

## **NEW PROHIBITED LEASE PROVISIONS EFFECTIVE AUGUST 8, 2023**

The Colorado Legislature has passed and Governor Polis has signed HB 23-1095, a law that expands the types of lease provisions that are not allowed in residential rental agreements. The law applies to leases signed on or after August 8, 2023. The signed Bill can be found at <https://leg.colorado.gov/bills/hb23-1095> .

### ***Penalties for Eviction Are Not Allowed***

Our experience is that both the courts and the legislature generally do not approve of penalties that are assessed by landlords against tenants. The new law reflects that general policy and provides that a lease may not include a cost penalty to a tenant arising from an eviction notice or an eviction and may only contain an attorney fee provision that awards attorney fees to the prevailing party following a determination by the court that the party prevailed and that the fee is reasonable. A cost penalty is not defined by the statute, however we believe that it would be any charge for the eviction or posting of an eviction notice over the actual costs incurred by the landlord as a result of either the posing of the notice or the eviction itself. Examples of costs that are actually incurred and allowable are such costs for service of notices and administrative time for property managers to prepare eviction documents and appear in court.

### ***Certain Tenant's Rights Cannot Be Waived In The Lease***

The new law also prohibits the waiver of certain Tenant's right in a lease. The rights that cannot be waived are:

1. The right to a jury trial, except that the parties may agree to a waiver of a jury trial in a hearing to determine possession of property.
2. The right to participate in class action litigation. Unlike the rest of the prohibitions in the law, this applies to Park owned mobile homes that are leased to tenants.
3. The implied covenant of good faith and fair dealing (Except that a lease may provide that the landlord is not responsible for any violation of the implied covenant of quiet enjoyment that is committed by a third party acting beyond the reasonable control of the landlord).
4. The implied covenant of Quiet enjoyment.

### ***Fees For Failure To Provide Nonrenewal Notice Cannot be Charged***

A lease provision that asses a fee or penalty for a tenant's failure to provide notice of nonrenewal of a rental agreement prior to the end of the rental agreement may not be included in the lease. However, there can be a provision that allows the landlord to charge the tenant for actual losses incurred as a result of the tenant's failure to provide a nonrenewal notice if one is required by the lease.

### ***Fees And Charges Cannot Be Characterized As “Rent”***

A lease may not characterize any charge or fee as “rent” except for the set monthly amount charged for the right to occupy the property. As a result, late fees, utilities, bad check charges, cleaning fees, and any other charge can no longer be considered additional rent and cannot be the basis for an eviction for non-payment of rent. A landlord operating under any local, state, or federal voucher or subsidy program cannot commence or pursue an eviction solely for the nonpayment of utilities. However, utilities may still be considered as rent for the purpose of calculating housing costs that are eligible for reimbursement or payment under any local, state, or federal voucher or subsidy program.

### ***Limits On Mark-Ups For Services Provided By Third Party Vendors***

A lease cannot require a tenant to pay a fee mark-up for a service provided by a third-party vendor in excess of two percent of the amount that the landlord was billed not to exceed a total of ten dollars per month.

### ***Covered Properties***

The new law applies to residential leases, other than Park Owned Mobile Homes (except as noted above). There is also an exception for duplexes, triplexes, and accessory dwelling units if: (a) the owner of the duplex, triplex, uses one of the units of the duplex or triplex as the owner's primary residence; or (b) the owner's primary residence is on the same lot as the duplex, triplex, or accessory dwelling. An “accessory dwelling” is defined as a dwelling that is located on the same lot as a primary residence, such as a carriage house or pool house. The law does not apply to mobile home site leases.

### ***Penalties***

The law does not provide for any penalty in the event that any of the prohibited provisions are contained in a lease, but it does state that such provisions are void and unenforceable.