

SHERIFF'S REQUIREMENTS FOR WRITS OF RESTITUTION

A PLANNING GUIDE FOR SUCCESSFUL EXECUTION

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This brochure is intended only as a basic information guide concerning the role and requirements of the Elbert County Sheriff's Office in the execution of a Writ of Restitution. Nothing contained in this brochure shall be construed as legal advice or as legally binding on the Sheriff's Office.

Conducting an eviction is an unpleasant experience for all those involved, landlord, tenant, movers, and deputy sheriff alike. While understanding the emotions involved, the deputy is acting under state law by virtue of a court order.

THE WRIT OF RESTITUTION

Once the Writ of Restitution has been obtained, it must be brought to the Sheriff's Office Civil Section for execution. This is the only stage of the process that requires the involvement of the Sheriff. That is because the Writ of Restitution is actually an order from the court to the Sheriff to dispossess the tenant and restore possession of the property to the landlord. ***No one else has legal authority to execute the Writ, and doing so may well give rise to legal action against the landlord, who may lose the protections that the law otherwise provides when proper legal procedures are followed.*** As soon as the Writ is issued it is enforceable. The Civil Division 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 most cases, the notice will cause the tenant to move on their own. Should the tenant not move the landlord must schedule an eviction with the Sheriff's Office.

SCHEDULING THE EVICTION

Contact the Civil Section by phone or in person. Evictions are scheduled for a mutually convenient time for both the landlord and the sheriff based on availability of a deputy. State law requires execution of the eviction between sunrise and sunset. After scheduling, if execution of the eviction is no longer needed, notify the Civil Section as soon as possible so others may schedule that time slot. If **proper notification** is made at least 24 hours in advance, a refund of the \$100.00 execution fee will be made.

The landlord or their representative must be present for the eviction to take responsibility and possession of the premises. Any representative must have decision making authority to act on the landlord's behalf, to include financial liability to obtain tools, equipment, supplies; contract with professional trades (locksmith, plumber, electrician, carpenter, etc.), truck rentals, vehicle tows, and manpower required to gain entry, perform the eviction, and secure the property.

MOVEMENT AND DISPOSITION OF PROPERTY

All of the belongings of the tenant must be removed from the property and deposited along the nearest public right-of-way. Private property can be utilized if the owner gives permission and the tenant has access to their possessions. The actual placement of the items will be under the direction of the sheriff's deputy. Under Colorado law, the deputy is immune from civil liability for any damage to a tenant's personal property that was removed. And a landlord who complies with the lawful direction of the deputy executing a writ is also immune from civil and criminal liability. However, if the persons moving the tenant's personal property do not exercise reasonable care, the sheriff's deputy may terminate the eviction.

If the landlord is not using a commercial moving company, heavy-duty trash bags and boxes are needed, especially for kitchens, bathrooms, and garages. Having a locksmith present is frequently helpful, both for making the initial entry and to change the key setting to prevent re-entry by the tenant after the eviction is over. Tools and equipment need to be available to dismantle, move large or heavy items, drain waterbeds,

aquariums, or move vehicles. A truck may be necessary to move property due to the lack of a convenient public right-of-way.

If the occupants are not present, the sheriff's deputy will work with the landlord or their representative to make arrangements for household pets and livestock encountered during the eviction. The Colorado Humane Society will take custody of most pets. Neighbors or local pets stores may also be helpful. In the case of livestock, prior to the eviction the landlord will need to work with the Civil Section and State Brand Inspector to make arrangements for their loading, transport, and housing. The livestock may need to remain on the premises under the care of the landlord until possession by the tenant, brand inspector, or other disposition brought about under an agistor's lien, C.R.S. 38-20-102 (1)(a).

PHYSICAL LABOR REQUIREMENTS

Physical labor required for moving the tenant's belongings is arranged, provided, and paid for by the landlord. **Under normal conditions, sufficient personnel must be present to complete the eviction in two hours.** An average three-bedroom home with basement and garage will need approximately eight movers; larger homes may require ten to fourteen. The landlord should take into account the size of the residence, the amount and type of property to be removed, and the distance to the nearest public right-of-way. If the Sheriff's Office determines that there are not sufficient resources, the eviction will be cancelled. When sufficient resources are available, it may be

rescheduled upon paying another \$100.00 execution fee. Prior consultation with the Civil Section will usually avoid such last minute problems.

UNUSUAL SITUATIONS

The landlord should be aware of any hazardous, peculiar or unusual requirements. These may either be due to the nature of a specific location or encountered due to the nature of the tenant's possessions, illegal activity, or materials stored on the property.

Hazardous materials and contaminated items, industrial waste, junk automobiles, vehicle or industrial parts may not be moved to the public right-of-way but left for proper disposal by the landlord. Each situation will be evaluated based on the amount of the material and impact to the public right-of-way.

Some locations cannot possibly be completed in the two-hour time frame even with a large moving crew. An additional fee of \$40.00 per hour is required for these unique evictions. The additional time must be scheduled in advance and is NOT a substitute for poor planning or lack of manpower.

The landlord must fully inform the Civil Section of all unusual situations PRIOR to execution of the writ. If necessary, the deputy will make a planning trip to the eviction site, possibly with the landlord to evaluate special needs and offer suggestions. Remember, if the deputy arrives to execute the Writ and determines that all proper arrangements have not been made, the eviction may be cancelled.

DISPOSITION OF PROPERTY AFTER THE EVICTION

A 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. However, "A landlord who elects to store a tenant's personal property that was removed from the premises during or after the execution of a writ of restitution may charge the tenant the reasonable costs of storing the personal property". C.R.S. 13-40-122 (4).

If not stored by the landlord it should be available for the tenant to reclaim possession from the public right-of-way. Ownership of the personal property removed remains with the tenant and is NOT free for the taking or immediately considered abandoned. Theft is a crime. Landlords should inform their staff and those assisting in the eviction, that persons who steal the tenant's property could be criminally charged.

Should the tenant re-claim only part of their personal property or none at all, after a reasonable time; landlords may be responsible to remove the debris. If the debris remains, many municipal codes or homeowner's association covenants provide sanctions and recovery of debris removal cost from the property owner.

Can we just change the locks and not move the tenant's property?

The sheriff will NOT participate in any attempt by the landlord to simply lock out the tenant and keep them from their possessions. "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. Hover, 643 P.2d 525 (Colo. 1982). The storage of property by the landlord under C.R.S. 13-40-122(4) is for "...personal property that was **REMOVED** from the premises..." (emphasis added).