



Colorado Legislature Imposes Warranty of Habitability on Residential Leases

Colorado has enacted new legislation which imposes a warranty of habitability upon leases of residential property. The law applies to all rental agreements for residential property entered into, extended, or renewed on or after September 1, 2008.

The law applies to owners and managers of residential property--property used as a home, residence or sleeping place. It excludes agricultural, institutional, employee, student, and temporary housing; occupancy under a sales contract; hotels/motels; and some mobile home leases.

The landlord warrants the property as "fit for human habitation". The landlord is required to maintain the property's waterproofing, weather protection, plumbing, gas, water, sewage disposal, heat, lighting, wiring, floors, stairs, railings, locks, and security devices in good working order. The landlord must keep common areas clean, provide for extermination of vermin, provide adequate trash receptacles, and comply with applicable laws concerning health and safety. A property must be habitable before being leased to a tenant.

A landlord breaches the warranty if: (1) the property is uninhabitable; (2) it is in a condition that is materially dangerous or hazardous to the tenant's life, health or safety; and (3) if the landlord fails to correct the problem within a "reasonable time" after receiving written notice from the tenant.

An agreement to waive or modify the warranty that does not comply with the act is void. There are limited abilities to "opt out" by requiring the tenant to assume responsibility for certain warranty items or to perform specific repairs. The "opt out" provisions only apply in limited situations, and they have technical legal requirements which are beyond the scope of this article. You should consult with legal counsel regarding any attempt to "opt out" to ensure compliance with the new law.

If there is a breach of the warranty, the tenant has between 10 and 30 days to give written notice specifying the breach and giving the landlord five business days to remedy the problem. The landlord can move the tenant to a comparable unit at the landlord's expense in lieu of repairing the premises. If there is a breach, and notice is given, the tenant can terminate the lease if the breach is not remedied, or damages paid. The tenant can obtain injunctive relief in certain circumstances. In some circumstances, a tenant can assert a breach of warranty as a defense in a suit for unpaid rent. While the case is pending, the tenant must pay rent to the court. The tenant can recover any resulting damages, including a reduction in rent based on the "fair rental value" of the property. The landlord has a defense if the tenant caused the problem or prevented a repair. Also, the tenant cannot assert a defense of breach of warranty of habitability if the landlord brings a suit for possession based upon a non-monetary violation of the lease, or if the landlord's action for possession is based upon a notice to quit or to vacate. Whether this limitation applies to a suit for rent coupled with an eviction based on a notice to quit or to vacate is unknown at this time. The tenant can recover attorney fees if attorney fees are allowed under the lease. *(continued on back)*

Becky Renee Solin

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We lost a dear friend this year when Becky Solin passed away at her home in Bismark, North Dakota, of natural causes. Some of you may remember Becky as the secretary to our litigation group from 1997 through 2003.

Uncommon kindness and a cheerful disposition were Becky's trademarks and she generally displayed them with disregard for her own circumstances. She was part earth mother, part cheerleader and part counselor to the people in her life; always ready to lend a helping hand, a caring ear or a sincere encouragement to anyone in need. Besides family and many friends, Becky most loved sports, children and big yellow dogs — and any event that combined them all! Becky lived quietly and loved large.

A native of Fargo (and a long time resident of Harvey), North Dakota, Becky is survived by her parents, Cyril and Darlene (Olson) Solin. She was preceded in death by her brother Rick Solin in 1993.

Someone once said that "friends are those rare people who ask how you are and then wait to hear the answer." Becky Solin was that kind of rare and fine woman and we miss her greatly.

This publication provides general information and should not be used or taken as legal advice for specific situations which depend on the evaluation of precise factual circumstances. Use of any information herein does not create an attorney-client relationship. The law is constantly changing and there are exceptions to almost every rule of law. You should not rely on the information provided in this newsletter without seeking legal counsel.



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Common Law Marriage – Are You In One?

Are you married? If you said “no,” are you sure? Being married is like being “a little bit pregnant” – either you are or you aren’t. You may be surprised to learn that if you are in a relationship with an opposite-sex companion, what you might consider as being “a little bit married” may be the real deal in which you are legally bound to one another until divorce – and not necessarily death – do you part.

That’s right. Even without a traditional wedding, you may have a common law marriage. It is an actual marriage that can terminate only upon death or through formal divorce proceedings. Your obligations to your common law spouse may not end, and in fact may just begin, at your death, because he or she may have significant statutory claims against your estate.

In Colorado, the test for determining whether a common law marriage exists is simple: if the parties consent to be husband and wife, and they openly assume the marital relationship, they have a common law marriage. Even if such an agreement between the parties cannot be proven, a common law marriage can nonetheless be proven by evidence of cohabitation coupled with a general reputation within the community of being married. Sadly, the issue of whether companions were common law spouses often arises after one of their deaths, which in turn often leads to animosity and expensive estate litigation.

Statutory claims that a spouse – including a common law spouse – can pursue against the decedent’s estate include: (1) the “Elective Share,” which involves a mathematical computation potentially resulting in a share of up to 50% of the decedent’s estate; (2) the “Exempt Property Allowance,” currently set at \$26,000; and (3) the “Family Allowance,” (only applicable if dependent children are involved), which could be up to \$24,000. Generally, these claims must be paid to the surviving spouse

(continued from above) upon demand, regardless of what the decedent’s Will may provide to the contrary. If your estate plan does not include your companion, or includes your companion to an extent less than these statutory claims provide, these claims could have a devastating effect on your intended beneficiaries’ inheritance.

To maximize the chance that your objectives will be carried out under these circumstances, it is critical to execute, together with your companion, a Cohabitation Agreement which clearly outlines the boundaries of your relationship. It is also extremely important to execute a Will clearly stating what, if anything, you wish to leave to your companion.

About the author: Brent Hultquist is an Associate with the firm and his practice areas include Wills; Trusts and Estates; Probate; Asset Protection; Tax Law; Business Law; Corporate Law; Partnership Law; Insurance; Trademarks, Servicemarks and Copyrights; and Real Estate Law.

(“...Warranty of Habitability” continued from front) This article is a general overview of the terms of the new law. The statute contains detailed requirements that are not addressed in this article. Anyone with questions concerning the warranty of habitability should consult with legal counsel to determine the requirements of the law.

About the author: Scott Fitzke is a Shareholder in the firm and his practice areas include Civil Litigation (Trials and Appeals), Real Estate Law, Defense Litigation, HOAs, Professional Liability and Malpractice, Entertainment Law, Business Law and Business Associations, Wills, Trusts and Estates, and Probate.