

Frequently Asked Questions about Evictions

How do I file an Eviction(FED)?

- An eviction is also called a Forcible Entry and Detainer (FED). Detailed instructions for filing the FED is found at the following link:
http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=28

Please note the following **before** filing an eviction case with the Court:

When can I file an eviction case with the Court?

- Once you post the proper notice (Demand for Compliance or Right to possession Notice or the Notice to Quit) and the allotted time has passed, you may file the Complaint (**JDF 99**) and the Summons (**CRCCP 1A**), along with a copy of the notice that you posted, with the Court.

Who can file the eviction case with the Court?

- The action must be filed by a “person in interest”, i.e. the property owner or other individual or entity identified as the landlord or lessor on the lease. If you are the property manager or the individual or entity acting as an agent for the owner(s), you may be required to show proof of your authority to the Court. Please contact your local courthouse for further information.

Where do I file my eviction case?

- The eviction must be filed in the County where the property is located.

What is a Demand for Compliance or Right to Possession Notice?

- This is a notice that is given by a landlord (owner) to a tenant requiring them to comply or correct a violation of the lease or to pay past due rent within *ten days* of giving the notice to avoid eviction.

What is a Notice to Quit?

- This is a notice that is given by a landlord (owner) to a tenant requiring them to vacate the property.
- This notice can be used if the lease or contract has ended and you want the tenant to vacate the property for any reason.

After I filed my eviction paperwork, I was told to serve the other party. What does that mean?

- There are two options of service;a) personal service or b) service by posting and mail.
 - Service must be made at least 7 days before your hearing date listed on the summons.
- a. Personal service**
- Your paperwork can be served by the Sheriff’s Department in the County where the defendant lives or works, by a Private Process Server or by someone 18 years of age or older, who is not a party to the case.
 - The person serving the paperwork must complete the affidavit of service (**JDF 98**) for each defendant listed. You will need to get the Affidavit of Service from the individual or agency that served the documents and file it with the Court.
 - Personal service is required if you are seeking a monetary (money) judgment.

b. Service by Posting and Mailing

- If personal service cannot be made, the person who attempted to complete service can post the papers on the main door of the dwelling.
- No later than the next day following the day you filed the Complaint (eviction) with the Court, you must mail a copy of the Summons, Complaint, and Answer to the Defendant(s). Please include any exhibits you filed with the Court.
- Complete the Certificate of Mailing on form CRCCP Form 1A and return the certificate to the Court.
- If you complete service by posting and mailing, the Court will only be able to award you possession of the property and cannot assess (award) money damages.

Do I have to file an answer?

- It is in your best interest to file an answer. If you do not file an answer and do not appear in court, the court may rule against you and a Default Judgment could enter against you.
- If you were personally served with the summons, a money judgment may also be ordered.

How do I file an answer?

- Once you receive the eviction papers, you can file a written response to your landlord's complaint. You will file your answer on the Answer under Simplified Civil Procedure form, **CRCCP 3** and file it with the Court.
- The purpose of the answer is for the defendant to respond to the claims or allegations in the Complaint. This is your time to give a legal defense. There is a filing fee that you must pay in order to file your answer. For more information, please visit the following state website:
 - http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=28

What is the Warranty of Habitability defense? – (C.R.S. 38-12-503).

- If the landlord serves the tenant with an eviction notice for **nonpayment of rent**, the warranty of habitability is a possible defense if the property was not fit for human habitation.
- If the tenant believes this has been violated, the tenant must have given written notice to the landlord describing the condition. The written notice must state that the landlord has five (5) days to repair the condition (unless the condition was the result of the tenant). The form can be found online at:
 - http://www.courts.state.co.us/Forms/Forms_List.cfm?Form_Type_ID=28

Please note the following if you are claiming the defense of warranty of habitability:

- The tenant must pay into the court registry the amount of rent due (minus the expenses).
- If all the rent is not paid to the court at the time of filing, the tenant will be in default.
- The party who loses, may have to pay attorney's fees if these terms are in the lease.
- If no terms are listed, neither party will receive attorney's fees.

Can I have a jury trial on an eviction case?

- Yes.

The tenant was ordered to leave by the Judge, but they are still there. What can I do?

- If the court orders a tenant to move out, they are usually given 48 hours.
- If the tenant does not leave, the plaintiff can file a writ of restitution with the court. Once ordered, the writ will allow the Sheriff to physically remove a tenant from the property.
- You will need to fill out the writ and return it to the Court for the Judge's signature.

- After the writ is issued, you must contact the Sheriff to set up a date for removal. There is a fee to have the Sheriff serve a writ of restitution. Please contact your local Sheriff's department for further information on a writ of restitution.