ISSUES RELATING TO COMMERCIAL LEASING

U.S.A., COLORADO
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1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.

   There are no state transfer taxes – only a state “documentary fee” that applies to recorded transfers of title. Some home rule cities located in mountain resort areas have transfer taxes, and local law may vary regarding the amount of the tax and the transactions on what it is imposed. Our experience is that such taxes generally have not been assessed against leaseholds. However, the parties to a proposed long-term lease in a municipality that imposes a real estate transfer tax should consider reviewing local law to evaluate whether the local transfer tax applies to the lease.

2. Describe any legal restrictions limiting the maximum term of a lease (including renewals).

   There are no statutory restrictions on the term of a lease in Colorado, but as a general practice landlords and tenants in Colorado do not enter into leases for a term longer than 99 years, including renewals. In at least one case, the Colorado Court of Appeals has avoided giving effect to lease language that appeared to grant the tenant an indefinite renewal right. See Carder, Inc. v. Cash, 97 P.3d 174, 181-82 (Colo. App. 2003), cert. denied (Colo. 2004) (holding that a lease providing an option to renew for “successive periods of 5 years each” could be renewed for only one period).
3. Describe any laws requiring landlords to allow a tenant to renew its lease.

There are no statutory provisions requiring a landlord to allow a tenant to renew its lease. However, there is precedent that if the tenant holds over, the landlord continues to collect rent, and the lease is silent as to the consequences of holdover, the lease may be deemed to have renewed for a period equal to or less than the original lease term depending on the duration of the original term and the apparent intent of the landlord and tenant. The best practice is to clearly specify the consequences of holdover in the lease document and to adhere to those provisions to avoid waiving them.

4. Describe any restrictions on rent that may be charged for to a tenant.

There are no state law restrictions on rent.

5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.

No such laws apply to commercial leases in Colorado, but Colorado common law does include a concept of constructive eviction.

6. Describe any laws allowing tenants to assign or sublease without landlord’s consent.

There is no Colorado law that limits restrictions on assignment or subleasing. However, in the absence of such a restriction in the lease, the tenant can generally assign the lease or sublet the premises.

A tenant that is a debtor in a proceeding under the U.S. Bankruptcy Code may have the right to assign its lease without the landlord’s consent pursuant to 11 U.S.C. section 365 if the conditions to such an assignment are satisfied, regardless of whether the lease contains restrictions on assignment or subletting.

7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.

There is no law prohibiting or invalidating restrictions on assignment or subletting. The lease may contain a provision giving the landlord the absolute right to withhold its consent to assignment or subletting. However, if the lease does not contain such a provision, the landlord must not unreasonably withhold or condition its consent.

8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?

The only form of eviction proceeding in Colorado is the statutory procedure provided in the Colorado Revised Statutes, Sections 13-40-101 through 13-40-123. The length of time for the proceeding varies, but the eviction hearing can usually be conducted within about three weeks after the initial eviction notice is given, and a writ of restitution entitling the landlord to re-enter the premises can be obtained 48 hours after the hearing.

Before the landlord can bring an eviction action, it must serve a three-day written demand for compliance with the lease or possession of the premises under C.R.S. section 13-40-
104(1)(d). The statute provides time periods for the service of the summons and complaint, the scheduling of the initial return hearing, and the setting of trial. The courts require strict compliance by the landlord with the notice and service requirements of the statute and the time periods set forth in the statute.

9. **Are there any legal restrictions on pledging a leasehold interest as security for a financing?**

   No, but it is typical for Colorado leases to prohibit such a pledge or at least require the landlord’s prior consent.

10. **Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.**

   There are no statutes regarding how security deposits are held. The Security Deposit Act, C.R.S. sections 38-12-101 through -104, governs the return of deposits in residential leases, but no such statute applies to commercial leases.

11. **Describe any required statutory or other legal disclosures to be made to all tenants.**

   No Colorado statutes provide minimum disclosure requirements. Leases are governed by general contract principles, and as a general matter the disclosure obligations of the parties will be the same as under any other contract.

12. **Describe all taxes on rent or other taxes that landlord are required to collect from tenants.**

   Landlords are not required to collect taxes on rent or other taxes from tenants.

13. **Describe any limitations on the ability of landlords to exercise self-help.**

   Landlords may not exercise self-help in Colorado. Although many leases in Colorado provide for the remedy of self-help, such provisions are unenforceable, and landlords may dispossess tenants only pursuant to the statutory eviction procedures set forth in C.R.S. sections 13-40-101 through 13-40-123.

14. **Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.**

   Acceleration remedies must be expressly stated. Some practitioners question the enforceability of an acceleration clause that does not reduce the lump sum being sought by the fair rental value of the premises or discount the accelerated rent to its present value.

15. **Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.**

   The statutory eviction procedure is an expedited remedy. Resolution of other claims related to a tenant’s default are generally bifurcated from the expedited eviction proceeding and follow the ordinary course of a civil case. A landlord will typically bring one action alleging separate claims for recovery of possession of the premises and breach of the lease.
16. Describe any formal requirements for the execution of a lease.

There are no statutory requirements in Colorado.

17. Describe whether a memorandum of lease or other document would need to be recorded for the lease to be enforceable against third parties.

Whether a memorandum of lease is necessary depends on whether the title to the property in question is registered. Title for most property in Colorado is not registered, but Colorado does have a “Torrens” title registration law under which some property is registered. A memorandum of lease is not usually necessary to put third parties on notice of a lease of unregistered property. Generally, a third party will be deemed to have inquiry notice of the lease if a reasonably diligent inquiry of those in possession of the property would have revealed that the property was leased. However, under some circumstances, tenants (and sometimes landlords) may wish to establish record notice by recording a memorandum of lease. Some practitioners contend that a memorandum of lease must contain an actual grant of lease to be effective, based on C.R.S. sect. 38-35-108 (recorded reference to terms of unrecorded document not binding on third parties).

Leases of property in the registered title system for a term of three years or more must be registered in the same manner as a mortgage to bind third parties. See C.R.S. sections 38-36-166 (leases), -160 (mortgages) and -133 (exceptions to title).

18. Describe any restrictions on the transfer of ownership of real properties subject to a lease. Does such a transfer affect the tenant’s rights or obligations?

There are generally no restrictions on transfer of ownership of leased property, and transfers do not generally affect the tenant’s rights or obligations, though lease provisions governing whom the tenant should look to for the return of the security deposit are common.