

## CHAPTER 372

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**PROPERTY**


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**HOUSE BILL 23-1095**

BY REPRESENTATIVE(S) Woodrow and Lindsay, Amabile, Bacon, Boesenecker, Brown, deGruy Kennedy, Dickson, English, Epps, Froelich, Garcia, Gonzales-Gutierrez, Jodeh, Joseph, Kipp, Mabrey, McCormick, Michaelson Jenet, Ortiz, Ricks, Sharbini, Sirota, Story, Titone, Velasco, Weissman, Duran, Herod, Lieder, Vigil;  
also SENATOR(S) Hinrichsen and Winter F., Cutter, Exum, Gonzales, Jaquez Lewis, Moreno.

**AN ACT****CONCERNING PROHIBITING THE INCLUSION OF CERTAIN PROVISIONS IN WRITTEN RENTAL AGREEMENTS.**

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

**SECTION 1.** In Colorado Revised Statutes, 38-12-801, **amend** (3); and **add** (4), (5), (6), (7), and (8) as follows:

**38-12-801. Written rental agreement - prohibited clauses - copy - tenant - applicability - definitions.** (3) (a) A written rental agreement must not include:

~~(a) (I) An unreasonable liquidated damages~~ A clause that assigns a ~~cost~~ PENALTY to a party stemming from an eviction notice or an eviction action THAT RESULTS from a violation of the rental agreement; ~~or~~

~~(b) (II)~~ 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 FOLLOWING A DETERMINATION BY THE COURT THAT THE PARTY PREVAILED AND THAT THE FEE IS REASONABLE.

(III) A WAIVER OF:

(A) 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 A DWELLING UNIT;

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*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.*

(B) THE ABILITY TO PURSUE, BRING, JOIN, LITIGATE, OR SUPPORT ANY KIND OF JOINT, CLASS, OR COLLECTIVE CLAIM OR ACTION ARISING FROM OR RELATING TO THE TERM OF THE TENANCY;

(C) THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; OR

(D) THE IMPLIED COVENANT OF QUIET ENJOYMENT; EXCEPT THAT A WRITTEN RENTAL AGREEMENT 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;

(IV) A PROVISION THAT PURPORTS TO AFFIX ANY FEE, DAMAGES, OR PENALTY FOR A TENANT'S FAILURE TO PROVIDE NOTICE OF NONRENEWAL OF A RENTAL AGREEMENT PRIOR TO THE END OF THE RENTAL AGREEMENT, EXCEPT FOR ACTUAL LOSSES INCURRED BY THE LANDLORD AS A RESULT OF THE TENANT'S FAILURE TO PROVIDE ANY SUCH NOTICE REQUIRED PURSUANT TO THE RENTAL AGREEMENT;

(V) A PROVISION THAT CHARACTERIZES ANY AMOUNT OR FEE SET FORTH IN THE RENTAL AGREEMENT, WITH THE SOLE EXCEPTION OF THE SET MONTHLY PAYMENT FOR OCCUPANCY OF THE PREMISES, AS "RENT" FOR WHICH ALL REMEDIES TO COLLECT RENT, INCLUDING EVICTION, ARE AVAILABLE. SUCH AMOUNTS AND FEES INCLUDE ANY FEES FOR UTILITIES OR SERVICES AND ANY OTHER CHARGE THAT IS NOT RENT.

(VI) A PROVISION THAT REQUIRES A TENANT TO PAY A FEE MARKUP OR FOR A SERVICE FOR WHICH THE LANDLORD IS BILLED BY A THIRD PARTY; EXCEPT THAT A WRITTEN RENTAL AGREEMENT MAY INCLUDE A PROVISION THAT REQUIRES A TENANT TO PAY EITHER A MARKUP OR FEE IN AN AMOUNT THAT DOES NOT EXCEED TWO PERCENT OF THE AMOUNT THAT THE LANDLORD WAS BILLED OR A MARKUP OR FEE IN AN AMOUNT THAT DOES NOT EXCEED A TOTAL OF TEN DOLLARS PER MONTH, BUT NOT BOTH. THIS SUBSECTION (3)(a)(VI) DOES NOT PRECLUDE A PREVAILING PARTY FROM RECOVERING AN AMOUNT EQUAL TO ANY REASONABLE ATTORNEY FEES AWARDED BY A COURT PURSUANT TO SUBSECTION (3)(a)(II) OF THIS SECTION.

(VII) A PROVISION THAT PURPORTS TO ALLOW A PROVIDER OPERATING UNDER ANY LOCAL, STATE, OR FEDERAL VOUCHER OR SUBSIDY PROGRAM TO COMMENCE OR PURSUE AN ACTION FOR POSSESSION BASED SOLELY ON THE NONPAYMENT OF UTILITIES.

~~(c)~~ (b) Any ~~clause~~ PROVISION THAT IS INCLUDED IN A WRITTEN RENTAL AGREEMENT in violation of subsection (3)(a) ~~or (3)(b)~~ of this section is ~~null and void~~ and unenforceable.

(4) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, SUBSECTIONS (3)(a)(III)(A), (3)(a)(III)(C), (3)(a)(III)(D), (3)(a)(IV), (3)(a)(V), (3)(a)(VI), AND (3)(a)(VII) OF THIS SECTION DO NOT APPLY TO A RENTAL AGREEMENT CONCERNING THE OCCUPANCY OF A MOBILE HOME, AS DEFINED IN SECTION 38-12-201.5 (5), IN A MOBILE HOME PARK, AS DEFINED IN SECTION 38-12-201.5 (6).

(5) NOTHING IN THIS SECTION LIMITS OR RESTRICTS ANY RIGHTS OR REMEDIES THAT ARE AVAILABLE ELSEWHERE IN LAW, INCLUDING UNDER THE "MOBILE HOME PARK ACT", PART 2 OF THIS ARTICLE 12, OR PURSUANT TO ANY JUDICIAL INTERPRETATIONS OF THE "MOBILE HOME PARK ACT".

(6) NOTHING IN THIS SECTION EXCLUDES UTILITIES FROM BEING 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.

(7) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ACCESSORY DWELLING UNIT" MEANS AN INTERNAL, ATTACHED, OR DETACHED RESIDENTIAL DWELLING UNIT THAT:

(I) PROVIDES COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS;

(II) IS LOCATED ON THE SAME LOT AS A PROPOSED OR EXISTING PRIMARY RESIDENCE; AND

(III) INCLUDES PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING, AND SANITATION.

(b) "DWELLING UNIT" HAS THE MEANING SET FORTH IN SECTION 38-12-502 (3).

(c) "RENT" MEANS ANY MONEY OR OTHER CONSIDERATION TO BE PAID TO A LANDLORD FOR THE RIGHT TO USE, POSSESS, AND OCCUPY A DWELLING UNIT.

(d) "RENTAL AGREEMENT" HAS THE MEANING SET FORTH IN SECTION 38-12-902 (3).

(e) "RESIDENTIAL PREMISES" HAS THE MEANING SET FORTH IN SECTION 38-12-1202 (5).

(8) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, SUBSECTIONS (3)(a)(III), (3)(a)(IV), (3)(a)(V), (3)(a)(VI), AND (3)(a)(VII) OF THIS SECTION DO NOT APPLY TO A DUPLEX OR TRIPLEX OR TO AN ACCESSORY DWELLING UNIT OF A RESIDENTIAL PREMISES IF:

(a) THE OWNER OF THE DUPLEX, TRIPLEX, OR RESIDENTIAL PREMISES USES THE RESIDENTIAL PREMISES OR AT LEAST ONE OF THE UNITS OF THE DUPLEX OR TRIPLEX, AS APPLICABLE, AS THE OWNER'S PRIMARY RESIDENCE; OR

(b) THE OWNER'S PRIMARY RESIDENCE IS ON THE SAME LOT AS THE DUPLEX, TRIPLEX, OR RESIDENTIAL PREMISES.

**SECTION 2. Act subject to petition - effective date - applicability.** (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; 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 such period, 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 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to written rental agreements executed on or after the applicable effective date of this act.

Approved: June 5, 2023