

CHAPTER 349

PROPERTY

SENATE BILL 21-173

BY SENATOR(S) Gonzales and Moreno, Fenberg, Kolker, Pettersen, Story, Winter, Buckner, Danielson, Jaquez Lewis, Lee, Rodriguez;
 also REPRESENTATIVE(S) Caraveo and Gonzales-Gutierrez, Duran, Jackson, Lontine, Michaelson Jenet, Roberts, Sirota, Woodrow, Benavidez, Bennett, Bird, Boesenecker, Cutter, Exum, Herod, Hooton, Kennedy, McCluskie, Ricks, Weissman.

AN ACT

CONCERNING RIGHTS RELATED TO RESIDENTIAL RENTAL AGREEMENTS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 13-40-111, **amend** (1); and **add** (5) and (6) as follows:

13-40-111. Issuance and return of summons. (1) Upon filing the complaint as ~~provided~~ **REQUIRED** in section 13-40-110, the clerk of the court or the attorney for the plaintiff shall issue a summons. The summons ~~shall~~ **MUST** command the defendant to appear before the court at a place named in ~~such~~ **THE** summons and at a time and on a day ~~which shall be~~ **not less than seven days** ~~nor~~ **BUT NOT** more than fourteen days from the day of issuing the same to answer the complaint of plaintiff. A COURT SHALL NOT ENTER A DEFAULT JUDGMENT FOR POSSESSION BEFORE THE CLOSE OF BUSINESS ON THE DATE UPON WHICH AN APPEARANCE IS DUE. The summons ~~shall~~ **MUST** also contain a statement addressed to the defendant stating: "If you fail to file with the court, at or before the time for appearance specified in the summons, an answer to the complaint setting forth the grounds upon which you base your claim for possession and denying or admitting all of the material allegations of the complaint, judgment by default may be taken against you for the possession of the property described in the complaint, for the rent, if any, due or to become due, for present and future damages and costs, and for any other relief to which the plaintiff is entitled. If you are claiming that the landlord's failure to repair the residential premises is a defense to the landlord's allegation of nonpayment of rent, the court will require you to pay into the registry of the court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

landlord's failure to repair the residential premises; UNLESS THE COURT DETERMINES THAT YOU QUALIFY TO HAVE THIS REQUIREMENT WAIVED DUE TO YOUR INCOME.

(5) A SUMMONS ISSUED PURSUANT TO THIS SECTION MUST ALSO CONTAIN A LIST OF AVAILABLE RESOURCES WITH A WEBSITE LINK AND PHONE NUMBER FOR RESIDENTIAL TENANTS TO OBTAIN CIVIL LEGAL AID AND RENTAL ASSISTANCE. THE DEPARTMENT OF LOCAL AFFAIRS SHALL MAKE AVAILABLE AND KEEP CURRENT THE LIST OF RESOURCES AVAILABLE. LOCAL GOVERNMENT ENTITIES MAY ALSO PROVIDE OR SUPPLEMENT THE LIST OF RESOURCES AND PROVIDE SUCH RESOURCES TO THE DEPARTMENT OF LOCAL AFFAIRS FOR PUBLICATION ON ITS WEBSITE.

(6) A SUMMONS ISSUED PURSUANT TO THIS SECTION MUST ALSO CONTAIN:

(a) A COPY OF A BLANK ANSWER FORM REQUIRED PURSUANT TO SECTION 13-40-113; AND

(b) A FORM THAT ALLOWS EITHER PARTY TO REQUEST ALL DOCUMENTS IN THE LANDLORD'S AND TENANT'S POSSESSION RELEVANT TO THE CURRENT ACTION.

SECTION 2. In Colorado Revised Statutes, **amend** 13-40-113 as follows:

13-40-113. Answer of defendant - additional and amended pleadings.

(1) The defendant shall file with the court, at or before the ~~time~~ DAY specified for ~~his~~ THE DEFENDANT'S appearance in the summons, an answer in writing. ~~setting~~ THE DEFENDANT'S ANSWER MUST SET forth the grounds on which ~~he~~ THE DEFENDANT bases ~~his~~ THE DEFENDANT'S claim for possession, ~~and~~ admitting or denying all of the material allegations of the complaint, and presenting every defense which then exists and upon which ~~he~~ THE DEFENDANT intends to rely, either by including the same in ~~his~~ THE DEFENDANT'S answer or by ~~filing simultaneously therewith~~ SIMULTANEOUSLY FILING motions setting forth every such defense.

(2) The court for good cause may permit the filing of additional and amended pleadings ~~where such~~ IF IT will not result in a delay prejudicial to the defendant.

(3) A DEFENDANT DOES NOT WAIVE ANY DEFENSE RELATED TO PROPER NOTICE BY FILING AN ANSWER PURSUANT TO THIS SECTION. A DEFENDANT CAN RAISE A DEFENSE RELATED TO PROPER NOTICE IN THE DEFENDANT'S ANSWER OR BY FILING A MOTION PREHEARING. A DEFENDANT CANNOT RAISE THIS DEFENSE FOR THE FIRST TIME AT THE HEARING IF THE DEFENDANT FAILED TO RAISE IT IN THE DEFENDANT'S ANSWER OR IN A PREHEARING MOTION.

(4) AFTER AN ANSWER IS PROVIDED TO THE COURT PURSUANT TO THIS SECTION:

(a) THE COURT SHALL SET A DATE FOR TRIAL NO SOONER THAN SEVEN, BUT NOT MORE THAN TEN, DAYS AFTER THE ANSWER IS FILED, UNLESS THE DEFENDANT REQUESTS A WAIVER OF THIS REQUIREMENT IN THE DEFENDANT'S ANSWER OR AFTER FILING AN ANSWER; EXCEPT THAT A COURT MAY EXTEND BEYOND TEN DAYS IF EITHER PARTY DEMONSTRATES GOOD CAUSE FOR AN EXTENSION OR IF THE COURT OTHERWISE FINDS JUSTIFICATION FOR THE EXTENSION. THE REQUIREMENT SET FORTH IN THIS SUBSECTION (4)(a) DOES NOT APPLY TO A FORCIBLE ENTRY AND DETAINER PETITION THAT ALLEGES A SUBSTANTIAL VIOLATION, AS DEFINED IN SECTION

13-40-107.5 (3), OR TERMINATES A TENANCY PURSUANT TO SECTION 38-12-203 (1)(f).

(b) IN THE TIME AFTER AN ANSWER IS FILED AND BEFORE A TRIAL OCCURS, THE COURT SHALL ORDER THAT THE LANDLORD OR TENANT PROVIDE ANY DOCUMENTATION RELEVANT TO THE CURRENT ACTION THAT EITHER PARTY REQUESTS PURSUANT TO SECTION 13-40-111 (6)(b).

SECTION 3. In Colorado Revised Statutes, 13-40-115, **amend** (2); and **add** (4) and (5) as follows:

13-40-115. Judgment - writ of restitution - cure period. (2) Upon ~~such~~ A trial or further hearing ~~under this article~~ PURSUANT TO THIS ARTICLE 40 after personal service ~~is had~~ HAS BEEN MADE upon the defendant in accordance with section 13-40-112 (1), if the court or jury has not already tried the issue of unlawful detainer, it may do so. ~~and, if it~~ IF THE COURT finds that the defendant has committed an unlawful detainer, the court shall enter judgment for the plaintiff to have restitution of the premises and shall issue a writ of restitution. In addition to ~~such~~ THE judgment for restitution, the court or jury shall further find the amount of rent, if any, due to the plaintiff from the defendant at the time of trial; the amount of damages, if any, sustained by the plaintiff to the time of the trial on account of the unlawful detention of the property by the defendant; and damages sustained by the plaintiff to the time of trial on account of injuries to the property. ~~and judgment~~ THE COURT shall enter JUDGMENT for such amounts, together with ANY reasonable ~~attorney's~~ ATTORNEY fees and costs ~~upon which judgment execution shall issue~~ as in other civil actions. ~~Nothing in This section shall be construed to~~ DOES NOT permit the entry of judgment in excess of the COURT'S jurisdictional limit. ~~of the court.~~

(4) A LANDLORD WHO PROVIDES A TENANT WITH PROPER NOTICE OF NONPAYMENT SHALL ACCEPT PAYMENT OF THE TENANT'S FULL PAYMENT OF ALL AMOUNTS DUE ACCORDING TO THE NOTICE, AS WELL AS ANY RENT THAT REMAINS DUE UNDER THE RENTAL AGREEMENT, AT ANY TIME UNTIL A JUDGE ISSUES A JUDGMENT FOR POSSESSION PURSUANT TO SUBSECTION (1) OR (2) OF THIS SECTION. A TENANT MAY PAY THIS AMOUNT TO EITHER THE LANDLORD OR TO THE COURT. ONCE A COURT HAS CONFIRMATION THAT THE FULL AMOUNT HAS BEEN TIMELY PAID, THE COURT SHALL:

(a) VACATE ANY JUDGMENTS THAT HAVE BEEN ISSUED; AND

(b) DISMISS THE ACTION WITH PREJUDICE.

(5) THE RIGHTS PROVIDED IN SUBSECTION (4) OF THIS SECTION MAY NOT BE WAIVED BY ANY WRITTEN AGREEMENT.

SECTION 4. In Colorado Revised Statutes, 13-40-117, **amend** (3) as follows:

13-40-117. Appeals. (3) If the appellee believes that ~~he~~ THE APPELLEE may suffer serious economic harm during the pendency of the appeal, ~~he~~ THE APPELLEE may petition the court taking the appeal to ~~order that an~~ REQUIRE THE APPELLANT TO HAVE AN additional undertaking ~~be required of the appellant~~ to cover the anticipated harm. The court shall order such undertaking only after a hearing and

upon a finding that the appellee has shown a substantial likelihood of suffering such economic harm during the pendency of the appeal and that ~~he~~ THE APPELLEE will not BE adequately ~~be~~ protected under the appeals bond and the other requirements for appeal pursuant to sections 13-40-118, 13-40-120 and 13-40-123.

SECTION 5. In Colorado Revised Statutes, 13-54-102, **amend** (1)(r) as follows:

13-54-102. Property exempt - definitions - repeal. (1) The following property is exempt from levy and sale under writ of attachment or writ of execution:

(r) For purposes of garnishment proceedings pursuant to ~~the provisions of~~ article 54.5 of this ~~title~~ TITLE 13, any amount held by a third party as a security deposit, as defined in ~~section 38-12-102(2), C.R.S.~~ SECTION 38-12-102 (6), or any amount held by a third party as a utility deposit to secure payment for utility goods or services used or consumed by the debtor or ~~his~~ THE DEBTOR'S dependents;

SECTION 6. In Colorado Revised Statutes, **amend** 38-12-101 as follows:

38-12-101. Legislative declaration. ~~The provisions of~~ This part 1 shall be liberally construed to implement the intent of the general assembly to ~~insure~~ ENSURE the proper administration of security deposits AND LATE FEES and protect the interests of tenants, MOBILE HOME OWNERS, and landlords.

SECTION 7. In Colorado Revised Statutes, **amend** 38-12-102 as follows:

38-12-102. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "HOME OWNER" HAS THE MEANING SET FORTH IN SECTION 38-12-201.5 (2).

(2) "LANDLORD" MEANS A LANDLORD, AS DEFINED IN SECTION 38-12-502 (5), OR THE MANAGEMENT OR LANDLORD OF A MOBILE HOME PARK, AS DEFINED IN SECTION 38-12-201.5 (3).

(3) "LATE FEE" MEANS A MONETARY SUM THAT A LANDLORD CHARGES A TENANT OR HOME OWNER AS A RESULT OF THE TENANT'S OR HOME OWNER'S FAILURE TO TIMELY PAY RENT AND THAT IS DETERMINED PURSUANT TO A RENTAL AGREEMENT BETWEEN THE LANDLORD AND THE TENANT OR HOME OWNER.

~~(+)~~ (4) "Normal wear and tear" means ~~that~~ deterioration ~~which~~ THAT occurs, based upon the use for which ~~the~~ A rental unit OR MOBILE HOME SPACE, AS DEFINED IN SECTION 38-12-201.5 (7), is intended, without negligence, carelessness, accident, or abuse of the premises or equipment or chattels by the tenant OR HOME OWNER or members of ~~his~~ THE TENANT'S OR HOME OWNER'S household, or their invitees or guests.

(5) "RENT SUBSIDY PROVIDER" MEANS A PUBLIC OR PRIVATE ENTITY, INCLUDING A PUBLIC HOUSING AUTHORITY, THAT PROVIDES ONGOING FINANCIAL ASSISTANCE TO A LANDLORD FOR THE PURPOSE OF SUBSIDIZING RENT.

~~(2)~~ (6) "Security deposit" means any advance or deposit of money, regardless of

its denomination, the primary function of which is to secure the performance of a rental agreement for a residential premises or any part thereof OF A RESIDENTIAL PREMISES.

(7) "TENANT" HAS THE MEANING SET FORTH IN SECTION 38-12-502 (9).

SECTION 8. In Colorado Revised Statutes, **add** 38-12-105 as follows:

38-12-105. Late fees charged to tenants and mobile home owners - maximum late fee amounts - prohibited acts - penalties - period to cure violations - remedies - unfair or deceptive trade practice. (1) A LANDLORD SHALL NOT TAKE ANY OF THE FOLLOWING ACTIONS OR DIRECT ANY AGENT TO TAKE ANY OF THE FOLLOWING ACTIONS ON THE LANDLORD'S BEHALF:

(a) CHARGE A TENANT OR HOME OWNER A LATE FEE UNLESS A RENT PAYMENT IS LATE BY AT LEAST SEVEN CALENDAR DAYS;

(b) CHARGE A TENANT OR HOME OWNER A LATE FEE IN AN AMOUNT THAT EXCEEDS THE GREATER OF:

(I) FIFTY DOLLARS; OR

(II) FIVE PERCENT OF THE AMOUNT OF THE PAST DUE RENT PAYMENT;

(c) REQUIRE A TENANT OR HOME OWNER TO PAY A LATE FEE UNLESS THE LATE FEE IS DISCLOSED IN THE RENTAL AGREEMENT;

(d) REMOVE OR EXCLUDE A TENANT FROM A DWELLING OR INITIATE A COURT PROCESS FOR THE REMOVAL OR EXCLUSION OF A TENANT FROM A DWELLING BECAUSE THE TENANT FAILS TO PAY ONE OR MORE LATE FEES TO THE LANDLORD;

(e) TERMINATE A TENANCY OR OTHER ESTATE AT WILL OR A LEASE IN A MOBILE HOME PARK BECAUSE A TENANT OR HOME OWNER FAILS TO PAY ONE OR MORE LATE FEES TO THE LANDLORD;

(f) IMPOSE A LATE FEE ON A TENANT OR HOME OWNER FOR THE LATE PAYMENT OR NONPAYMENT OF ANY PORTION OF THE RENT THAT A RENT SUBSIDY PROVIDER, RATHER THAN THE TENANT OR HOME OWNER, IS RESPONSIBLE FOR PAYING;

(g) IMPOSE A LATE FEE MORE THAN ONCE FOR EACH LATE PAYMENT, EXCEPT THAT A LANDLORD MAY IMPOSE A LATE FEE MORE THAN ONCE FOR A LATE PAYMENT IF THE TOTAL AMOUNT OF SUCH LATE FEES DOES NOT EXCEED THE AMOUNT DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION;

(h) REQUIRE A TENANT OR HOME OWNER TO PAY ANY AMOUNT OF INTEREST ON A LATE FEE;

(i) RECOUP ANY AMOUNT OF A LATE FEE FROM A RENT PAYMENT MADE TO THE LANDLORD BY A TENANT OR HOME OWNER; OR

(j) CHARGE A TENANT OR HOME OWNER A LATE FEE UNLESS THE LANDLORD

PROVIDED THE TENANT OR HOME OWNER WRITTEN NOTICE OF THE LATE FEE WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE UPON WHICH THE RENT PAYMENT WAS DUE.

(2) A PROVISION OF A LEASE OF A LANDLORD OR PERSON ACTING ON BEHALF OF A LANDLORD THAT DOES NOT COMPLY WITH THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION IS VOID AND UNENFORCEABLE. A TENANT WHO IS AGGRIEVED BY AN ACTION TAKEN BY A LANDLORD OR PERSON ACTING ON BEHALF OF THE LANDLORD IN VIOLATION OF SUBSECTION (1) OF THIS SECTION MAY BRING AN ACTION FOR INJUNCTIVE RELIEF PURSUANT TO SUBSECTION (5) OF THIS SECTION.

(3) A LANDLORD WHO VIOLATES SUBSECTION (1) OF THIS SECTION SHALL PAY TO AN AGGRIEVED TENANT OR HOME OWNER A PENALTY IN THE AMOUNT OF FIFTY DOLLARS FOR EACH VIOLATION.

(4) EXCEPT AS DESCRIBED IN SUBSECTION (3) OF THIS SECTION, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE CONTRARY, A LANDLORD WHO VIOLATES SUBSECTION (1) OF THIS SECTION HAS SEVEN DAYS TO CURE THE VIOLATION, WHICH SEVEN DAYS BEGINS WHEN THE LANDLORD RECEIVES WRITTEN OR ELECTRONIC NOTICE OF THE VIOLATION.

(5) IF A LANDLORD VIOLATES SUBSECTION (1) OF THIS SECTION AND FAILS TO TIMELY CURE THE VIOLATION AS DESCRIBED IN SUBSECTION (4) OF THIS SECTION, A TENANT OR HOME OWNER MAY BRING A CIVIL ACTION TO SEEK ONE OR MORE OF THE FOLLOWING REMEDIES:

(a) COMPENSATORY DAMAGES FOR INJURY OR LOSS SUFFERED;

(b) A PENALTY OF AT LEAST ONE HUNDRED FIFTY DOLLARS BUT NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION, PAYABLE TO THE TENANT OR HOME OWNER;

(c) COSTS, INCLUDING REASONABLE ATTORNEY FEES TO THE PREVAILING PARTY; AND

(d) OTHER EQUITABLE RELIEF THE COURT FINDS APPROPRIATE.

(6) A TENANT OR HOME OWNER MAY RAISE AN ALLEGED VIOLATION OF THIS SECTION AS AN AFFIRMATIVE DEFENSE IN A FORCIBLE ENTRY AND DETAINER PROCEEDING.

(7) A LATE FEE IS DISTINCT FROM RENT, AND A RENTAL AGREEMENT MAY NOT CLASSIFY A LATE FEE AS RENT FOR THE PURPOSES OF SECTION 13-40-104 (1)(d).

SECTION 9. In Colorado Revised Statutes, 38-12-201.5, **amend** the introductory portion, (1)(d), and (1)(e); and **add** (1)(f) and (2.5) as follows:

38-12-201.5. Definitions. As used in this part 2 and in part 11 of this ~~title 38~~ ARTICLE 12, unless the context otherwise requires:

(1) "Entry fee" means any fee paid to or received from an owner of a mobile

home park or an agent thereof except for:

(d) Utilities; ~~and~~

(e) Incidental reasonable charges for services actually performed by the mobile home park owner or the ~~home~~ MOBILE HOME PARK owner's agent and agreed to in writing by the home owner; AND

(f) LATE FEES.

(2.5) "LATE FEE" HAS THE MEANING SET FORTH IN SECTION 38-12-102 (3).

SECTION 10. In Colorado Revised Statutes, 38-12-213, **amend** (1) introductory portion, (1)(c), (1)(e), and (1)(f) as follows:

38-12-213. Rental agreement - disclosure of terms in writing. (1) The MANAGEMENT SHALL ADEQUATELY DISCLOSE THE terms and conditions of a tenancy ~~must be adequately disclosed~~ in writing in a rental agreement ~~by the management~~ to any prospective home owner ~~prior to~~ BEFORE the rental or occupancy of a mobile home space or lot. ~~Said~~ THE disclosures ~~shall~~ MUST include:

(c) The day when unpaid rent ~~shall be~~ IS considered in default FOR THE PURPOSE OF ESTABLISHING A LATE FEE, WHICH DAY MAY NOT BE LESS THAN TEN CALENDAR DAYS AFTER THE DAY RENT IS DUE AND PAYABLE;

(e) The name and mailing address where a manager's decision can be appealed; AND

(f) All charges to the home owner other than rent, INCLUDING LATE FEES.

SECTION 11. In Colorado Revised Statutes, **amend** 38-12-220 as follows:

38-12-220. Private civil right of action. ~~Any~~ A home owner ~~who owns a home~~ in a ~~mobile home~~ park where the landlord has violated any provision of this ~~article~~ ~~shall have~~ ARTICLE 12 HAS a private civil right of action against the landlord. In any such action, EXCEPT AS DESCRIBED IN SECTION 38-12-105 (4), the home owner ~~shall~~ ~~be~~ is entitled to actual economic damages and reasonable attorney fees and costs if the home owner is successful in the action.

SECTION 12. In Colorado Revised Statutes, 38-12-507, **amend** (1)(c) and (1)(d); and **add** (1)(d.5) as follows:

38-12-507. Breach of warranty of habitability - tenant's remedies. (1) If there is a breach of the warranty of habitability as set forth in section 38-12-503 (2):

(c) (I) In an action for possession OR COLLECTION based upon nonpayment of rent, in which the tenant asserts a defense to possession based upon the landlord's alleged breach of the warranty of habitability, upon the filing of the tenant's answer the court shall order the tenant to pay into the registry of the court all or part of the rent accrued after due consideration of expenses already incurred by the tenant based upon the landlord's breach of the warranty of habitability. THE TENANT MAY

ASSERT, AS AN AFFIRMATIVE DEFENSE, AN ALLEGED BREACH OF THE WARRANTY OF HABITABILITY, PROVIDED THAT THE LANDLORD OR ANY AGENT ACTING ON BEHALF OF THE LANDLORD HAS PREVIOUSLY RECEIVED WRITTEN OR ELECTRONIC NOTICE OF AN ALLEGED BREACH OF THE WARRANTY OF HABITABILITY. IF A COUNTY OR DISTRICT COURT IS SATISFIED THAT THE DEFENDANT IS UNABLE TO DEPOSIT THE AMOUNT OF RENT SPECIFIED BECAUSE THE DEFENDANT IS FOUND TO BE INDIGENT PURSUANT TO SUBSECTION (1)(c)(II) OF THIS SECTION, THE DEFENDANT SHALL NOT BE REQUIRED TO DEPOSIT ANY AMOUNTS TO RAISE WARRANTY OF HABITABILITY CLAIMS AS AN AFFIRMATIVE DEFENSE AND THE CLAIM WILL BE PERFECTED.

(II) A DEFENDANT IS INDIGENT FOR THE PURPOSES OF THIS SECTION IF THE DEFENDANT HAS A NET INCOME THAT IS:

(A) FIVE TIMES OR LESS THE ANNUAL RENTAL OF THE DEFENDANT'S PREMISES, AFTER ALLOWING ALL EXEMPTIONS AVAILABLE TO FAMILIES OCCUPYING DWELLINGS IN LOW-RENT HOUSING AUTHORIZED UNDER THE ACT OF THE CONGRESS OF THE UNITED STATES KNOWN AS THE "UNITED STATES HOUSING ACT OF 1937", AS AMENDED. FOR THE PURPOSE OF MAKING AN INDIGENT DETERMINATION IN COMPUTING THE ANNUAL RENTAL, THERE MUST BE INCLUDED IN THE CALCULATION THE AVERAGE ANNUAL COST TO THE DEFENDANT, AS DETERMINED BY THE COURT, OF HEAT, WATER, ELECTRICITY, GAS, AND OTHER NECESSARY SERVICES OR FACILITIES, WHETHER OR NOT THE CHARGE FOR SUCH SERVICES AND FACILITIES IS IN FACT INCLUDED IN THE RENTAL; OR

(B) LESS THAN TWO HUNDRED FIFTY PERCENT OF THE FEDERAL POVERTY LINE; EXCEPT THAT, FOR PURPOSES OF CALCULATION, A DEFENDANT'S ASSETS MUST NOT BE TAKEN INTO ACCOUNT.

(d) Whether asserted as a claim, ~~or~~ counterclaim, OR AN AFFIRMATIVE DEFENSE, a tenant may recover damages directly arising from a breach of the warranty of habitability, which may include, but are not limited to, any reduction in the fair rental value of the dwelling unit, in any court of competent jurisdiction.

(d.5) THE COURT SHALL DETERMINE THE REDUCTION OF THE PREMISE'S RENTAL VALUE IN ITS UNINHABITABLE STATE TO THE DATE OF TRIAL AND SHALL DENY POSSESSION TO THE LANDLORD AND DEEM THE TENANT TO BE THE PREVAILING PARTY, CONDITIONED UPON THE PAYMENT OF THE RENT THAT HAS ACCRUED TO THE DATE OF THE TRIAL, AS ADJUSTED PURSUANT TO THE REDUCTION IN THE RENTAL VALUE CAUSED BY THE BREACH OF THE WARRANTY OF HABITABILITY. THE TENANT SHALL MAKE THIS PAYMENT TO EITHER THE COURT OR THE LANDLORD WITHIN FOURTEEN DAYS FROM THE DATE OF THE COURT'S JUDGMENT. THE COURT MAY ORDER THE LANDLORD TO MAKE REPAIRS AND CORRECT THE CONDITIONS THAT CONSTITUTE A BREACH OF THE LANDLORD'S OBLIGATIONS, SHALL ORDER THAT THE MONTHLY RENT BE LIMITED TO THE PREMISE'S REASONABLE RENTAL VALUE, AS DETERMINED PURSUANT TO THIS SECTION, UNTIL REPAIRS ARE COMPLETED, AND SHALL AWARD THE TENANT COSTS AND ATTORNEY FEES IF PROVIDED BY AND PURSUANT TO ANY STATUTE OR THE CONTRACT OF THE PARTIES. IF THE COURT ORDERS REPAIRS OR CORRECTIONS, OR BOTH, PURSUANT TO THIS SECTION, THE COURT'S JURISDICTION CONTINUES OVER THE MATTER FOR THE PURPOSE OF ENSURING COMPLIANCE. THE COURT SHALL AWARD POSSESSION OF THE PREMISES TO THE LANDLORD IF THE TENANT FAILS TO PAY ALL REDUCED RENT OBLIGATIONS

ACCRUED TO THE DATE OF TRIAL WITHIN THE PERIOD PRESCRIBED BY THE COURT PURSUANT TO THIS SUBSECTION (1)(d.5).

SECTION 13. In Colorado Revised Statutes, **amend** 38-12-510 as follows:

38-12-510. Unlawful removal or exclusion. (1) It ~~shall be~~ is unlawful for a landlord to remove or exclude a tenant from a dwelling unit without resorting to court process, unless the removal or exclusion is consistent with ~~the provisions of~~ article 18.5 of title 25 ~~C.R.S.~~, and the rules promulgated by the state board of health for the cleanup of an illegal drug laboratory; ~~or~~ is with the mutual consent of the landlord and tenant; or unless the dwelling unit has been abandoned by the tenant, as evidenced by the return of keys, the substantial removal of the tenant's personal property, notice by the tenant, or the extended absence of the tenant while rent remains unpaid, any of which would cause a reasonable person to believe the tenant had permanently surrendered possession of the dwelling unit. ~~Such~~ Unlawful removal or exclusion includes the willful termination of utilities or the willful removal of doors, windows, or locks to the premises other than as required for repair or maintenance. If the landlord willfully and unlawfully removes the tenant from the premises or willfully and unlawfully causes the termination of heat, running water, hot water, electric, gas, or other essential services, the tenant may seek any remedy available under the law, including this part 5.

(2) A TENANT AFFECTED BY ANY VIOLATION OF THIS SECTION MAY BRING A CIVIL ACTION TO RESTRAIN FURTHER VIOLATIONS AND TO RECOVER DAMAGES, COSTS, AND REASONABLE ATTORNEY FEES. IN THE CASE OF A VIOLATION, THE TENANT MUST BE AWARDED STATUTORY DAMAGES EQUAL TO THE TENANT'S ACTUAL DAMAGES AND THE HIGHER AMOUNT OF EITHER THREE TIMES THE MONTHLY RENT OR FIVE THOUSAND DOLLARS, AS WELL AS ANY OTHER DAMAGES, ATTORNEY FEES, AND COSTS THAT MAY BE OWED.

(3) A COURT MAY ALSO ORDER THAT POSSESSION BE RESTORED TO A TENANT WHO WAS AFFECTED BY A VIOLATION OF THIS SECTION.

SECTION 14. In Colorado Revised Statutes, 38-12-801, **add** (3) as follows:

38-12-801. Written rental agreement - prohibited clauses - copy - tenant.

(3) A WRITTEN RENTAL AGREEMENT MUST NOT INCLUDE:

(a) AN UNREASONABLE LIQUIDATED DAMAGES CLAUSE THAT ASSIGNS A COST TO A PARTY STEMMING FROM AN EVICTION NOTICE OR AN EVICTION ACTION FROM A VIOLATION OF THE RENTAL AGREEMENT; OR

(b) A ONE-WAY, FEE-SHIFTING CLAUSE THAT AWARDS ATTORNEY FEES AND COURT COSTS ONLY TO ONE PARTY. ANY FEE-SHIFTING CLAUSE CONTAINED IN A RENTAL AGREEMENT MUST AWARD ATTORNEY FEES TO THE PREVAILING PARTY IN A COURT DISPUTE CONCERNING THE RENTAL AGREEMENT, RESIDENTIAL PREMISES, OR DWELLING UNIT.

(c) ANY CLAUSE IN VIOLATION OF SUBSECTION (3)(a) OR (3)(b) OF THIS SECTION IS NULL AND VOID AND UNENFORCEABLE.

SECTION 15. In Colorado Revised Statutes, 24-34-501, **amend** (2) as follows:

24-34-501. Definitions. As used in this part 5, unless the context otherwise requires:

(2) "Housing" means any building, structure, vacant land, or part thereof offered for sale, lease, rent, or transfer of ownership. ~~except that "housing" does not include any room offered for rent or lease in a single-family dwelling maintained and occupied in part by the owner or lessee of said dwelling as his household.~~

SECTION 16. Appropriation. For the 2021-22 state fiscal year, \$15,756 is appropriated to the judicial department. This appropriation is from the general fund and is based on an assumption that the department will require an additional 0.2 FTE. To implement this act, the department may use this appropriation for trial court programs.

SECTION 17. Act subject to petition - effective date. This act takes effect October 1, 2021; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 25, 2021