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Employee housing: Normal eviction process may not apply

Ski resorts, property management companies, apartment communities, motels, hotels and nursing homes all provide employee housing. However, when the employment relationship ends, in many cases not amicably, it becomes a safety concern for the employee to continue to live on site.

For purposes including protecting the rights and safety of the employer's patients, clients, customers or tenants, in 1997 the Colorado Legislature passed the Employee Occupancy Law, C.R.S. § 8-4-123, to provide a mechanism for employers to remove an employee from the premises without wasting time obtaining a court order authorizing the removal. The EOL provides that in employee housing situations, the employee's occupancy of the premises is not a tenancy, but a license to occupy the premises pursuant to an employment relationship. The rationale being that the employee's occupancy of the premises is not for the purpose of providing housing, but is "a means to provide services to the employer's patients, clients, customers or tenants."

Under the EOL, a written license to occupy the premises, entered into as part of an employee's compensation, may be terminated at any time after the employment relationship ceases. Once terminated, the employee has three days after receipt of the notice of termination to vacate the premises. If the employee fails to vacate the premises within three days after receipt of the notice, the sheriff is authorized to remove the employee from the premises upon being shown the notice of termination of the license to occupy the premises and the written agreement pursuant to which the license to occupy the premises was granted. This procedure is far less time-consuming than the normal eviction process, where the landlord would have to file a civil eviction action under Colorado's Forcible Entry and Detainer Statute and would then have to wait until after a show-cause hearing to obtain a writ of restitution from the court authorizing the county sheriff to evict. Importantly, the notice of ter-



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mination of a license to occupy the premises must set forth the time when the license to occupy the premises will terminate, and it must be signed by the employer or the employer's agent or attorney. In order for the termination to be effective, the employer/landlord must have a written license-to-occupy agreement with the employee that meets specific statutory requirements. Under the EOL, the occupancy license agreement must include: (i) the names of the employer and employee; (ii) a statement that the license to occupy the premises is provided to the employee as part of the employee's compensation and is subject to termination at any time after the employment relationship ceases; (iii) the address of the premises; and (iv) the signature of both the employer and the employee.

It is not entirely clear under the EOL whether the notice of termination must be personally served on the employee, or whether posting a copy of the notice in a conspicuous place on the premises is acceptable. The EOL states that termination

of the license to occupy is effective three days after "service." It also states that the sheriff is authorized to remove the tenant from the premises if the employee fails to vacate within three days after "receipt" of the notice of termination. Nowhere in the EOL does it provide for the method of service. However, given the safety purpose of the EOL, it makes sense that posting the notice of termination in a conspicuous place on the premises, which is far more expedient than trying to personally serve an employee who may be difficult to find or may be deliberately avoiding service, is sufficient to terminate the occupancy. Furthermore, posting of an eviction complaint is sufficient under the FED statute for purposes of obtaining a court order authorizing eviction.

The rationale being that the employee's occupancy of the premises is not for the purpose of providing housing, but is 'a means to provide services to the employer's patients, clients, customers or tenants.'

In addition to the occupancy license agreement, employers also may want the employee to sign and enter into a written lease agreement with the employer that sets forth the respective rights and obligations of the parties as landlord and tenant, including provisions for payment of any additional rent above the amount being applied as employment compensation, and standard provisions relating to subletting, security deposit and the like. If a separate lease is entered into, as a precautionary measure employers should incorporate the occupancy license into the lease and should include a provision permitting termination of the lease on three days' notice, as set forth in the occupancy license. If these steps are not taken, the employee could argue that notwithstanding the EOL, a normal landlord-tenant relationship also exists with the employer, which entitles the employee to the rights, protections and procedures afforded under the FED statute, including an opportunity to be heard at a show-cause hearing. While this may not appear to be a viable argument, it might get traction with the county sheriff, who for liability purposes may not be satisfied with simply being shown a notice of termination and an occupancy license, and may require a formal court order before evicting the employee. ▲

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