

## Real Estate Leasing: Colorado

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A Q&A guide to commercial real estate leasing law for landlords and tenants in Colorado. This Q&A addresses state laws and customs that impact commercial leasing, including the execution and enforceability of leases, disclosures, transfer taxes, rents and security deposits, permitted assignments, financings, remedies, and automatic terminations in foreclosure actions. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Real Estate Leasing: State Q&A Tool).

### Execution and Enforceability

#### 1. Describe any formal requirements for the execution of a lease. In particular specify if:

- Witnesses are required.
- Acknowledgments are necessary.
- Counterpart signatures are enforceable.
- There are any other important requirements in your state.

For information on whether Colorado has adopted electronic signatures, electronic recording, or remote online notarization, see Question 20.

#### Witnesses

Colorado does not require witnesses to execute a commercial lease.

#### Acknowledgments

Colorado does not require acknowledgments to execute a commercial lease.

#### Counterpart Signatures

Colorado commercial leases executed in counterparts are enforceable (see *Grizzly Bar, Inc. v. Hartman*, 169 Colo. 178, 184, 454 P.2d 788, 791 (Colo. 1969)).

### Other Requirements

There are no other relevant requirements to execute a commercial lease in Colorado.

#### 2. Must a memorandum of lease (or any other instrument) be recorded for a lease to be enforceable against third parties? If so, must an amendment to a recorded memorandum of lease be recorded if there is a further (material or non-material) amendment to the lease?

A memorandum of lease does not need to be recorded to protect the tenant against junior third-party claims because, under Colorado law, third parties are generally deemed to have constructive notice of parties in possession of real property, including tenants (*Cohen v. Thomas & Son Transfer Line, Inc.*, 586 P.2d 39, 40-41 (Colo. 1978)).

Retail, residential, and office leases are not typically recorded. However, it is common, if not customary, for the parties to a long-term ground lease to record a memorandum of lease setting out certain terms, which may include:

- A legal description of the property.
- The term of the lease.
- Any option rights to purchase the property or extend the term of the lease.

Confirm the necessary recording procedures with a title company or by contacting the applicable recording office directly. In the event the landlord or tenant is an entity or a trust, best practice in Colorado includes recording a statement of authority for each entity or trust to evidence existence and authority of the entity or trust (Colo. Rev. Stat. Ann. § 38-30-172).

### 3. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

Colorado Code Colo. Rev. Stat. Ann. § 38-35-101(2) provides short forms of acknowledgment certificates. The examples below are:

- Based on the short forms and sufficient for use, assuming the acknowledgment meets all other statutory requirements.
- Applicable to both in-state and out-of-state acknowledgments (Colo. Code Colo. Rev. Stat. Ann. § 38-35-105).

Colorado has adopted remote online notarization (RON) (Colo. Rev. Stat. Ann. §§ 24-21-501 to 24-21-540; see Question 20). There may be additional requirements for acknowledgments certified using RON. For more information, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart: Colorado](#).

### Individual

STATE OF [STATE] )  
COUNTY OF [COUNTY] )SS.  
)

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [SIGNATORY NAME].

Witness my hand and official seal.

[SEAL]

Expiration of  
Commission: [DATE]

*[If acknowledgment  
is taken by a notary  
public]*

Notary Public

Printed Name: [NOTARY  
NAME]

*[(If applicable:) This notarial  
act was performed using  
audio-video communication  
technology.]*

### Corporation

STATE OF [STATE] )  
COUNTY OF [COUNTY] )SS.  
)

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [NAME] as [TITLE] of [NAME OF CORPORATION], a [STATE] corporation.

Witness my hand and official seal.

[SEAL]

Expiration of  
Commission: [DATE]

*[If acknowledgment  
is taken by a notary  
public]*

Notary Public

Printed Name: [NOTARY  
NAME]

*[(If applicable:) This notarial  
act was performed using  
audio-video communication  
technology.]*

### Limited Liability Company

STATE OF [STATE] )  
COUNTY OF [COUNTY] )SS.  
)

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [NAME] as [SIGNATORY TITLE] of [NAME OF LIMITED LIABILITY COMPANY], a [STATE] limited liability company.

Witness my hand and official seal.

[SEAL] \_\_\_\_\_  
Expiration of Commission: [DATE] Notary Public  
Printed Name: [NOTARY NAME]  
[If acknowledgment is taken by a notary public] [(If applicable:) This notarial act was performed using audio-video communication technology.]

### Limited Partnership

STATE OF [STATE] )  
COUNTY OF [COUNTY] )SS.  
)

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [NAME] as general partner of [NAME OF LIMITED PARTNERSHIP], a [STATE] limited partnership.

Witness my hand and official seal.

[SEAL] \_\_\_\_\_  
Expiration of Commission: [DATE] Notary Public  
Printed Name: [NOTARY NAME]  
[If acknowledgment is taken by a notary public] [(If applicable:) This notarial act was performed using audio-video communication technology.]

### Trustee

STATE OF [STATE] )  
COUNTY OF [COUNTY] )SS.  
)

The foregoing instrument was acknowledged before me this [DATE] day of [MONTH], [YEAR], by [NAME] as trustee of [NAME OF TRUST], a trust established under the laws of [STATE].

Witness my hand and official seal.

[SEAL] \_\_\_\_\_  
Expiration of Commission: [DATE] Notary Public  
Printed Name: [NOTARY NAME]  
[If acknowledgment is taken by a notary public] [(If applicable:) This notarial act was performed using audio-video communication technology.]

## Disclosures, Certifications, and Implied Uses

### 4. Are there any statutory or legal disclosures required by the landlord or the tenant either at the beginning or end of the lease term? Are there any compliance certificates the tenant may request from the landlord?

Colorado does not have statutory or legal disclosures requirements for either the landlord or tenant at either the beginning or end of a commercial lease's term. However, it is highly probable that a landlord must disclose known material latent defects (see *Baughman v. Cosler*, 459 P.2d 294, 298-99 (Colo. 1969); *Thum v. Rhodes*, 55 P. 264, 266 (Colo. App. 1898)).

Colorado law also does not require a commercial landlord to provide compliance certificates when requested by the tenant unless otherwise agreed to in the lease. Either the landlord or tenant may request an estoppel certificate from the other, but the certificate is only required if provided for in the lease.

### 5. Is a lease deemed to include an implied warranty of fitness for intended use?

In Colorado, unlike residential leases, commercial leases do not contain an implied warranty of suitability or fitness for intended use (see *Davidson v. Fischer*, 11 Colo. 583, 585 (Colo. 1888) ("In the lease of a store,

dwelling or other building there is no implied warranty that the building is safe, suitable for habitation, or properly adapted to the uses to which it is applied, nor that it shall continue fit for the purposes for which it is demised.”)).

### Term, Renewal, and Early Termination

#### 6. Are there any legal restrictions which:

- Limit the maximum term of a lease (including any renewals)?
- Require the landlord to allow the tenant to renew its lease?
- Allow the tenant to terminate its lease before the express expiration date?

#### Limit on Maximum Term

In Colorado, there are no statutory restrictions on the maximum term of a commercial lease other than the rule against perpetuities, if applicable (Colo. Rev. Stat. Ann. § 15-11-1102.5).

#### Tenant Renewal

Colorado law does not require a commercial landlord to offer a lease renewal.

#### Early Termination

Commercial tenants cannot terminate a lease before the express expiration date, unless either:

- The lease provides for early termination.
- Conditions meeting the common law definition of constructive eviction have occurred.

(See *Associated Oil Co. v. Rector*, 97 Colo. 387, 394, 50 P.2d 551, 554 (Colo. 1935); *Radinsky v. Weaver*, 170 Colo. 169, 174, 460 P.2d 218, 220 (Colo. 1969).)

#### 7. Is the landlord required to provide the tenant with a notice before the effective date of a renewal when the lease term automatically renews?

Colorado does not require a landlord to provide the tenant with notice before the effective date of an automatic lease renewal.

### Rent and Security Deposits

#### 8. Are there any legal restrictions on:

- How much rent the landlord may charge?
- Whether certain operating expenses (or other additional rent) may be passed through to the tenant?

#### Maximum Rent

In Colorado, there are no legal restrictions on the amount of rent a commercial landlord may charge.

#### Operating Expenses

In Colorado commercial leases, operating expenses may be paid by the landlord, passed to the tenant, or shared between them, as agreed to by the parties and set forth in the lease agreement.

#### 9. For security deposits:

- Must the landlord maintain security deposits in a separate bank account for each tenant?
- Must a security deposit be in an interest bearing account?
- Must the landlord pay all interest earned to the tenant or can the landlord retain a percentage of the interest earned as an administrative fee?

#### Commingle Permitted

Colorado law does not require a commercial landlord to maintain security deposits in a separate bank account for each tenant. However, real estate management companies that are licensed real estate brokers must hold security deposits in a separate trust account (4 Colo. Code Regs. § 725-1:5 (5:10)).

#### Interest-Bearing Account

In Colorado, commercial landlords are not required to, and typically do not, hold security deposits in interest bearing accounts.

### Administrative Fees

In Colorado, commercial landlords are not required to pay tenants any interest earned on the security deposit unless the lease provides otherwise.

For more information about security deposit requirements across jurisdictions, see [Security Deposit Laws \(Commercial Lease\): State Comparison Chart](#) and Quick Compare Chart: Commercial Security Deposit Laws.

### Transfer Taxes and Other Taxes

#### **10. Are any state or local transfer taxes triggered when a lease is signed or in the later assignment of a lease? If so, please specify the:**

- Rate for the tax and how it is calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

Colorado does not have transfer taxes applicable to commercial leases. Some municipalities have ordinances imposing real estate transfer taxes on the conveyance of real property. Some of these ordinances may deem a long-term lease as described in the ordinance to be a conveyance and trigger a transfer tax.

Confirm any local transfer tax requirements with a title company or by contacting the applicable taxing authority or recording office.

For more information about transfer taxes across jurisdictions, see [State Transfer Tax Comparison Chart](#) and Quick Compare Chart: State Transfer Taxes.

#### **11. Are state or local transfer taxes triggered when the tenant undergoes a (direct or indirect) transfer of its ownership interests? In particular, please specify the:**

- Percentage of ownership interest that triggers the taxes.
- Rates for the taxes and how they are calculated.
- Returns required.
- Timing for filing the returns and paying the taxes.

Colorado does not have transfer taxes for the transfer of interests in a tenant.

Confirm any local transfer tax requirements with a title company or by contacting the applicable taxing authority or recording office.

For more information about transfer taxes across jurisdictions, see [State Transfer Tax Comparison Chart](#) and Quick Compare Chart: State Transfer Taxes.

#### **12. Describe any state or local taxes (rental or other) that the landlord must collect from the tenant.**

Colorado commercial landlords are not required to collect state or local taxes from the tenant. Commercial leases often pass through ad valorem real estate taxes and assessments in whole or in part to the tenant as specified in the lease.

Tax assessment, payment, and collection practices vary by jurisdiction. Consult with local counsel or a title company (or contact the applicable taxing authority directly) to verify these details.

### Assignment, Financing, and Transfers

#### **13. Describe any laws allowing the tenant to assign its lease, or sublease its premises, without the landlord's consent. Is a reasonableness standard implied when the lease is silent on whether the landlord's consent to an assignment or sublease may be reasonably or unreasonably withheld?**

In Colorado, a tenant's interest under a commercial lease may be assigned or sublet absent a provision in the lease to the contrary. Most commercial leases include general prohibitions on assignment and sublease. Assignment and sublease provisions are often subject to negotiation.

A commercial landlord typically agrees not to unreasonably withhold its consent if the new tenant both:

- Is a related entity or successor.
- Meets certain net worth, experience, and reputation requirements.

Under Colorado law, a landlord's decision to prohibit assignment or sublease must be reasonable unless the lease contains a "freely negotiated" provision

giving the landlord an absolute right to withhold consent (*Cafeteria Operators L.P. v. AMCAP/Denver Ltd. P'ship*, 972 P.2d 276, 278 (Colo. App. 1998)).

**14. If the lease does not expressly define the term “assignment” and there is no other express restriction in the lease to the contrary can the:**

- Tenant’s corporate ownership interests be freely transferred without the landlord’s consent?
- Tenant freely place a lien on its leasehold interest, or pledge its corporate ownership interests, in connection with a financing without the landlord’s consent?

### Transfer of Ownership Interests

In Colorado, a commercial tenant generally may transfer its corporate ownership interests without the landlord’s consent. However, Colorado commercial leases commonly include a restriction prohibiting the tenant from doing so.

### Security Lien or Pledge of Ownership Interests

A tenant may be prohibited from assigning a lease or subletting the property without the landlord’s consent, but a tenant is probably not similarly prohibited from pledging its leasehold interests as collateral to secure a loan without the landlord’s consent. However, the tenant’s lender exercising its rights to the tenant’s interest in the lease would likely be required to obtain the landlord’s consent or would be considered in default. In Colorado, best practice is for the lender to obtain a landlord’s waiver or subordination to a tenant’s lender’s security interest in the lease.

**15. When a lease requires a landlord’s consent for an assignment and defines the term “assignment” to include a transfer of the tenant’s corporate ownership interests, would an indirect transfer of the tenant’s interests trigger the landlord’s consent requirement?**

In Colorado, leases are often drafted so that a transfer of the tenant’s ownership expressly constitutes an assignment of the lease. If a lease defines assignment to include a transfer of the tenant’s corporate ownership interests, an indirect transfer of the ownership interest of the tenant would most likely constitute an assignment of the lease and trigger the landlord’s consent requirement.

**16. Is the tenant/assignor deemed released from future liability under the lease when the lease is silent on whether the original tenant will be released in the event of an assignment?**

In Colorado, a tenant’s assignment of a commercial lease does not release the tenant from future liability unless there is a provision in the lease stating otherwise. As a general practice in Colorado, landlords do not agree to provisions releasing tenants from future liability after an assignment.

**17. Describe any restrictions on the landlord’s ability to transfer the real property subject to the lease. Does this transfer affect the tenant’s rights or obligations?**

Colorado law does not restrict a landlord’s ability to transfer real property subject to a commercial lease. If a landlord transfers its interest in the real property, the tenant’s rights and obligations remain in full force and effect, absent language to the contrary in the lease (see *Baber v. Baber*, 474 P.2d 630, 632 (Colo. App. 1970)). Commercial leases in Colorado typically contain provisions releasing the landlord from prospective liability following a conveyance of the leased property.



### Remedies

#### 18. If a tenant breaches the lease:

- Are there any implied remedies available to the landlord, such as the acceleration of rent?
- Is there a limitation on the landlord's ability to exercise self-help?
- Is there a common form of an eviction proceeding and, if so, what is the typical length of time for the proceeding?
- Are there specific mechanisms for expedited remedies, such as waiver of jury trial or arbitration?
- Is the landlord required to mitigate its damages without an express obligation to do so?

### Implied Remedies

In Colorado, there are no implied remedies for a tenant's breach of lease. However, landlords may rely on typical common law contract remedies, including:

- Maintaining the lease and suing the tenant for rent as it becomes due.
- Treating the breach as an anticipatory repudiation, repossessing the property, and suing the tenant for:
  - the present value of future rentals, less the reasonable value of the property for the remaining term; or
  - the difference between the rent stated in the lease and that received from a new tenant.

(*Schneiker v. Gordon*, 732 P.2d 603, 610 (Colo.1987).)

### Self-Help

Colorado district courts are inconsistent on whether a commercial landlord may exercise self-help remedies. Most Colorado commercial leases are drafted to provide certain rights to the landlord, including the right to re-enter the property, exclude the tenant, and possibly exercise a security interest in the tenant's personal property if granted in the lease. However, a landlord should undertake self-help remedies with extreme caution because they may result in a judgment for damages against the landlord (Colo. Rev. Stat. Ann. §§ 13-40-101 to 13-40-123).

### Eviction Proceeding

Before evicting a tenant for default, a landlord must serve the tenant with a written notice to vacate that:

- Specifies the defaults.
- Includes the landlord's demands that the tenant must either:
  - leave the premises within a specified number of days depending on the type of lease; or
  - pay all monies owed to the landlord and cure other defaults. However, in the event of a subsequent violation of the same covenant or condition, other than non-payment of rent, a tenancy may be terminated at any time by a notice to quit, and the tenant has no right to cure the subsequent violation.

(Colo. Rev. Stat. Ann. §§ 13-40-104 and 13-40-106.)

A landlord must provide three days' notice for a nonresidential agreement (Colo. Rev. Stat. Ann. § 13-40-104(d)).

If the tenant has not vacated within the designated period, the commercial landlord may pursue a forcible detainer action in district court (Colo. Rev. Stat. Ann. § 13-40-109; *Western Cities Broad., Inc. v. Schueller*, 830 P.2d 1074, 1079 (Colo. App. 1991)). Landlords must manage the notice with care or it may be treated as a landlord's election of remedies and deprive the landlord of a claim for damages if the tenant turns over possession within the designated period (see *Aigner v. Cowell Sales Co.*, 660 P.2d 907, 908-09 (Colo. 1983)). Landlords can prevent this by expressly stating in the lease or notice that the landlord's demand that the tenant pay or quit does not waive the landlord's right to seek damages (*Aigner*, 660 P.2d at 909).

The action for possession typically proceeds quickly but can be extended if the tenant requests a jury trial in a claim for wrongful eviction. Any disputes between the landlord and tenant, including the measure of damages beyond the landlord's demand for possession, are resolved in a proceeding after the eviction action that follows normal litigation deadlines (Colo. Rev. Stat. Ann. § 13-40-119).

### Expedited Remedies

Landlords and tenants can avoid a jury trial by:

- Knowingly and voluntarily waiving their rights to a jury trial (Colo. R. Civ. P. 38).
- Including a provision in the lease agreeing to arbitrate disputes, although that is not commonly done in Colorado.

### Mitigation of Damages

Colorado courts have held that a landlord has a common law duty to mitigate damages for a lease default and abandonment (*Pomeranz v. McDonald's Corp.*, 821 P.2d 843, 847 (Colo. App. 1991), aff'd in part and rev'd in part, 843 P.2d 1378 (Colo. 1993)).

More sophisticated commercial leases often specify actions a landlord may take that will not be deemed a breach of the landlord's duty to mitigate damages, for example:

- Leasing other vacant space in the landlord's building before leasing the space vacated by the tenant.
- Refusing to lease to unqualified tenants or below market rates.

For more information about mitigation of damages across jurisdictions, see [Commercial Landlord's Duty to Mitigate: State Comparison Chart](#) and [Quick Compare Chart: Commercial Landlord's Duty to Mitigate](#).

### Automatic Termination of a Lease in a Foreclosure Action

**19. When a landlord's lender forecloses on its lien recorded against the landlord's property, would the lease interest that is subordinated to the lender's lien automatically terminate? If so, how do the parties avoid automatic termination of subordinated lease interests?**

In Colorado, if the lease exists before the landlord's lender's lien and is not automatically by its terms subordinated to any future landlord lender's lien, then the tenant's leasehold interest is not subordinate to the lender's lien and is not terminated in a foreclosure of the landlord's interest in the property.

However, if the lender's lien exists before the lease or has priority over a pre-existing lease that, by its terms, is automatically subordinate to the landlord's

lender's future lien, the lease may be terminated in a foreclosure if the landlord's lender elects not to recognize the lease. Termination of the lease can be avoided if the landlord, tenant, and lender execute a subordination, non-disturbance, and attornment agreement.

Under Colorado law, the foreclosing lender or a purchaser at a foreclosure sale can affirm the lease and require the lease to continue in effect after the foreclosure proceedings conclude (Colo. Rev. Stat. Ann. § 38-38-506(3)).

### Electronic Signatures, Recording, and Notarization Laws

**20. Has your state adopted laws permitting electronic signatures, electronic recording, and remote notarization? In particular, include information on whether:**

- The Uniform Electronic Transactions Act (UETA) or another law giving electronic signatures legal effect has been adopted.
- The Uniform Real Property Electronic Recording Act (URPERA) or another law permitting the recording of electronic signatures has been adopted.
- The Revised Uniform Law on Notarial Acts (RULONA) or another law permitting remote online notarization (RON) has been permanently adopted and/or temporary remote online notarization is permitted on an emergency basis due to the coronavirus pandemic.

Despite Colorado's adoption of the applicable electronic laws referred to below, the transaction parties or recording offices may not be required to accept documents executed or notarized electronically. Before relying on any of the below electronic laws for a particular transaction, counsel should confirm (as applicable) that:

- All parties to the transaction agree to accept electronic signatures and/or remotely notarized documents and intend to be bound by them.
- The applicable recording office accepts electronic signatures and remotely notarized documents for recording.



### Electronic Signatures

Colorado has adopted the UETA (Colo. Rev. Stat. Ann. §§ 24-71.3-101 to 24-71.3-121).

### Electronic Recording

Colorado has not adopted the URPERA.

### Remote Online Notarization

Colorado has adopted RON (Colo. Rev. Stat. Ann. §§ 24-21-501 to 24-21-540).

There are detailed requirements for performing RON. Reference should be made to the statute,

any applicable emergency orders, and any rules promulgated by the secretary of state or other state authority to understand all RON requirements and conditions.

For a state-by-state chart covering key provisions of RON laws, emergency orders permitting RON, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart: Colorado](#). To view and customize comparison charts on electronic signatures, recording, and notarization laws across states, see Quick Compare Chart, State Laws on Electronic Signatures, Electronic Recording, and Remote Notarization.

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