PROTECTING COLORADO’S RENTERS

A Call for State & Local Policy Action  |  February 2017

This document was created jointly by Enterprise Community Partners, Mile High Connects, 9to5 Colorado, and FRESC: Good Jobs, Strong Communities. These policy recommendations build on recent reports by Mile High Connects and 9to5 Colorado and were informed by dozens of Colorado renters and local partner organizations. This list is intended to be neither final nor comprehensive, and we look forward to continued community engagement in the coming weeks and months.

INTRODUCTION

Last year, 36,000 families in Colorado received official eviction notices. We know that the actual number of evictions and forced moves in our state is much higher, especially after accounting for “cash-for-keys” agreements, moves due to tenant intimidation, landlord foreclosures, building condemnations, and other actions that are not typically uncaptured in state and local data.

Research shows that evictions and other forms of forced displacement can have profound consequences, both for the individual family and the broader community. According to Harvard sociologist Matthew Desmond, author of the best-selling book *Evicted: Poverty and Profit in the American City*, evictions are a leading cause of family homelessness and can often trigger a job loss or declines in physical and mental health. One study also found that relative to voluntary moves, evictions in a neighborhood can drive up local poverty and crime rates.

There are a number of factors behind Colorado’s eviction problem – but one key factor is the rising cost of living. Today one in four renters in our state – an unprecedented 733,000 households in total – are “housing insecure,” meaning they pay at least half of their monthly income on rent and utilities. As a result, hundreds of thousands of working Coloradans are forced to make impossible tradeoffs: pay rent or buy groceries, pay the electric bill or put gas in the car. And many are just one unforeseen event – an illness, a job loss, even a drop in hours at work – from seeing an eviction notice on their front door.

In recent years, cities and towns across Colorado have taken meaningful steps to address the region’s deepening affordable housing crisis. In September, the City of Denver passed the city’s first-ever revenue source dedicated to affordable housing, which is expected to generate $150 million over the next 10 years, and in May, the Colorado legislature renewed the State Low Income Housing Tax Credit program, a crucial source of financing for local affordable housing development. Despite this progress, Colorado law provides very few tenant protections that promote housing quality and prevent landlord discrimination, unnecessary eviction or forced displacement. As a result, a recent informal survey found that nearly 9 in 10 renters in the Denver area reported facing barriers to finding rental housing in the past three years, while a similar percentage reported facing the same challenges while living in rental housing.

Herein is a set of specific policies that we recommend pursuing at the state and local levels. The proposals are organized around each step of the rental process – from application, to lease-up and occupancy, to eviction proceedings. The order in which the proposals appear in this document in no way implies prioritization.

OUR POLICY RECOMMENDATIONS

A. Establish a fair and equitable application process
B. Ensure access to safe and well maintained properties
C. Establish strong protections against unnecessary evictions
D. Help tenants understand and defend their rights
## Policies that ensure a fair and equitable application process for rental homes.

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<th>Issue</th>
<th>Recommendation</th>
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<td><strong>APPLICATION FEES:</strong> Application fees are the first step in screening potential tenants. Currently, there is no limit to the amount a landlord can charge for running an application. Excessive application fees can create a significant barrier to accessing rental housing, especially for lower income tenants applying to several apartments over a short period of time.</td>
<td><strong>ENACT</strong> limits on the amount a landlord can charge for an application. Application fees should only relate to the actual costs incurred by the landlord in leasing the rental. Finally, no landlord may charge a fee when the landlord knows or should know that no rental unit is available or will become available in a reasonable period of time.</td>
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<td><strong>CRIMINAL BACKGROUND CHECKS:</strong> One in four Americans has a criminal record according to the National Employment Law Project. Criminal background checks typically occur after the initial application and before a potential tenant is allowed to move into the rental unit. Colorado is an open records state, meaning landlords can go back 30 years or more to deny housing. Even very old cases, minor offenses and dismissed charges could be grounds for a denial on a rental unit. As a result, a criminal history is often a significant barrier to quality rental housing. For many, the inability to secure stable housing increases the probability of returning to criminal activity or experiencing homelessness.</td>
<td><strong>JOIN</strong> other states like California, Maine and Oregon by enacting sensible restrictions on the criminal background check process, such as limiting checks to seven years, which follows the Fair Credit Reporting Act guidelines on limiting “adverse information” to seven years on credit reports.(^viii)</td>
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<td><strong>EVICITION RECORDS:</strong> Evictions or “forcible entry and detainers” occur after a tenant has violated the terms of their rental contract. In Colorado, once an eviction is filed – i.e. entered into a court’s database – it remains on a tenant’s record indefinitely, even if the case was dismissed or settled out of court before an eviction actually takes place. As a result, evictions are often a permanent stain on tenant’s background and lessens their chances of finding and securing quality rental housing.</td>
<td><strong>FOLLOW</strong> California’s guidelines on eviction proceedings. If a tenant agrees to a settlement with the landlord that stops the eviction process, the eviction should be sealed. If a tenant is evicted, the judgement should be sealed for 60 days to allow the tenant to seek alternative housing(^ix). Further, in California, all eviction records are filed under seal and remained sealed if the tenant prevails. Oregon has also enacted a law prohibiting the use of dismissed eviction records in making rental decisions.</td>
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<td><strong>DISCLOSURE STATEMENTS:</strong> Most states require landlords to provide disclosure statements, which outline the rights and responsibilities of tenants based on local, state and federal law. Currently Colorado has no such requirement, leaving many tenants unclear on the rights and responsibilities they have under state and local law. Requiring this information to be on the lease contract or as an addendum to the contract will allow for greater understanding of the landlord/tenant relationship.</td>
<td><strong>LANDLORDS</strong> need to protect their assets and tenants need to understand their rights and responsibilities under the law. A disclosure form: 1) Warns of any potentially harmful materials or substances in the home (lead, mold, asbestos); 2) Outlines local landlord/tenant law regarding security deposits, move in requirements and tenant insurance requirements; 3) Details the condition of the property upon move-in; 4) Outlines tenant insurance requirements (renter’s insurance); 5) Details strict policies on tenant responsibilities upon move-in. Overall, a disclosure statement provides a full and complete outline of both parties’ legal responsibilities under the law.</td>
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<td><strong>SOURCE OF INCOME DISCRIMINATION:</strong> Tenants should be able to use any verifiable source of income, including child support payments, housing vouchers, and social security benefits, as available income to qualify for rental housing. Colorado currently has no protections for source of income discrimination, and most landlords require a tenant to have income equal to two to three times the rent to qualify for a unit. Thus, prospective tenants could be unfairly denied housing if some or all of their income is not recognized or accepted by the landlord during the application process.</td>
<td><strong>ACCORDING</strong> to the Poverty &amp; Race Research Action Council at least 13 states and several cities and counties(^x) have passed laws that prohibit discrimination based on source of income. Enact legislation similar to Connecticut law, which prohibits landlords from refusing to rent or offering different terms, conditions or privileges based on “lawful source of income,” and from advertising any such preferences or limitations. Further, the statute defines source of income as “income derived from Social Security, supplemental security income, housing assistance, child support, alimony, or public or state administered general assistance.”(^xx)</td>
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## B. Policies that ensure all renters have access to safe and well maintained properties.

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<td>STANDARDIZED LEASE CONTRACTS WITH WARRANTEES OF HABITABILITY: Many states have a standardized lease contract that holds landlords accountable for housing quality and give tenant’s options to remedy any deficiencies in the unit without fear of retaliation. Every Colorado lease contains a very limited “Warranty of Habitability” that ensures landlords are leasing properties that are safe for people to occupy. Many leases also revoke the tenant’s right to withhold rent until major repairs are made or to move out of uninhabitable conditions. Tenants have little recourse when their homes become uninhabitable for various reasons, such as mold or a sustained lack of heat or hot water. In addition, without a standard lease contract landlords can create their own timelines and policies on completing emergency repairs.</td>
<td><strong>ALLOW</strong> tenants to withhold rent for egregious repair issues and strengthen warranty of habitability standards – condition a tenant’s duty to pay rent on the landlord’s duty to maintain habitable conditions. A habitable property should be defined in every lease contract as one that has adequate heating, water, electricity, and is structurally sound. Furthermore, couple the warranty with rules prohibiting landlords from retaliating against tenants who complain of housing code violations. The standard lease should also state that any problems that interfere with a property being safe for occupancy should be repaired within 24 hours.</td>
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<td>RENTAL REGISTRIES: Currently, many cities and counties within Colorado do not have concrete data on the number of rental properties within their boundaries. Creating a rental registry and a regular inspection schedule will help to identify and bring sub-standard properties up to code, and having an updated list of all rentals will help connect prospective tenants to available units and help enforce housing code requirements.</td>
<td><strong>REPLICATE</strong> Boulder’s rental registry, which requires that every rental property/unit be permitted and assigned a number by the city. The registry allows for tracking of every new unit that enters the market, requires inspections prior to the move-in date, and helps connect tenants seeking housing to available properties/units.</td>
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## C. Policies that establish strong protections against unnecessary evictions.

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<td>JUST-CAUSE EVICTION: Under current law Colorado landlords can evict tenants with a “no fault” eviction, meaning landlords in market rate housing can evict tenants from their homes without cause.</td>
<td><strong>ENACT</strong> an ordinance at the local level and similar legislation at the state, requiring landlords to have a reason to evict a tenant at will. In Seattle, there are over 18 “just cause” reasons to evict, such as nonpayment of rent, destruction of property and disorderly conduct, to name a few.</td>
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<td>EVICTION GRACE PERIODS: Under current law landlords only need to give seven days’ notice before any rent increases and eviction notices are enforced on month-to-month leases. Most renters are unable to secure alternative housing in a week’s time. Without adequate time to secure new housing, families are more vulnerable to experiencing homelessness, housing insecurity and economic hardship.</td>
<td><strong>COLORADO</strong> should increase notice requirements for rent increases and notice to vacate, to at least 30 days. According to the Colorado Center on Law &amp; Policy, 47 states require more than 7 days’ notice before termination of the lease or notice of rent increases. Colorado is one of three states that does not meet this standard for notice.</td>
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<td>EVICTION FILING COSTS: The cost of filing an eviction varies widely from state to state and county to county, ranging from $50 to $500. High fees can be a significant deterrent from unnecessary legal proceedings, especially when the dispute is over a relatively small amount of arrears. Today it costs just $97 to file an eviction in the state of Colorado.</td>
<td><strong>INCREASE</strong> eviction filing fees to discourage unnecessary legal procedures. In addition, any proceeds from these higher fees could be allocated to a fund dedicated to providing legal services to low-income tenants facing eviction proceedings (see section on right to legal counsel).</td>
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<td>PROTECTIONS FOR VICTIMS OF STALKING AND SEXUAL ASSAULT: Victims of sexual assault and stalking are unable to break their lease without financial penalty. This often traps victims in situations where they cannot escape their abuser or their stalker without fear of financial ruin.</td>
<td><strong>ENSURE</strong> victims of sexual assault and stalking are protected in the same ways current statute protects domestic violence survivors.</td>
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1 At the time of this publication this bill is moving through the Colorado legislature.  
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D. Policies that ensure tenants understand and can adequately defend their rights.

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<td>RIGHT TO LEGAL COUNSEL: Colorado has no constitutional requirement for tenants to have legal representation in non-criminal (i.e. civil) matters. A 2014 report from the Colorado Access to Justice Commission outlined a “serious crisis in civil legal representation of the indigent,” in part because state funding for legal services was well below the national average. Often access to legal counsel is the difference between an eviction and a home for low-income tenants, especially since the vast majority of landlords have legal representation during court proceedings.</td>
<td>ESTABLISH a right to counsel for housing related court proceedings to ensure both the landlord and tenant have adequate access to legal protections. To help defray the cost of legal services, the city could dedicate all proceeds from eviction filing fees (see above) to a dedicated fund.</td>
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**Next Steps**

In the coming weeks and months, our organizations will work together to translate the above policy recommendations into a tangible state and local advocacy strategy, starting with a narrower set of high-priority policies. As we do, we will have the support of Coloradans across the state. Nearly 90 percent of respondents to a recent statewide poll agreed that Colorado’s leaders should work to create and preserve affordable homes for all.

**Community Strategies**

We believe that our partners at 9to5 Colorado have outlined excellent community-based strategies to empower renters throughout the state:

- Community Organizing
- Create Collective Action Groups
- Create Neighborhood Organizations

**Policy/Legal Strategies**

We believe that any worthwhile push requires a comprehensive strategy informed by community members, the legal sector and policy experts. The policies outlined above are a starting point for meaningful change for tenants throughout Colorado.

We hope that you will join us in this effort. If you are interested in joining this campaign or have any questions about the above recommendations, please contact Tiana Patterson from Enterprise Community Partners at tpatterson@enterprisecommunity.org.

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3 Emilie Rusch, “40 percent of working Colorado renters spend more than a third of income on housing” The Denver Post (May 2016) http://www.denverpost.com/2016/05/02/40-percent-of-working-colorado-renters-spend-more-than-a-third-of-income-on-housing/
6 National Housing Law Project, State and Local Tenant Protections http://ihlp.org/node/1341
7 9to5: Colorado Warning Gentrification in Progress; Community perspective on the Denver Metro Housing Crisis.
9 California Code of Civil Procedure § 1161.2
10 Poverty & Race Research Action Council “Expanding Choice: Practical Strategies for Building A Successful Housing Mobility
12 Connecticut General Statutes § 46a-64(j)
13 Colorado Center on Law & Policy, Notice to Quit Fact Sheet
14 http://personalfinance.com/helpers/eviction.html
15 Coalition Against Domestic Violence, Housing Protections for Survivors Fact Sheet
16 Justice Crisis in Colorado 2014: Report on Civil Legal Needs in Colorado
17 More Than 80 percent of Coloradans Support Affordable Housing, Statewide Poll Finds (May 2016)