. **Mobile Home Parks / (Self Owned Mobile Home Owner): Terminate Tenancy (38-12-202):** The Mobile Home Park owner/landlord must serve/post to a mobile home owner/tenant a Notice to Quit in order to terminate a mobile home owner/tenant's tenancy. The Notice to Quit must be in writing and must set forth the grounds for the termination of the tenancy, whether or not the mobile home owner has a right to cure under the "Mobile Home Park Act", and that the mobile home owner/tenant has the option of mediation pursuant to 38-12-216. The landlord's demand for possession of the premises must include the description of premises, the date and time that the tenancy will terminate, and must be signed by the landlord or his agent or attorney.
- B. **Mobile Home Parks / (Self Owned Mobile Home Owner): Nonpayment of Space Rent (38-12-204(1)):** Tenancy in a mobile home park may be terminated upon the landlord's written Notice to the mobile home owner/tenant requiring payment of rent, or, the removal of the mobile home owner/tenant's unit from the premises, not less than **ten days** after the date notice is served or posted, for failure to pay rent when due.
- C. **Notice of Nonpayment of Rent (38-12-204.3):** The Mobile Home Park owner/landlord must serve/post to a mobile home owner/tenant a Notice of Nonpayment of Rent in order to terminate a mobile home owner/tenants tenancy. The Notice must be in writing and must require the mobile home owner/tenant make payment of rent with any applicable fees due and owing (Cure), OR, remove the mobile home owner/tenants unit from the premises, within **ten days** after the date the Notice is served or posted. The landlord's notice must include the description of premises, the date and time that the tenancy will terminate, and must be signed by the landlord or his agent or attorney. Cure refers to a mobile home owner/tenant remedying, fixing, or otherwise correcting the situation/problem that caused the tenancy to be terminated.
- D. **Cure Periods:** If the mobile home owner/tenant has the right to Cure the noncompliance under the "Mobile Home Park Act", the landlord cannot terminate the mobile home owner/tenants tenancy without first providing the mobile home owner/tenant with a time period to Cure the noncompliance.
- E. **Upon failure of the Mobile Home Owner to vacate and deliver possession:** If after the **ten-day** Notice period has passed, and the mobile home owner/tenant has not removed the mobile home from the mobile home park, or, fails to meet the terms outlined in the Notice, take a copy of this Notice to the Clear Creek Combined Courts, located at 405 Argentine, Georgetown. There you must obtain a Summons and Forcible Entry and Detainer (S.F.E.D.), and file with the court a Complaint in writing describing the property, names of the mobile home owner/tenant. The Summons will command the mobile home owner/tenant to appear before the court at a designated date and time. The Complaint may also set forth the amount of rent due, or, to become due, present and future damages, costs, and any other relief to which the landlord is entitled.

- F. **Service of the S.F.E.D.** The service of the S.F.E.D. can be completed by a Sheriff's Deputy or, by a disinterested party over the age of 18 years. "Personal" service as outlined in Rule 4 of the Colorado Rules of Civil Procedure is required if you are seeking a money Judgment along with the actual eviction. A copy of the Complaint must be served with the S.F.E.D. If no money Judgment is sought, the Summons and Complaint may be served by posting in a conspicuous place upon the premises/property after diligent effort to make "Personal" service. Both types of service must be completed at least **seven days** before the day of the court appearance specified in the S.F.E.D., and must be evidenced by completing the return of service to the court (13-40-112).
- G. **The Court Hearing / Answer of Mobile Home Owner-Defendant (13-40-113)**: The mobile home owner/tenant may respond to the landlord's Complaint by filing a written Answer with the court on or before the date and time in the Summons, or by appearing in court at the date and time in the Summons. The tenants Answer may state why they believe they have a right to remain on the property, and whether they believe they were given proper notice by the landlord. If the tenant fails to file an Answer or appear in court on the date and time in the Summons, the judge may enter a default Judgment against the mobile home owner in favor of the landlord to take possession of the space leased by the mobile home owner. A default Judgment for Possession means the mobile home must be removed from the mobile home park. The court will issue a Writ of Restitution for the Sheriff to oversee the removal of the mobile home from the mobile home park. A Writ of Restitution may not be issued until 48 hours after the time of the Judgment.
- H. **Eviction / Writ of Restitution (13-40-122)**: A Writ of Restitution is a court order directing the Sheriff to oversee the removal of a tenant/occupants and their personal property. **Only** Sheriff's Deputies can execute the Writ of Restitution (eviction). The Sheriff's Office shall not execute a Writ of Restitution until at least **ten days** after entry of the judgment.
- I. **Moving Mobile Homes**: No mobile home can be towed without meeting Colorado State Statutes applying to movement of mobile homes on public roadways. Removal of a mobile home requires the owner/landlord to have a specific location to store the mobile home, arrange for a tow vehicle and qualified personnel to remove skirting and make the needed disconnection at the owner/landlord's expense, if the tenant fails to do so, prior to eviction date. Such mobile homes may not be placed on the side of public roadways.