

REAL ESTATE ADVISORY

Colorado Eviction Moratorium and Commercial Real Estate



The ongoing COVID-19 pandemic has led to an economic downturn causing rapidly decreasing revenues for commercial and residential landlords. Many jurisdictions, including Colorado, have implemented moratoriums on tenant evictions during this crisis, which lack necessary details. Therefore, any moratoriums enacted now by local governments will likely change over time to address tenant and landlord needs and procedural issues due to strained resources.

The Colorado governor recently issued **Executive Order D 2020 012**, as amended and extended by **D 2020 031** and **D 2020 051** (collectively, the "Orders"), limiting evictions to provide relief to Coloradans affected by COVID-19. It is clear that the Orders apply to residential properties. What is less clear is how the Orders apply to commercial properties.

The following is a brief outline of the key takeaways and practical guidance regarding commercial property and tenant evictions only:

1. There is a 30-day suspension on commercial evictions "in order to provide support and relief to Coloradans that have experienced economic hardship due to COVID-19." The 30-day suspension will expire May 30 but could be extended pursuant to a follow-up Executive Order. This is not a blanket prohibition on all evictions and, although not expressly stated in the Orders, it is reasonable to expect commercial tenants to demonstrate financial struggles due to COVID-19 in order to be afforded the protections under these Orders. A landlord may pursue an eviction if a tenant's violation causes, or will cause, imminent and serious threat to other individuals or significant damage to property. This depends on the situation, but failure to clean or maintain property over time could rise to the level of threatening to cause significant damage to the property, warranting an eviction. Commercial landlords may also consider other appropriate legal or equitable remedies,



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like suing the tenant or guarantor for recovery of all monies due and any damages incurred due to breach of lease; however, it is clear that the governor and local government agencies want landlords to work with tenants as much as possible under the circumstances.

2. Landlords and lenders are prohibited from charging any late fees or penalties for any breach of the terms of a lease or rental agreement due to nonpayment for the duration of the Orders. However, tenants are still responsible for rent that they were unable to pay on time, and the protection from late fees ends when the Orders expire (unless extended or amended otherwise). The Orders also direct the Department of Local Affairs, the Department of Labor and Employment, and the Department of Regulatory Agencies to create a model repayment agreement that allows tenants additional time to repay rent. Right now, this is just an order to the local agencies to work on creating a model agreement.
 - **Practical Tip:** The Orders do not provide a repayment period after the protections expire; however, the trend from other jurisdictions is to require a repayment period to allow the tenant additional time to repay rent. For example, Santa Monica, California, has a repayment period of six months for residential and commercial property; Los Angeles, California, has a repayment period of only three months for commercial properties. Colorado may specifically address repayment periods in future Executive Orders or pursuant to a model repayment agreement developed by the local agencies mentioned above, but if not, and in the meantime, we recommend negotiating a written repayment agreement with your tenants that allows additional time to repay rent.
 - **Practical Tip:** Landlords should consider ways to reduce property operating expenses without breaching their obligations to tenants under the lease. Be aware that even if a tenant's business is temporarily closed, the terms of the lease may still require the landlord to provide access, utilities, and/or HVAC. It is important to carefully review the lease and continue to provide all required access/services to avoid any affirmative defenses or counterclaims in the event you need to proceed with eviction. Landlords can also try to obtain a written express waiver of any landlord obligations to avoid any future affirmative defenses or counterclaims.
3. State agencies and landlords are encouraged to work with tenants to avoid eviction procedures without cause or as a result of unpaid rent or any other minor tenancy violations.
 - **Practical Tip:** Landlords should proactively reach out to tenants to figure out how both parties are going to adjust to the new economic realities. Creative solutions are encouraged (and likely expected) between landlords and tenants to balance tenants' reduced revenue and landlords' need for cash flow. An open line of communication and an acknowledgment of what the tenant is facing will make tenants more likely to communicate financial struggles, and the more you know, the better you can prepare.

The intent of the Orders is to protect the economic well-being of Colorado's communities and businesses during the next month. These Orders expire May 30, 2020, unless further extended by an Executive Order. Additionally, the City and County of Denver have said that Denver sheriffs will not enforce eviction orders against businesses due to more pressing demands of the COVID-19 crisis. Although local sheriffs may enforce eviction orders once the Orders have expired, eviction proceedings will likely be delayed due to understaffed or backlogged court systems and, potentially, reluctant judges.

QUESTIONS

If you have any questions regarding this advisory, our [Real Estate Group](#) is available to help navigate the uncertainty related to a commercial tenant's failure to pay rent or other breach of lease.

Additionally, please see this [previously issued advisory](#) regarding the CARES Act and its impacts on real estate.