Colorado Statutes – Title 38 – Article 12 – Tenant and Landlord

SECURITY DEPOSITS - WRONGFUL WITHHOLDING

PART 1

SECURITY DEPOSITS - WRONGFUL WITHHOLDING

38-12-101. Legislative declaration.

The provisions of this part 1 shall be liberally construed to implement the intent of the general assembly to insure the proper administration of security deposits and protect the interests of tenants and landlords.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

Law reviews. For comment, "Colorado's Wrongful Withholding of Security Deposits Act: Three Litigious Shares in an Untested Law", see 49 Den. L.J. 453 (1973). For article, "The Colorado Security Deposit Act", see 50 U. Colo. L. Rev. 29 (1978).

Purpose. The security deposit act was passed to control the practices of landlords who withhold, without justification, their tenants' damage deposits. Houle v. Adams State College, 190 Colo. 406, 547 P.2d 926 (1976).

Statute as basis for jurisdiction. See Turner v. Lyon, 189 Colo. 234, 539 P.2d 1241 (1975).

38-12-102. Definitions.

As used in this part 1, unless the context otherwise requires:

(1) "Normal wear and tear" means 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 chattels by the tenant or members of his household, or their invitees or guests.

(2) "Security deposit" means any advance or deposit of money, regardless of its denomination, the primary function of which is to secure the performance of a rental agreement for residential premises or any part thereof.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

Law reviews. For comment, "Colorado's Wrongful Withholding of Security Deposits Act: Three Litigious Shares in an Untested Law", see 49 Den. L.J. 453 (1973). For article, "The Colorado Security Deposit Act", see 50 U. Colo. L. Rev. 29 (1978).

Landlord undefined. This section does not define the term landlord nor does it state what constitutes the landlord-tenant relationship. Houle v. Adams State College, 190 Colo. 406, 547 P.2d 926 (1976).

But common-law definition not expanded by legislative intent. The legislative intent does not expand the common-law definition of a landlord and a tenant. Houle v. Adams State College, 190 Colo. 406, 547 P.2d 926 (1976).

College board of trustees is not landlord. Houle v. Adams State College, 190 Colo. 406, 547 P.2d 926 (1976).

And dormitory student is not tenant. Houle v. Adams State College, 190 Colo. 406, 547 P.2d 926 (1976).

38-12-102. Definitions.

"Residential premise". A furnished condominium unit containing complete sleeping and eating facilities and available for short-term rentals is a "residential premise" subject to the provisions of this act. Haan v. Mountain Queen Condo. Ass'n, Inc., 717 P.2d 969 (Colo. App. 1985), rev'd on other grounds, 753 P.2d 1234 (Colo. 1988).

The language adopted by the parties to a rental agreement to describe a payment made by the tenant to the landlord prior to occupancy is not dispositive of the question of whether the payment constitutes a "security deposit". Mountain Queen Condo Ass'n v. Haan, 753 P.2d 1234 (Colo. 1988).

Applied in In re Quintana, 28 Bankr. 269 (Bankr. D. Colo. 1983).

38-12-103. Return of security deposit.

(1) A landlord shall, within one month after the termination of a lease or surrender and acceptance of the premises, whichever occurs last, return to the tenant the full security deposit deposited with the landlord by the tenant, unless the lease agreement specifies a longer period of time, but not to exceed sixty days. No security deposit shall be retained to cover normal wear and tear. In the event that actual cause exists for retaining any portion of the security deposit, the landlord shall provide the tenant with a written statement listing the exact reasons for the retention of any portion of the security deposit. When the statement is delivered, it shall be accompanied by payment of the difference between any sum deposited and the amount retained. The landlord is deemed to have complied with this section by mailing said statement and any payment required to the last known address of the tenant. Nothing in this section shall preclude the landlord from retaining the security deposit for nonpayment of rent, abandonment of the premises, or nonpayment of utility charges, repair work, or cleaning contracted for by the tenant.

(2) The failure of a landlord to provide a written statement within the required time specified in subsection (1) of this section shall work a forfeiture of all his rights to withhold any portion of the security deposit under this section.

(3) (a) The willful retention of a security deposit in violation of this section shall render a landlord liable for treble the amount of that portion of the security deposit wrongfully withheld from the tenant, together with reasonable attorneys' fees and court costs; except that the tenant has the obligation to give notice to the landlord of his intention to file legal proceedings a minimum of seven days prior to filing said action.
(b) In any court action brought by a tenant under this section, the landlord shall bear the burden of proving that his withholding of the security deposit or any portion of it was not wrongful.

(4) Upon cessation of his interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver, or otherwise, the person in possession of the security deposit, including but not limited to the landlord, his agent, or his executor, shall, within a reasonable time:
(a) Transfer the funds, or any remainder after lawful deductions under subsection (1) of this section, to the landlord's successor in interest and notify the tenant by mail of such transfer and of the transferee's name and address; or
(b) Return the funds, or any remainder after lawful deductions under subsection (1) of this section, to the tenant.

(5) Upon compliance with subsection (4) of this section, the person in possession of the security deposit shall be relieved of further liability.

(6) Upon receipt of transferred funds under subsection (4) (a) of this section, the transferee, in relation to such funds, shall be deemed to have all of the rights and obligations of a landlord holding the funds as a security deposit.

(7) Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this section for the benefit of a tenant or members of his household is waived shall be deemed to be against public policy and shall be void.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 49 Am. Jur.2d, Landlord and Tenant, 651-657. C.J.S. See 52 C.J.S., Landlord and Tenant, 473(1). Law reviews. For comment, "Colorado's Wrongful Withholding of Security Deposits Act: Three Litigious Shares in an Untested Law", see 49 Den. L.J. 453 (1973). For article, "The Colorado Security Deposit Act", see 50 U. Colo. L. Rev. 29 (1978).

Purpose of section. From a consideration of the language of the entire section, it is evident that the legislative purpose of this section is to assure that tenants will not be wrongfully deprived of their security deposits, and that if so deprived they will be entitled to adequate judicial relief. Ball v. Weller, 39 Colo. App. 14, 563 P.2d 371 (1977). This section is designed to assist tenants in vindicating their legal rights and to equalize the disparity in power which exists between landlord and tenant in conflicts over relatively small sums. Martin v. Allen, 193 Colo. 395, 566 P.2d 1075 (1977).

This section provides a court remedy against landlords who withhold security deposits willfully and wrongfully, and the tenant's attorney should be paid for the time necessary to prevail; absent reasonable attorneys' fees, the security deposit law would not be enforced. Mau v. E.P.H. Corp., __ Colo. __, 638 P.2d 777 (1981).
Security deposit actually belongs to tenant; it is only security for the landlord. Turner v. Lyon, 189 Colo. 234, 539 P.2d 1241 (1975).

Landlords not absolved from notice requirement. The last sentence in subsection (1) does not absolve landlords from the notice requirement; it merely permits them, upon proper notice, to apply deposits against unpaid rent. Heatherridge Mgt. Co. v. Benson, 192 Colo. 190, 558 P.2d 435 (1976).

Justification for requiring tenants to notify landlords prior to claiming treble damages, attorneys' fees, and court costs is to give the landlord one last week to return the security deposit. Turner v. Lyon, 189 Colo. 234, 539 P.2d 1241 (1975).

"Willful" defined. The term "willful" in subsection (3)(a) means "deliberate". Turner v. Lyon, 189 Colo. 234, 539 P.2d 1241 (1975).

When retention "willful". If the landlord deliberately fails to return the security deposit during the additional seven-day period, the retention is logically "willful" under this section. Turner v. Lyon, 189 Colo. 234, 539 P.2d 1241 (1975).

Wrongful withholding of deposit determined. Failure to return the deposit, coupled with failure to provide a tenant with statutorily mandated written statement of reasons for the retention, makes the withholding of a deposit wrongful. Martinez v. Steinbaum, __ Colo. __, 623 P.2d 49 (1981).

Deposit not "wrongfully" held. Where respondent authorized petitioner in writing to retain that portion of his deposit equal to one month's rent, petitioner did not withhold that part of the deposit "wrongfully", within the contemplation of subsection (3)(a). Heatherridge Mgt. Co. v. Benson, 192 Colo. 190, 558 P.2d 435 (1976).

Evidence of landlord's good faith. The discrepancy between the amount of a security deposit retained and the amount of actual damages proved by the landlord is important evidence of his good faith. Guzman v. McDonald, 194 Colo. 160, 570 P.2d 532 (1977).

Tenant may not accelerate statutory time requirements. McAuliffe v. Rooney, 38 Colo. App. 137, 552 P.2d 1031 (1976).

Where the statutory notice was given within the one-month period allowed by subsection (1), and only nine days after the surrender of the key to the premises, and suit was commenced prior to the expiration of the additional seven-day period contemplated by the notice requirements of subsection (3)(a), award of treble damages is improper. McAuliffe v. Rooney, 38 Colo. App. 137, 552 P.2d 1031 (1976).

Statute as basis for jurisdiction. See Houle v. Adams State College, 190 Colo. 406, 547 P.2d 926 (1976).

II. TREBLE DAMAGES AND ATTORNEYS' FEES.

Treble damages action not "frivolous" merely because landlord wins. A treble damages action under subsection (3)(a) cannot be characterized as "frivolous" or "groundless", as used in section 13-17-101(3), merely because the landlord prevails on the merits of his defense. Torres v. Portillos, __ Colo. __, 638 P.2d 274 (1981).
Constitutionality of attorneys' fees provision. The legitimate aims of subsection (3)(a) supply a rational basis for the distinction between prevailing tenant-plaintiffs, who are entitled to attorneys' fees, and prevailing landlord-defendants, who are not, and therefore the provision is constitutional. Torres v. Portillos, __ Colo. __, 638 P.2d 274 (1981).

Equality of opportunity to recover attorneys' fees is not a fundamental right, and therefore the rational relationship test, not the strict scrutiny test, is the appropriate standard for equal protection review. Torres v. Portillos, __ Colo. __, 638 P.2d 274 (1981).

Entitlement to attorneys' fees. Tenants who are successful on appeal are entitled to an award of reasonable attorneys' fees. Martin v. Allen, 193 Colo. 395, 566 P.2d 1075 (1977).

Attorneys' fees allowable include those incurred on appeal. Martinez v. Steinbaum, __ Colo. __, 623 P.2d 49 (1981). Attorneys' fees allowable include those incurred in resolving an issue as to the amount of reasonable attorneys' fees incurred in the underlying litigation and those incurred on appeal. People v. Abbott, __ Colo. __, 638 P.2d 781 (1981).

Rationale for award of attorneys' fees. The reason this section provides for an award of attorneys' fees is two-fold: (1) to insulate the award of damages from being substantially reduced by the fees; and (2) to encourage the private bar to enforce its provisions in actions which generally involve small amounts of money. Ball v. Weller, 39 Colo. App. 14, 563 P.2d 371 (1977); Torres v. Portillos, __ Colo. __, 638 P.2d 274 (1981); Mau v. E.P.H. Corp., __ Colo. __, 638 P.2d 777 (1981).

Hearing to determine amount of attorneys' fees. When a successful plaintiff has requested attorneys' fees in his complaint, such an award is mandatory, and it becomes incumbent upon the trial court to hold a hearing to determine the amount of reasonable attorneys' fees to be awarded. Ball v. Weller, 39 Colo. App. 14, 563 P.2d 371 (1977). And awarding fees without hearing error. The trial court erred in awarding attorneys' fees to respondent without a hearing on their reasonableness. Heatherridge Mgt. Co. v. Benson, 192 Colo. 190, 558 P.2d 435 (1976).
Factors considered in determining of reasonable fee. If the fee requested is reasonable in light of community standards and the other criteria to be considered by the court, it is not appropriate for a court to take into consideration what a major client may pay the attorney on an hourly basis or the possible absence of overhead expenses comparable to those borne by lawyers in private practice. Mau v. E.P.H. Corp., __ Colo. __. 638 P.2d 777 (1981).

When penalty provision attaches. If a landlord does not return a security deposit within the required time, the penalty provision of subsection (3)(a) attaches to that portion of the money wrongfully retained, plus attorneys' fees, and court costs. Turner v. Lyon, 189 Colo. 234, 539 P.2d 1241 (1975).

Statutory liability of subsection (3)(a) may be offset by an award, if any, made to the landlord by counterclaim for damages caused by the tenant to the property, and the landlord has the burden of proving the claim by a preponderance of the evidence. Turner v. Lyon, 189 Colo. 234, 539 P.2d 1241 (1975).

Statute of limitations. The treble damages provision of this section, being penal in nature, is governed by the one-year statute of limitations; however, the recovery of the actual security deposit and the award of attorneys' fees, being remedial in nature, are limited by the six-year statute of limitations. Carlson v. McCoy, 193 Colo. 391, 566 P.2d 1073 (1977).

38-12-103. Return of security deposit.

I. General Consideration.
II. Treble Damages and Attorneys' Fees.

I. GENERAL CONSIDERATION.

A restrictive endorsement, by which a landlord attempts to create a waiver of a tenant's right to legal recourse, is void under this section. Anderson v. Rosebrook, 737 P.2d 417 (Colo. 1987).

Applied in In re Quintana, 28 Bankr. 269 (Bankr. D. Colo. 1983).

II. TREBLE DAMAGES AND ATTORNEYS' FEES.

Entitlement to attorneys' fees.
In accord with original. See Kirkland v. Allen, 678 P.2d 568 (Colo. App. 1984).
Attorney's fees allowable include, etc.
Attorney fees allowable include those incurred in resolving an issue as to the amount of reasonable attorney's fees incurred in the underlying litigation and those incurred on appeal. Mau v. E.P.H. Corp., 638 P.2d 777 (Colo. 1981).

(This annotation is set forth in the supplement to correct an error as it appeared in the 1982 Replacement Volume 16A.)
Rationale for award of attorneys' fees. The reason this section provides for an award of attorneys' fees is two-fold: (1) To insulate the award of damages from being substantially reduced by the fees; and (2) to encourage the private bar to enforce its provisions in actions which generally involve small amounts of money. Ball v. Weller, 39 Colo. App. 14, 563 P.2d 371 (1977); Torres v. Portillos, 638 P.2d 274 (Colo. 1981). (This annotation is set forth in the supplement to correct an error as it appeared in the 1982 Replacement Volume 16A.)
Hearing to determine amount of attorneys' fees.
In accord with original. See Kirkland v. Allen, 678 P.2d 568 (Colo. App. 1984).

When penalty provision attaches.
In accord with original. See Kirkland v. Allen, 678 P.2d 568 (Colo. App. 1984).

Where landlord deliberately fails to return security deposit within the additional seven-day period following the tenant's notice to landlord of his intention to file legal proceedings, such retention is logically "willful" under subsection (3)(a) treble damages provisions. Kirkland v. Allen, 678 P.2d 568 (Colo. App. 1984).

Prospective renter was not entitled to treble damages pursuant to this section since deposit paid for rental of condominium unit was not a security deposit but was instead prepayment of the entire rent for said unit. Mountain Queen Condo. Ass'n v. Haan, 753 P.2d 1234 (Colo. 1988).

38-12-104. Return of security deposit - hazardous condition - gas appliance.

(1) Anytime service personnel from any organization providing gas service to a residential building become aware of any hazardous condition of a gas appliance, piping, or other gas equipment, such personnel shall inform the customer of record at the affected address in writing of the hazardous condition and take any further action provided for by the policies of such personnel's employer. Such written notification shall state the potential nature of the hazard as a fire hazard or a hazard to life, health, property, or public welfare and shall explain the possible cause of the hazard.
(2) If the resident of the residential building is a tenant, such tenant shall immediately inform the landlord of the property or the landlord's agent in writing of the existence of the hazard.
(3) The landlord shall then have seventy-two hours excluding a Saturday, Sunday, or a legal holiday after the actual receipt of the written notice of the hazardous condition to have the hazardous condition repaired by a professional. "Professional" for the purposes of this section means a person authorized by the state of Colorado or by a county or municipal government through license or certificate where such government authorization is required. Where no person with such government authorization is available, and where there are no local requirements for government authorization, a person who is otherwise qualified and who possesses insurance with a minimum of one hundred thousand dollars public liability and property damage coverage shall be deemed a professional for purposes of this section. Proof of such repairs shall be forwarded to the landlord or the landlord's agent. Such proof may also be used as an affirmative defense in any action to recover the security deposit, as provided for in this section.
(4) If the landlord does not have the repairs made within seventy-two hours excluding a Saturday, Sunday, or a legal holiday, and the condition of the building remains hazardous, the tenant may opt to vacate the premises. After the tenant vacates the premises, the lease or other rental agreement between the landlord and tenant becomes null and void, all rights and future obligations between the landlord and tenant pursuant to the lease or

other rental agreement terminate, and the tenant may demand the immediate return of all or any portion of the security deposit held by the landlord to which the tenant is entitled. The landlord shall have seventy-two hours following the tenant's vacation of the premises to deliver to the tenant all of, or the appropriate portion of, the security deposit plus any rent rebate owed to the tenant for rent paid by the tenant for the period of time after the tenant has vacated. If the seventy-second hour falls on a Saturday, Sunday, or legal holiday, the security deposit must be delivered by noon on the next day that is not a Saturday, Sunday, or legal holiday. The tenant shall provide the landlord with a correct forwarding address. No security deposit shall be retained to cover normal wear and tear. In the event that actual cause exists for retaining any portion of the security deposit, the landlord shall provide the tenant with a written statement listing the exact reasons for the retention of any portion of the security deposit. When the statement is delivered, it shall be accompanied by payment of the difference between any sum deposited and the amount retained. The landlord is deemed to have complied with this section by mailing said statement and any payments required by this section to the forwarding address of the tenant. Nothing in this section shall preclude the landlord from withholding the security deposit for nonpayment of rent or for nonpayment of utility charges, repair work, or cleaning contracted for by the tenant. If the tenant does not receive the entire security deposit or a portion of the security deposit together with a written statement listing the exact reasons for the retention of any portion of the security deposit within the time period provided for in this section, the retention of the security deposit shall be deemed willful and wrongful and, notwithstanding the provisions of section 38-12-103(3), shall entitle the tenant to twice the amount of the security deposit and to reasonable attorney fees.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION
Source: L. 91: Entire section added, p. 1691, 1, effective July 1.

PART 2

MOBILE HOME PARK ACT

38-12-200.1. Short title.

This part 2 shall be known and may be cited as the "Mobile Home Park Act".

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION
Source: L. 85: Entire section added, p. 1198, 1, effective June 6.

38-12-200.2. Legislative declaration.

The general assembly hereby declares that the purpose of this part 2 is to establish the relationship between the owner of a mobile home park and the owner of a mobile home situated in such park.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION
Source: L. 85: Entire section added, p. 1198, 1, effective June 6.

38-12-201. Application of part 2.

(1) This part 2 shall apply only to manufactured homes as defined in section 42-1-102(106)(b), C.R.S.
(2) Repealed.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION
Source: L. 89: (1) amended, p. 729, 34, effective July 1. L. 94: (1) amended, p. 706, 13, effective April 19.
Cross reference. As to the definition of mobile homes, see 12-51.5-101 (4).
Applied in Husar v. Larimer County Court, __ Colo. App. __. 629 P.2d 1104 (1981).

38-12-202. Tenancy - notice to quit.

(1) (a) No tenancy or other lease or rental occupancy of space in a mobile home park shall commence without a written lease or rental agreement, and no tenancy in a mobile home park shall be terminated until a notice to quit has been served. Said notice to quit shall be in writing and in the form specified in section 13-40-107 (2), C.R.S. 1973. The property description required in section 13-40-107 (2), C.R.S. 1973, shall be deemed legally sufficient if it states:

(I) The name of the landlord or the mobile home park;

(II) The mailing address of the property;

(III) The location or space number upon which the mobile home is situate; and

(IV) The county in which the mobile home is situate.

(b) Service of the notice to quit shall be as specified in section 13-40-108, C.R.S. 1973. Service by posting shall be deemed legally sufficient within the meaning of section 13-40-108, C.R.S. 1973, if the notice is affixed to the main entrance of the mobile home.

(c) (I) Except as otherwise provided in subparagraph (II) of this paragraph (c), the home owner shall be given a period of not less than thirty days, to be extended to not less than sixty days where the home owner must remove a multisection mobile home, to remove any mobile home from the premises from the date the notice is served or posted. In those situations where a multisection mobile home is being leased to, or occupied by, persons other than its owner and in a manner contrary to the rules and regulations of the landlord, then, in that event, the tenancy may be terminated by the landlord upon giving a thirty-day notice rather than said sixty-day notice.

(II) If the tenancy is terminated on grounds specified in section 38-12-203(1)(f), the home owner shall be given a period of not less than ten days, to be extended to not less than fifteen days where the home owner must remove a multisection mobile home, to remove any mobile home from the premises from the date the notice is served or posted.

(d) No lease shall contain any provision by which the home owner waives his rights under this part 2, and any such waiver shall be deemed contrary to public policy and shall be unenforceable and void. However, any lease may provide that the tenancy may be terminated on the landlord's notice in writing to the home owner, in such prescribed manner, to remove the home owner's unit from the premises within a period of not less than thirty days, to be extended to not less than sixty days where the home owner must remove a multisection mobile home, from the date the notice is served or posted. In those situations where a multisection mobile home is being leased to, or occupied by, persons other than its owner and in a manner contrary to the rules and regulations of the landlord, then, in that event, the tenancy may be terminated by the landlord upon giving a thirty-day notice rather than said sixty-day notice.

(2) The landlord or management of a mobile home park shall specify, in the notice required by this section, the reason for the termination of any tenancy in such mobile home park.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

Source: L. 87: (1)(c) and (1)(d) amended, p. 1311, 3, effective May 8. L. 94: (1)(c) amended, p. 703, 1, effective April 19.

Cross reference. As to the form specified for notice to terminate a tenancy, see 13-40-107(2).

C.J.S. See 51C C.J.S., Landlord and Tenant, 89(3), 89(4).

Applied in Hurricane v. Kanover, Ltd., 651 P.2d 1218 (Colo. 1982).

38-12-202.5. Action for termination.

(1) The action for termination shall be commenced in the manner described in section 13-40-110, C.R.S. 1973. The property description shall be deemed legally sufficient and within the meaning of section 13-40-110, C.R.S. 1973, if it states:

(a) The name of the landlord or the mobile home park;

(b) The mailing address of the property;
(c) The location or space number upon which the mobile home is situate; and
(d) The county in which the mobile home is situate.

(2) Service of summons shall be as specified in section 13-40-112, C.R.S. 1973. Service by posting shall be deemed legally sufficient within the meaning of section 13-40-112, C.R.S. 1973, if the summons is affixed to the main entrance of the mobile home.

(3) Jurisdiction of courts in cases of forcible entry, forcible detainer, or unlawful detainer shall be as specified in section 13-40-109, C.R.S. 1973. Trial on the issue of possession shall be timely as specified in section 13-40-114, C.R.S. 1973, with no delay allowed for the determination of other issues or claims which may be severed at the discretion of the trial court.

(4) After commencement of the action and before judgment, any person not already a party to the action who is discovered to have a property interest in the mobile home shall be allowed to enter into a stipulation with the landlord and be bound thereby.

38-12-203. Reasons for termination.

(1) After July 1, 1973, a tenancy shall be terminated pursuant to this part 2 only for one or more of the following reasons:

(a) Failure of the home owner to comply with local ordinances and state laws and regulations relating to mobile homes;

(b) Conduct of the home owner, on the mobile home park premises, which constitutes an annoyance to other home owners or interference with park management;

(c) Failure of the home owner to comply with written rules and regulations of the mobile home park either established by the management in the rental agreement at the inception of the tenancy, amended subsequently thereto with the consent of the home owner, or amended subsequently thereto without the consent of the home owner on sixty days' written notice if the amended rules and regulations are reasonable, except when local ordinances and state laws and regulations or emergency situations require immediate compliance. However, regulations applicable to recreational facilities may be amended at the discretion of the management. For purposes of this paragraph (c), when the mobile home is owned by a person other than the owner of the mobile home park, the mobile home is a separate unit of ownership, and regulations which are adopted subsequent to the unit location in the park without the consent of the home owner and which place restrictions or requirements on that separate unit are prima facie unreasonable. Nothing in this paragraph (c) shall prohibit a mobile home park owner from requiring compliance with current park unit regulations at the time of sale or transfer of the mobile home to a new owner. Transfer under this paragraph (c) shall not include transfer to a coowner pursuant to death or divorce or to a new coowner pursuant to marriage.

(d) (I) Condemnation or change of use of the mobile home park. When the owner of a mobile home park is formally notified by an appropriate governmental agency that his mobile home park is the subject of a condemnation proceeding, the landlord shall, within seventeen days, notify his home owners in writing of the terms of the condemnation notice which he receives.
(II) In those cases where the zoning law allows the landlord to change the use of his land without obtaining the consent of the zoning authority and where such change of use would result in eviction of inhabited mobile homes, the landlord shall first give the owner of each mobile home subject to such eviction a written notice of his intent to evict not less than six months prior to such change of use of the land, notice to be mailed to each home owner.

(e) The making or causing to be made, with knowledge, of false or misleading statements on an application for tenancy.

(f) Conduct of the home owner or any lessee of the home owner or any guest, agent, invitee, or associate of the home owner or lessee of the home owner, that:

(I) Occurs on the mobile home park premises and unreasonably endangers the life of the landlord, any home owner or lessee of the mobile home park, any person living in the park, or any guest, agent, invitee, or associate of the home owner or lessee of the home owner;
(II) Occurs on the mobile home park premises and constitutes willful, wanton, or malicious damage to or destruction of property of the landlord, any home owner or lessee of the mobile

home park, any person living in the park, or any guest, agent, invitee, or associate of the home owner or lessee of the home owner;

(III) Occurs on the mobile home park premises and constitutes a felony prohibited under article 3, 4, 6, 7, 9, 10, 12, or 18 of title 18, C.R.S.; or

(IV) Is the basis for a pending action to declare the mobile home or any of its contents a class 1 public nuisance under section 16-13-303, C.R.S.

(2) In an action pursuant to this part 2, the landlord shall have the burden of proving that he complied with the relevant notice requirements and that he provided the home owner with a statement of reasons for the termination. It shall be an affirmative defense that the landlord's allegations are false or that the reasons for termination are invalid.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

Source: L. 84: (1)(c) amended, p. 976, 1, effective July 1. L. 87: (1)(a), (1)(b), (1)(c), (1)(d), and (2) amended, p. 1311, 4, effective May 8. L. 94: (1)(f) added, p. 703, 2, effective April 19.
C.J.S. See 51C C.J.S., Landlord and Tenant, 98, 112.
Applied in Hurricane v. Kanover, Ltd., 651 P.2d 1218 (Colo. 1982).

38-12-204. Nonpayment of rent - notice required for rent increase.

(1) Any tenancy or other estate at will or lease in a mobile home park may be terminated upon the landlord's written notice to the home owner requiring, in the alternative, payment of rent or the removal of the home owner's unit from the premises, within a period of not less than five days after the date notice is served or posted, for failure to pay rent when due.
(2) Rent shall not be increased without sixty days' written notice to the home owner. In addition to the amount and the effective date of the rent increase, such written notice shall include the name, address, and telephone number of the mobile home park management, if such management is a principal owner, or owner of the mobile home park and, if the owner is other than a natural person, the name, address, and telephone number of the owner's chief executive officer or managing partner; except that such ownership information need not be given if it was disclosed in the rental agreement made pursuant to section 38-12-213.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

Source: L. 85: Entire section amended, p. 1199, 1, effective July 1. L. 87: Entire section amended, p. 1312, 5, effective May 8.
C.J.S. See 51C C.J.S., Landlord and Tenant, 110, 112.

38-12-205. Termination prohibited.

A tenancy or other estate at will or lease in a mobile home park may not be terminated solely for the purpose of making the home owner's space in the park available for another mobile home or trailer coach.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

Source: L. 87: Entire section amended, p. 1312, 6, effective May 8.

38-12-206. Home owner meetings.

Meetings of home owners relating to mobile home living and affairs in their park community hall or recreation hall, if such a facility or similar facility exists, shall not be subject to prohibition by the park management if the hall is reserved according to the park rules and such meetings are held at reasonable hours and when the facility is not otherwise in use.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

Source: L. 87: Entire section amended, p. 1313, 7, effective May 8.

38-12-207. Security deposits - legal process.

(1) The owner of a mobile home park or his agents may charge a security deposit not greater than the amount of one month's rent or two month's rent for multiwide units.
(2) Legal process, other than eviction, shall be used for the collection of utility charges and incidental service charges other than those provided by the rental agreement.

38-12-208. Remedies.

(1) (a) Upon granting judgment for possession by the landlord in a forcible entry and detainer action, the court shall immediately issue a writ of restitution which the landlord shall take to the sheriff. Upon receipt of the writ of restitution, the sheriff shall serve notice in accordance with the requirements of section 13-40-108, C.R.S., to the home owner of the court's decision and entry of judgment.

(b) The notice of judgment shall state that at a specified time, not less than forty-eight hours from the entry of judgment, the sheriff will return to serve a writ of restitution and superintend the peaceful and orderly removal of the mobile home under that order of court. The notice of judgment shall also advise the home owner to prepare the mobile home for removal from the premises by removing the skirting, disconnecting utilities, attaching tires, and otherwise making the mobile home safe and ready for highway travel.

(c) Should the home owner fail to have the mobile home safe and ready for physical removal from the premises or should inclement weather or other unforeseen problems occur at the time specified in the notice of judgment, the landlord and the sheriff may, by written agreement, extend the time for the execution of the writ of restitution to allow time for the landlord to arrange to have the necessary work done or to permit the sheriff's execution of the writ of restitution at a time when weather or other conditions will make removal less hazardous to the mobile home.

(d) If the mobile home is not removed from the landlord's land on behalf of the mobile home owner within the time permitted by the writ of restitution, then the landlord and the sheriff shall have the right to take possession of the mobile home for the purposes of removal and storage. The liability of the landlord and the sheriff in such event shall be limited to gross negligence or willful and wanton disregard of the property rights of the home owner. The responsibility to prevent freezing and to prevent wind and weather damage to the mobile home lies exclusively with those persons who have a property interest in the mobile home; except that the landlord may take appropriate action to prevent freezing, to prevent wind and weather damage, and to prevent damage caused by vandals.

(e) Reasonable removal and storage charges and the costs associated with preventing damage caused by wind, weather, or vandals can be paid by any party in interest. Those charges will run with the mobile home, and whoever ultimately claims the mobile home will owe that sum to the person who paid it.

(2) (a) Prior to the issuance of said writ of restitution, the court shall make a finding of fact based upon evidence or statements of counsel that there is or is not a security agreement on the mobile home being subjected to the writ of restitution. A written statement on the mobile home owner's application for tenancy with the landlord that there is no security agreement on the mobile home shall be prima facie evidence of the nonexistence of such security agreement.

(b) In those cases where the court finds there is a security agreement on the mobile home subject to the writ of restitution and where that holder of the security agreement can be identified with reasonable certainty, then, upon receipt of the writ of restitution, the plaintiff shall promptly inform the holder of such security agreement as to the location of the mobile home, the name of the landlord who obtained the writ of restitution, and the time when the mobile home will be subject to removal by the sheriff and the landlord.

(3) The remedies provided in part 1 of this article and article 40 of title 13, C.R.S. 1973, except as inconsistent with this part 2, shall be applicable to this part 2.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

Source: L. 87: (1)(a) to (1)(d) amended, p. 1313, 8, effective May 8. L. 91: (1)(d) and (1)(e) amended, p. 1695, 3, effective July 1.

Cross references. As to security deposits to secure the performance of a rental agreement and the wrongful withholding of such, see 38-12-101 through 38-12-103. As to the general provisions for forcible entry and detainer, see
13-40-101 through 13-40-123.

38-12-209. Entry fees prohibited - entry fee defined - security deposit - court costs.

(1) The owner of a mobile home park, or the agent of such owner, shall neither pay to nor receive from an owner or a seller of a mobile home an entry fee of any type as a condition of tenancy in a mobile home park.

(2) As used in this section, "entry fee" means any fee paid to or received from an owner of a mobile home park or his agent except for:

(a) Rent;
(b) A security deposit against actual damages to the premises or to secure rental payments, which deposit shall not be greater than the amount allowed under this part 2. Subsequent to July 1, 1979, security deposits will remain the property of the home owner, and they shall be deposited into a separate trust account by the landlord to be administered by the landlord as a private trustee. For the purpose of preserving the corpus, the landlord will not commingle the trust funds with other money, but he is permitted to keep the interest and profits thereon as his compensation for administering the trust account.
(c) Fees charged by any state, county, town, or city governmental agency;
(d) Utilities;
(e) Incidental reasonable charges for services actually performed by the mobile home park owner or his agent and agreed to in writing by the home owner.

(3) The trial judge may award court costs and attorney fees in any court action brought pursuant to any provision of this part 2 to the prevailing party upon finding that the prevailing party undertook the court action and legal representation for a legally sufficient reason and not for a dilatory or unfounded cause.

(4) The management or the resident may bring a civil action for violation of the rental agreement or any provision of this part 2 in the appropriate court of the county in which the park is located. Either party may recover actual damages or, the court may in its discretion award such equitable relief as it deems necessary, including the enjoining of either party from further violations.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

Source: L. 87: (2)(b) and (2)(e) amended, p. 1313, 9, effective May 8.

38-12-210. Closed parks prohibited.

(1) The owner of a mobile home park or his agent shall not require as a condition of tenancy in a mobile home park that the prospective home owner has purchased a mobile home from any particular seller or from any one of a particular group of sellers.

(2) Such owner or agent shall not give any special preference in renting to a prospective home owner who has purchased a mobile home from a particular seller.

(3) A seller of mobile homes shall not require as a condition of sale that a purchaser locate in a particular mobile home park or in any one of a particular group of mobile home parks.

(4) The owner or operator of a mobile home park shall treat all persons equally in renting or leasing available space. Notwithstanding the foregoing, nothing in this subsection (4) shall be construed to preclude owners and operators of mobile home parks from providing housing for older persons as defined in section 24-34-502(7)(b), C.R.S.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION
Source: L. 87: (1) and (2) amended, p. 1314, 10, effective May 8. L. 92: (4) amended, p. 1128, 12, effective July 1.

38-12-211. Selling fees prohibited.

The owner of a mobile home park or his agent shall not require payment of any type of selling fee or transfer fee by either a home owner in the park wishing to sell his mobile home to another party or by any party wishing to buy a mobile home from a home owner in the park as a condition of tenancy in a mobile home park for the prospective buyer. This section shall in no way prevent the owner of a mobile home park or his agent from applying the normal park standards to prospective buyers before granting or denying tenancy or from charging a reasonable selling fee or transfer fee for services actually performed and agreed to in writing by the home owner. Nothing in this section shall be construed to affect the rent charged. The owner of a mobile home shall have the right to place a "for sale" sign on or in his mobile home. The size, placement, and character of such signs shall be subject to reasonable rules and regulations of the mobile home park.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION
Source: L. 87: Entire section amended, p. 1314, 11, effective May 8.

38-12-212. Certain types of landlord-seller agreements prohibited.

A seller of mobile homes shall not pay or offer cash or other consideration to the owner of a mobile home park or his agent for the purpose of reserving spaces or otherwise inducing acceptance of one or more mobile homes in a mobile home park.

38-12-212.3. Responsibilities of landlord - acts prohibited.

(1) (a) Except as otherwise provided in this section, a landlord shall be responsible for and pay the cost of the maintenance and repair of:

> (I) Any sewer lines, utility service lines, or related connections owned and provided by the landlord to the utility pedestal or pad space for a mobile home sited in the park; and
> (II) Any accessory buildings or structures, including, but not limited to, sheds and carports, owned by the landlord and provided for the use of the residents; and (III) The premises as defined in section 38-12-201.5(5).

(b) Any landlord who fails to maintain or repair the items delineated in paragraph (a) of this subsection (1) shall be responsible for and pay the cost of repairing any damage to a mobile home which results from such failure.

(2) No landlord shall require a resident to assume the responsibilities outlined in subsection (1) of this section as a condition of tenancy in the mobile home park.

(3) Nothing in this section shall be construed as:

> (a) Limiting the liability of a resident for the cost of repairing any damage caused by such resident to the landlord's property or other property located in the park; or
> (b) Restricting a landlord or his agent or a property manager from requiring a resident to comply with reasonable rules and regulations or terms of the rental agreement and any covenants binding upon the landlord or resident, including covenants running with the land which pertain to the cleanliness of such resident's lot and routine lawn and yard maintenance, exclusive of major landscaping projects.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION
Source: L. 91: Entire section added, p. 1679, 1, effective April 19.

38-12-212.7. Landlord utilities account.

(1) Whenever a landlord contracts with a utility for service to be provided to a resident, the usage of which is to be measured by a master meter or other composite measurement device, such landlord shall remit to the utility all moneys collected from each resident as payment for the resident's share of the charges for such utility service within forty-five days of the landlord's receipt of payment.

(2) If a landlord fails to timely remit utility moneys collected from residents as required by subsection (1) of this section, such utility may, after written demand therefor is served upon the landlord, require the landlord to deposit an amount equal to the average daily charge for the usage of such utility service for the preceding twelve months multiplied by the sum of ninety.

(3) Any utility which prevails in an action brought to enforce the provisions of this section shall be entitled to an award of its reasonable attorney fees and court costs.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION
Source: L. 91: Entire section added, p. 1679, 1, effective April 19.

38-12-213. Rental agreement - disclosure of terms in writing.

(1) The terms and conditions of a tenancy must be adequately disclosed in writing in a rental agreement by the management to any prospective home owner prior to the rental or occupancy of a mobile home space or lot. Said disclosures shall include:

(a) The term of the tenancy and the amount of rent therefor;
(b) The day rental payment is due and payable;
(c) The day when unpaid rent shall be considered in default;
(d) The rules and regulations of the park then in effect;
(e) The name and mailing address where a manager's decision can be appealed;
(g) All charges to the home owner other than rent.

(2) Said rental agreement shall be signed by both the management and the home owner, and each party shall receive a copy thereof.

(3) The management and the home owner may include in a rental agreement terms and conditions not prohibited by this part 2.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION
Source: L. 87: IP(1), (1)(f), (2), and (3) amended, p. 1314, 12, effective May 8.

38-12-214. Rules and regulations.

(1) The management shall adopt written rules and regulations concerning all home owners' use and occupancy of the premises. Such rules and regulations are enforceable against a home owner only if:

(a) Their purpose is to promote the convenience, safety, or welfare of the home owners, protect and preserve the premises from abusive use, or make a fair distribution of services and facilities held out for the home owners generally;
(b) They are reasonably related to the purpose for which they are adopted;
(c) They are not retaliatory or discriminatory in nature;
(d) They are sufficiently explicit in prohibition, direction, or limitation of the home owner's conduct to fairly inform him of what he must or must not do to comply.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION

Source: L. 87: IP(1), (1)(a), and (1)(d) amended, p. 1315, 13, effective May 8. L. 92: (1)(c) amended, p. 1128, 13, effective July 1.

38-12-215. New developments and parks - rental of sites to dealers authorized.

(1) The management of a new mobile home park or manufactured housing community development may require as a condition of leasing a mobile home site or manufactured home site for the first time such site is offered for lease that the prospective lessee has purchased a mobile home or manufactured home from a particular seller or from any one of a particular group of sellers.

(2) A licensed mobile home dealer or a manufactured home dealer may, by contract with the management of a new mobile home park or manufactured housing community development, be granted the exclusive right to first-time rental of one or more mobile home sites or manufactured home sites.

38-12-216. Mediation, when permitted - court actions.

(1) In any controversy between the management and a home owner of a mobile home park arising out of the provisions of this part 2, except for the nonpayment of rent or in cases in which the health or safety of other home owners is in imminent danger, such controversy may be submitted to mediation by either party prior to the filing of a forcible entry and detainer lawsuit upon agreement of the parties.

(2) The agreement, if one is reached, shall be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process at any time without prejudice.

(3) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

ANNOTATIONS, INCLUDING SOURCES AND COURT CASES RELATED TO THIS SECTION
Source: L. 87: (1) amended, p. 1315, 14, effective May 8.

38-12-217. Notice of sale of mobile home park.

(1) The mobile home park owner shall notify the owners of all mobile homes in the park of his intent to sell. Such notification shall be made only once for any particular contract to sell or trade and shall be by written notice mailed to each mobile home owner at the address shown on the rental agreement with the mobile home park owner at least ten days prior to the first scheduled closing for the sale or trade.

(2) The provisions of this section shall not apply to the sale of a mobile home park when such sale occurs between members of an immediate family or partners in a partnership. For purposes of this section "immediate family" means persons related by blood or adoption.

PART 3

LOCAL CONTROL OF RENTS PROHIBITED

38-12-301. Control of rents by counties and municipalities prohibited.

The general assembly finds and declares that the imposition of rent control on private residential housing units is a matter of statewide concern; therefore, no county or municipality may enact any ordinance or resolution which would control rents on private residential property. This section is not intended to impair the right of any state agency, county, or municipality to manage and control any property in which it has an interest through a housing authority or similar agency.

38-12-302. Definitions.

As used in this part 3, unless the context otherwise requires:
(1) "Municipality" means a city or town and, in addition, means a city or town incorporated prior to July 3, 1877, whether or not reorganized, and any city, town, or city and county which has chosen to adopt a home rule charter pursuant to the provisions of article XX of the state constitution.