New for-cause eviction law: Insights, implications

After suffering defeat last year, the bill sponsors of HB 23-1171 succeeded this year in passing HB 24-1098, which limits the reasons a landlord can evict a tenant or refuse to renew a tenant's lease. Colorado now joins California, the District of Columbia, New Jersey, New Hampshire, Oregon and Washington state in passing a so-called "for-cause" eviction law. Although more narrow than last year's bill, HB 1098 introduces significant shifts in the landlord-tenant relationship that could present challenges for Colorado landlords in managing their properties and dealing with problematic tenants.

■ **A more targeted approach.** As mentioned above, HB 1098 passed this year because it took a more targeted approach than HB 1171. For example, unlike HB 1171, HB 1098 does not expressly restrict a landlord from increasing rents except that such increase shall only be for a "reasonably increased amount," or require a landlord to provide a tenant with two to three months' rent as relocation costs in the event of an eviction. Nor does HB 1098 require landlords to provide tenants with a "first right of return" after substantial repairs or renovations. In addition, HB 1098 expressly allows for a landlord to part ways with a tenant at the end of the tenant's lease term if the tenant failed more than twice to pay rent on time during the lease term or the tenant refuses to sign a lease renewal, so long as the renewal contains "reasonable" terms. However, as detailed below, the latter circumstance presents significant ambiguity that landlords should be aware of, including and especially regarding rent increases.

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■ **Applicability of HB 1098.** The new for-cause eviction requirements apply to all Colorado residential premises, with specific exceptions. These limited exceptions include mobile home lots, short-term rental properties, certain owner-occupied units, and residential premises under employer-provided housing agreements. The bill also exempts from its provisions tenants who have not resided at a property for at least 12 months. Put another way, the bill does not apply to a tenant with a lease term that is shorter than 12 months, unless the tenant has resided at the premises for multiple lease terms that add up to 12 months or more.

■ **Evictions during the term of the lease.** At the heart of HB 1098 is a restatement of the current circumstances in which a landlord is allowed to evict a tenant during the term of a lease, including for nonpayment of rent, serious criminal acts occurring on the premises, acts that endanger others on the premises, nuisance that interferes with others on the premises, material violations of the lease, repeated violations of the lease after proper notice, remaining on the premises beyond the lease term, and negligent property damage caused by the tenant.

■ **"Evictions" at the end of the lease term.** Prior to passage of HB 1098, a landlord could choose not to renew a tenant's lease at the end of the lease term for any reason, so long as it was not discriminatory. HB 1098 now prohibits a landlord from declining to renew a tenant's lease unless the landlord is demolishing, converting, repairing or renovating the residential premises or unless the tenant failed to pay rent on time more than two times during the lease term. Notably, the bill characterizes the nonrenewal of a lease by the landlord in these circumstances to be an "eviction." Thus, in nearly all cases, this restriction on nonrenewal gives a tenant the sole choice of whether to renew a lease, thereby preventing a landlord from using the expiration of a lease term as a natural break with a problematic tenant and, instead, requiring the landlord to initiate an eviction of that tenant.

■ **Reasonable lease terms.** HB 1098 also allows a landlord to "evict" a tenant who refuses to sign a lease renewal at the end of the tenant's lease term, so long as the terms of the lease are "reasonable." Unlike last year's bill that prohibited a landlord from increasing a tenant's rent in a new lease except by a "reasonably increased amount," HB 1098 does not expressly prohibit a landlord from increasing a tenant's rent. That said, HB 1098 requires that any new lease must have "reasonable terms" and the bill does not define what constitutes a "reasonable term." While a rent increase is not necessarily an unreasonable term, it is possible that a court could find a rent increase, depending on the amount of the increase, to be unreasonable and a landlord could be required to maintain the lease with the tenant at the current rent amount or an amount lower than as requested by the landlord. This uncertainty is particularly acute given the increased attention on the use of data and algorithms in rent setting. It is possible that the language of HB 1098 is intentionally broad with a purposeful aim of bringing such rent-setting methods before the courts on behalf of tenants and against landlords.

■ **Next steps.** The passage of HB 1098 signals a significant shift in Colorado's rental housing landscape. As Colorado joins other states in implementing this type of "for-cause" eviction law, the bill highlights ongoing efforts to increase tenants' rights as a policy solution to the state's housing crisis. It remains to be seen whether the policy enacted by HB 1098 will indeed stabilize housing as the bill sponsors have promised, or whether it will result in increased evictions as a result of restricted use of lease renewals and unnecessary litigation over whether rent increases are reasonable, making being a landlord in Colorado all the more uncertain. ▲

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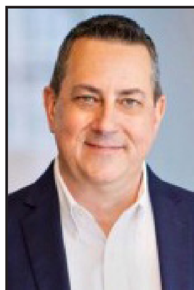
Working with lawmakers, challenging legislation

In April, the Apartment Association of Metro Denver and Colorado Apartment Association joined with the Colorado Hotel and Lodging Association and NAIOP Colorado to file a federal lawsuit to challenge the Colorado Regulation 28 and Energize Denver building performance standards. The AAMD and CAA also filed a lawsuit in state court against Regulation 28, challenging significant errors in the rulemaking process at the Air Quality Control Commission that led to Regulation 28.

We have taken these significant steps because these rules violate state and federal law, will impose major and unreasonable costs on building owners and our tenants, and will not produce the benefits claimed by the rules' supporters.

We filed the federal court lawsuit because both these mandates violate the federal Energy Policy and Conservation Act, which sets consistent, nationwide energy-efficiency standards for a wide variety of appliances, including consumer appliances as well as heating and air-conditioning systems for large buildings like apartments, hotels and commercial buildings in Colorado. This federal law prohibits states and local governments from restricting consumers' and businesses' right to purchase and use appliances that meet the federal standards. Regulation 28 and Energize Denver violate this law by forcing building owners and consumers to throw away perfectly good and functioning appliances and systems that meet federal standards and replace them at great cost with electric equipment and appliances preferred by unelected officials.



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In addition to violating federal law and depriving consumers their freedom of choice in appliances, these draconian regulations are just not necessary and will do more harm than good. Colorado's real estate sector has been at the forefront of designing and constructing sustainable and efficient buildings that benefit tenants and the environment. We understand that energy efficiency and transitioning to cleaner sources of energy are key parts of a sustainable real estate sector that benefits all Coloradans. But this cannot be done in silos, which Regulation 28 and Energize Denver try to do. They must be executed in concert with other Colorado priorities, including growing the availability of affordable housing, strengthening Colorado's ability to provide good-paying jobs for its citizens, and strengthening the reliability and sustainability of Colorado's energy grid.

Consistent with our commitment to sustainability, each of us participated in the public processes that resulted in Regulation 28 and Energize Denver. We provided input on the technical and economic issues associated with improving the energy efficiency of buildings, particularly the challenges of retrofitting existing buildings to meet the proposed standards.

We hoped to help shape final regulations that combined the aspirational goals of reducing carbon emissions from the built environment and the realities of implementation. Unfortunately, our input was largely ignored, resulting in impractical and costly mandates that will increase rents, room rates at hotels and lease rates for office space, displace tenants, and divert capital and other resources from more effective energy-efficiency strategies.

Ultimately, Regulation 28 and Energize Denver will require the retroactive "electrification" of thousands of existing buildings at tremendous expense and disruption, costing hundreds of millions of dollars, and displacing tens of thousands of tenants over the several years such retro fits can consume. These impacts are compounded by supply chain and labor shortages that constrain the availability of the necessary equipment and the skills required to install them.

Added to this are the significant uncertainties about the ability of Colorado's electrical grid to deliver increased power consistently and reliably to all these newly electrified buildings on the unreasonable schedules mandated by these rules. In addition, electrification does not magically eliminate carbon emissions: Over half of Colorado's electricity is generated by fossil fuels, and the power grid's largest power source continues to be coal. Rushing, at great cost, to shift significant demand to an already stressed and fossil fuel-based power grid does not make climate or economic sense.

Taken together, we believe these rules will increase Coloradans' cost of living when we are already facing high inflation, impose new and unexpected burdens on the real estate sector already suffering from high interest rates, create serious headwinds for Colorado's economy, all without providing any meaningful benefits to Colorado's citizens.

Our organizations are committed to working with lawmakers, regulators and stakeholders, including environmental groups, to improve sustainability and efficiency in the real estate sector. This effort needs to be based on reasonable solutions initiatives that are part of a comprehensive strategy that considers energy efficiency goals, Colorado's continuing need for affordable housing and a vibrant economy, and realistic evaluations of available technologies, the capabilities (both reliability and renewability) of the grid, and achievable schedules.

Regulation 28 and Energize Denver just do not do that – and that's why these lawsuits were filed.

Finally, if you have not done so yet, we strongly advise you to look into the particulars of these rules, assess if your buildings are subject to one or both of the rules, and then quickly begin to understand the compliance process and requirements. ▲

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